

# Client Alert

## Enhanced Protection for Retail Investors in the Financial Sector in Belgium: Pre-Contractual Information Requirements and Risk Label

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After the approval by Royal Decree of the Regulation of the Belgian Financial Services and Markets Authority (the “**FSMA**”) banning the distribution of certain non-mainstream financial products to retail clients (see [here](#)), two new legal measures confirm the trend towards increased protection for retail investors in the financial sector in Belgium

A Royal Decree of 25 April 2014, published in the Belgian Official Gazette on 12 June 2014 (the “**Royal Decree**”), will reinforce the pre-contractual information requirements applicable to the distribution of financial products to retail clients in Belgium. A regulation of the FSMA, which was approved by Royal Decree on the same day, will require a standardized risk label to be assigned to financial products distributed to retail clients in Belgium (the “**Regulation**”). The Royal Decree and the Regulation will both enter into force on 12 June 2015.

The Royal Decree is characterized by its cross-sector nature: it applies to financial products such as savings accounts, cash certificates, life and non-life insurance agreements, securities and other investment products, with only a few exceptions. It introduces an obligation to provide a standardized information sheet to retail investors and, further, regulates the advertisement of financial products.

The Regulation sets out the technical requirements of the risk label and the classification that needs to be complied with when distributing financial products to retail investors.

### 1. Inspiration for the Royal Decree

The Royal Decree is inspired by a Royal Decree of 18 June 2013 which imposes information duties on credit institutions in relation to the distribution of regulated savings accounts. The Royal Decree will expand its scope to all financial products within the meaning of the law of 2 August 2002 on the supervision of the financial sector and on financial services (i.e., savings products, investment products and insurance products).

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Further, the Royal Decree and the Regulation are also inspired by the PRIIPs initiative at the European level. The proposed Regulation on key information documents (or KIDs), which will introduce a new pan-European pre-contractual product disclosure document for packaged retail and insurance-based investment products has been voted by the European Parliament on 15 April 2014. The Member States in the Council of the European Union are expected to adopt the proposed Regulation in the coming months.

## 2. The Royal Decree

### 2.1 Scope of application

The Royal Decree is applicable to the distribution, on a professional basis, of financial products (other than certain pension and insurance products) to retail clients in Belgium.

However, the Royal Decree does not apply:

- where the transaction requires an initial consideration of at least 100,000 EUR or, in case of parts in open-ended collective investment undertakings, at least 250,000 EUR; or
- where the financial product is admitted to trading on a regulated market or an MTF and its distribution takes place in the context of an investment service that only consists of the reception and transmission of orders or the execution of orders, without any additional remuneration for the distributor. That is the situation, for example, where a financial intermediary would only provide a list of listed securities for which orders may be passed.

The definition given in the Royal Decree to the notion of 'distribution' is wide. It covers any form of presentation of a financial product in order to encourage a (potential) retail client to purchase, subscribe for, join, accept, sign or open a financial product. In other words, any person distributing financial products to retail clients will need to comply with the Royal Decree even if the latter does not actually proceed with the purchase of the relevant financial product.

### 2.2 Mandatory information sheet

The Royal Decree requires that a standardized information sheet complying with the conditions laid out in the Royal Decree be provided for free and in due course before the contemplated transaction. The information sheet must be provided on paper or, under certain conditions, electronically.

However, the requirement to provide an information sheet is not applicable to investment products distributed in the context of: (i) A public offering subject to the publication of a prospectus in accordance with the law of 16 June 2006 on public offers of investment instruments and admission of investment instruments for trading on regulated markets (the "**Belgian Prospectus Law**"); (ii) An offer which is not public in the sense of the Belgian Prospectus Law, the law of 3 August 2012 on collective investment undertakings or the law of 19 April 2014 on AIFM; or (iii) An offer of certain investment products (such as shares in central banks of an EU Member State, investment instruments issued by certain non-profit organizations or shares in certain cooperative companies). In relation to UCITS, the provision of the KIID would be sufficient to satisfy the information requirements of the Royal Decree.

The information sheet aims to provide appropriate information to retail clients by describing, in a concise and comparable way, the most important characteristics of the

proposed financial product. The idea is that this will allow the client to understand the nature of and the risks related to the related financial product and, in the case of insurance products, the coverage offered and the main risks which are not covered.

Consequently, the information sheet will have to comply with, amongst others, the following conditions:

- the information must be correct, clear, not misleading, and correspond to the information contained in all other documents with contractual and pre-contractual information;
- the information must be written in non-technical language and be understandable for non-professional clients without referring to other documents;
- the information sheet must be printed on no more than three A4-pages (unless it also contains performance scenarios, in which case a fourth page is allowed);
- the typography must ensure readability and proper understanding of the information sheet;
- it must clearly mention the words “information sheet”;
- the contact details of the independent service or persons to whom complaints may be addressed must be mentioned;
- if the information sheet has been approved by the FSMA, it shall mention “this information sheet has been approved by the FSMA” and it shall clearly state that such approval neither implies an assessment by the FSMA of the appropriateness of the contemplated transaction nor an analysis of the quality of the product, the related risks or the coverage offered for insurance products;
- for savings and investment products, the information sheet shall clearly indicate the relevant risk label on the first page;
- if the information sheet relates to a financial product giving the right to payments based on a formula on pre-determined dates, it shall contain three numerical examples to illustrate the formula (a negative, a neutral and a positive scenario);
- it shall contain a warning that entering into the transaction must take place on the basis of a complete analysis of all available contractual or pre-contractual information;
- it shall mention the applicable tax regime for the average retail individual client resident in Belgium;
- it shall mention the date on which it prepared the most recent update; and
- it shall mention the website on which any updated version of the information sheet can be found.

### 2.3 Responsibility

Responsibility for drafting and updating the information sheet is in principle borne by the distributor.

However, if a manufacturer of financial products calls (“*fait appel à*”/“*een beroep doet op*”) a distributor for distributing the products in Belgium, the manufacturer will be responsible for the drafting and any update of the information sheet. Similarly, if a

primary regulated distributor (being defined as a distributor having the status of a credit institution, investment firm, insurance company or management company of a UCIT) calls other distributors (being regulated or not), without any intervention of the manufacturer, this primary regulated distributor will be the sole responsible for the drafting and any update of the information sheet. This is what the Royal Decree describes as being the “cascade system”.

A manufacturer will be deemed to have called a distributor if such manufacturer has entered into a distribution agreement with the distributor. The same presumption will apply in case a primary regulated distributor enters into a distribution agreement with another distributor.

The cascade system does not discharge the distributor of its obligation to comply with the applicable conduct of business rules such as the MiFID rules. Further, if a distributor receives an information sheet that contains serious errors or which manifestly does not comply with the legal requirements, it should stop the distribution of the relevant financial product.

Except where the information sheet relates to insurance products, it shall always require prior approval of the FSMA. Information sheets relating to insurance products may also be submitted for approval to the FSMA on an opt-in basis.

## 2.4 Advertising

The Royal Decree sets out general requirements regarding the advertisement of financial products as well as the minimum content of advertising materials. Additional rules apply where the advertisement refers to (historical, simulated or future) performance, awards or ratings or if products are being compared.

These rules also apply to ‘other documents and messages’ that are being circulated in the same context.

Without prejudice to the application of the Belgian Prospectus Law, any advertisement relating to a financial product must be approved in advance by the FSMA if the information sheet is subject to the approval of the FSMA.

## 3. The Regulation

A risk label must appear on any information sheet that must be prepared in accordance with the Royal Decree and on any advertising materials relating thereto.

The purpose of the risk label is to reflect the degree of risk of savings and investment products in a highly standardized format so as to allow retail clients to compare products and to provide them with an initial understanding of the risk. However, this label does not intend to be a quality label.

The Regulation divides the financial products on the basis of a limited number of risk-related criteria that are relatively easy to apply. It sets out the criteria used to categorize savings products and investment products in one of the five classes on the risk label. The principle underlying the criteria is the degree of risk of not recovering one’s initial investment at maturity. The classification is as follows:

- **class 1:** financial products denominated in euros that fall under the deposit guarantee scheme offered by a highly creditworthy Member State of the European Economic Area, and debt securities denominated in euro issued directly by such a Member State (e.g. a savings or term deposit account or a

Class 21 insurance contract written by a Belgian credit institution or insurance company);

- **class 2:** financial products denominated in euros that promise to repay the investment after at most 10 years, issued by a creditworthy debtor (for instance an 8-year bond issued by a company with an investment grade rating);
- **class 3:** financial products denominated in euros without capital protection but with a risk spread and limited volatility, and class 2 products with a maturity over 10 years or which promise to repay at least 90 per cent of the investment (e.g. units in a harmonised investment fund with a volatility indicator of SRRI 3);
- **class 4:** financial products that cannot be specifically allocated to classes 1, 2, 3 or 5 (such as a share, a subordinated bond or a bond denominated in a foreign currency);
- **class 5:** derivative instruments and equivalent products (such as CFDs and options).

Finally, the Regulation provides that the risk label shall be presented in the colors as shown in the image below. The dimension of the label shall be in proportion to the dimension of the information sheet or advertisement and the label and the text contained in it must be visible and easily readable for the client.

