



THE REQUIREMENT OF “COMPREHENSIBILITY” IN A PROSPECTUS

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Introduction

Prior to publishing a prospectus, an Issuer must ensure that the information in the prospectus is complete, consistent, and comprehensible in order to obtain approval from the Danish Financial Supervisory Authority (“**DFSA**”).

The criteria to determine when these requirements are satisfied are set out in Article 36-38 in Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 (“**Delegated Regulation**”) supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council of 17 June 2017 (“**Prospectus Regulation**”). The DFSA may also establish criteria additional to those listed in articles 36-38 of the Delegated Regulation.

If the prospectus does not satisfy the requirement of comprehensibility, the DFSA may reject approval. On 28 March 2023, the DFSA issued a short form memo on the requirement for “comprehensibility” in a prospectus with the purpose of contributing to a better understanding of the underlying meaning of the requirement in practice.

Below is a short summary of the DFSA's comments in relation to the specific criteria set out in Article 37 of the Delegated Regulation.

Clear and detailed Table of Contents

The table of contents of a prospectus should be detailed and clear to facilitate the reader's access to the various information contained in the prospectus. This is particularly important for base prospectuses which encompass more than one financial instrument. The table of contents must enable the reader to locate information pertaining to specific financial instruments within the prospectus.

Structure in different Levels

The table of contents should be structured into different levels comprising sections and sub-sections. In cases where the prospectus covers multiple types of instruments the table of contents should be structured in varying levels that correspond to each instrument type. The level of detail required depends on the specific content of the prospectus.

Division of Risk Factors

Risk factors should be divided into Issuer risks and securities risks in the table of contents. Depending on the instruments that the Issuer is expected to issue under the base prospectus, it is advisable to further divide securities risks associated with specific instruments in the table of contents.

Balanced Level of Detail

An excessive level of detail may impede the clarity of the table of contents. Therefore, the number of levels in the table of contents should adequately reflect the structure and complexity of the prospectus. The different levels in the table of contents should be structured alphabetically or numerically.

Structure and Function of the Prospectus

1. *Headings and Subheadings*: This can create an overview that is helpful to investors.
2. *Differentiation between Instruments*: If a prospectus covers multiple instruments, the draft must clearly and consistently differentiate between the different instruments in the prospectus, making it easy for the reader to identify them.

3. *Limitation of Instruments and Variations*: It is essential to limit the number of different instruments and instrument variations as much as possible. The more simplified the structure and the more limited the scope, the more accessible the prospectus will be for investors.
4. *Risk Factors*: As the risk factors section is one of the most significant aspects of a prospectus the section should only list the risk factors that meet the criteria set out in Article 16 of the Prospectus Regulation e.g., risks that are relevant to the Issuer. The Issuer should therefore not include information that does not meet these criteria, such as specific contract terms for bonds, which should be placed in a separate section with a relevant heading.

Mathematical Formulas and Calculations

Especially for more complex derivative products, sample calculations or scenarios should be provided to demonstrate how the instruments function.

Plain Language and Definitions

The prospectus must be written in clear and plain language using common terms and avoiding lengthy sentences, specialist terms, and misleading product names. It should include a glossary and provide the full name for each law, regulation, order, or other rules that are referred to. The text should have a logical structure, and complex issues should be visualized with scenarios, examples, and graphics. If the prospectus is primarily directed at Danish investors, the prospectus should be in Danish. The DFSA also recommends that the prospectus is proof-read before it is filed for review.

Besides the above, Issuers should keep in mind that a prospectus must always comply with the formatting requirements set out in the Delegated Regulation (Article 24 for regular prospectuses, Article 25 for base prospectuses, and Article 32 for EU growth prospectuses).

Lastly, the DFSA recommends that the prospectus includes a brief guide that explains the principles of the prospectus structure and how to use the prospectus, which is especially true for complex base prospectuses. If it is not possible to provide a brief guide it may indicate as a general rule that the structure of the base prospectus is too complex.

Link to the DFSA's newsletter can be found [here](#) (in Danish).

If you have any questions or require further information regarding any of the above, please do not hesitate to contact us.



Dan Moalem
Partner

Dan.moalem@moalemweitemeyer.com



Joachim Buznicki Nørlem
Senior Associate

Joachim.noerlem@moalemweitemeyer.com



Kadir Kurt
Associate

kadir.kurt@moalemweitemeyer.com

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