PROSPECTUS LIABILITY

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PROSPECTUS LIABILITY: SUMMARY

- The Prospectus: Regulation Regime
- Prospectus liability: characterization
  - Non-Contractual
  - Contractual
  - Rome II Regulation
- Conclusions
ISSUE OF SECURITIES

PROSPECTUS:
- Information of the issuer
- Information on the securities

ISSUER

Public offer

Investors

Listing

Stock Exchange

THE PROSPECTUS DIRECTIVE (PD): KEY ELEMENTS

ISSUER/OFFEROR...

Duty
Obligation to publish a prospectus when: public offer or admission to trading. Information on the issuer and the securities

Approval
The prospectus must be approved by the authorities of the home Member State

Mutual recognition
Once approved, it enjoys an EU passport

Civil liability
Article 6 of the PD: legal diversity = conflict-of-laws risks
THE PROSPECTUS DIRECTIVE (PD): PROSPECTUS LIABILITY

ISSUER/OFFEROR...

Civil liability

Article 6 of the PD: legal diversity = conflict-of-laws risks

- Civil liability → Damage suffered by investors
- Double function: compensatory and regulatory
- Article 6 PD: No harmonization
- Legal diversity → Legal uncertainty. Conflict-of-laws risks

CROSS-BORDER ISSUE OF SECURITIES: Which law applies?

ISSUER/OFFEROR

Listing

Public offer

Public offer

Public offer

Listing

Spain

France

Germany
Prospectus liability: no special conflict rule in the EU PIL (≠ Swiss PIL).

Characterization

- Contractual
- Non-Contractual

Rome I Regulation

Rome II Regulation

Traditional characterization
- General standard of behavior in the market
- The Rome I Reg connections are not appropriate

Prospectus Liability

Rome II Regulation: Article 4 (1)

LEX

LOCI

DAMNI

No physical, but financial or mere economic damage
PROSPECTUS LIABILITY

LOCIs

Location of the securities: ECJ (Kronhofer)
- Cons: Arbitrary and unpredictable

Lex mercatus
- Market
- Pros
- Cons: Mosaic Approach

State of origin principle
- Home Member State
- Pros
- Cons: lege lata + lege ferenda

PROSPECTUS LIABILITY: FINAL CONSIDERATIONS

- Legal uncertainty: the need of a special conflict-of-laws rule PL
- The lex mercatus a main connecting factor.

Relevant market:
- Market where the securities are offered/listed
- Multi-offer/listing → Market + transaction
- OTC → Market + closest connection
CROSS-BORDER ISSUE OF SECURITIES

ISSUER/OFFEROR...

CROSS-BORDER ISSUE OF SECURITIES

ISSUER/OFFEROR...