

Client Alert

FSMA launches consultations on information obligations applicable to distribution of financial products to non-professional clients in Belgium

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At the European level, the legislative process on the regulation of package retail investment products (“**PRIPs**”) reached a new peak in November 2013 when the European Parliament published its proposed amendments to the European Commission’s legislative proposal for the regulation on key information documents (“**KIDs**”) for investment products. In parallel, on 3 February 2014, the Belgian Financial Services and Markets Authority (the “**FSMA**”) launched a consultation on a draft royal decree on certain information obligations applicable to the distribution of financial products to non-professional clients (“**Royal Decree**”). On the same day, the FSMA announced the launch of a consultation on a draft regulation banning the distribution of certain non-mainstream financial products to non-professional clients (the “**Regulation**”).

The purpose of the Royal Decree is to enhance the protection of non-professional clients during the distribution cycle of financial products by introducing identical rules which are valid for all types of financial products (securities, insurance products, savings accounts, etc.).

Firstly, the Royal Decree intends to introduce an obligation to provide an information sheet accompanying the distribution of financial products to non-professional clients. Secondly, the Royal Decree intends to regulate advertising of financial products.

Scope of application of the Royal Decree

The Royal Decree purports to be transversal, meaning that it intends to apply to all financial products (savings accounts, certificates of deposit, life and non-life insurance contracts, securities and other investment instruments, etc.) which are distributed to non-professional clients, including individuals as well as companies that are not considered to be professional clients (such as SMEs). The notion of non-professional client is broader than the notion of “consumer” under Belgian law.

Mandatory information sheet

The Royal Decree requires that an information sheet meeting certain conditions be provided to non-professional clients, for free and before the purchase of financial products. As with the discussion at European level on the KID for PRIPs, the KIID drawn up in relation to UCITS is considered to fulfill the needs and requirements of the Royal Decree.

The information sheet shall contribute to the provision of appropriate information to

For more information on the topics discussed in this alert, please contact:

Matthieu Duplat
Local Partner, Brussels
+32 2 239 2526
matthieu.duplat@whitecase.com

Laurent Vercauteren
Associate, Brussels
+32 2 239 2610
laurent.vercauteren@whitecase.com

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non-professional clients by describing, in a concise and comparable way, the main characteristics of the proposed financial product, to enable such clients to reasonably understand the nature of the financial product, the associated risks and, in the case of insurance products, the coverage that is offered.

The information sheet must comply with the following requirements:

- 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 3 A4-pages (unless it also contains performance scenarios);
- 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 service or persons to whom one may address a complaint must be mentioned;
- it must indicate whether or not the information sheet has been approved by the FSMA; and
- the website on which any updated version of the information sheet can be found must be mentioned in the information sheet.

In addition, information sheets relating to investment and savings products must include a label.

The responsibility to draft and update the information is in principle borne by the distributor of the financial products in Belgium. However, the Royal Decree also contains some exceptions to that principle.

The Royal Decree mentions on what medium (paper, website, other) the information must be provided to the non-professional client and requires that any information sheet be approved by the FSMA before it is distributed.

Advertising

The Royal Decree provides that the advertising of financial products to non-professional clients at the time of distribution must comply with a number of requirements.

Further, if advertisements relating to investment or savings products contain information on historical or expected returns, an additional set of requirements must be met. If the advert refers to the granting of rewards, or if it compares financial products with other products, specific rules must be complied with.

Finally, any advertisement relating to a financial product must in principle be approved in advance by the FSMA.

Sanctions and responsibility

Notwithstanding any contractual provision to the contrary, the purchase of any financial product may be annulled by a court if (i) the financial product has been distributed without prior approval of the information sheet related thereto by the FSMA, or (ii) the distribution took place without prior approval of related advertisements (if any) by the FSMA .

If adopted, the Royal Decree further provides that, notwithstanding any contractual provision to the contrary, any damage caused by the purchase of the product is deemed to be a consequence of the violation of the requirement to obtain prior approval of the FSMA.

Consultation on the Regulation banning the distribution of certain financial products

The Regulation intends to ban the distribution of several non-mainstream financial products to non-professional clients located in Belgium, such as financial products that depend on life settlements or units in an investment fund when the investment fund itself may not be offered to the public in Belgium, such as certain hedge funds or funds investing in wine.

The ban would further extend to financial products that are distributed in the form of rights to assets which form part of a set of assets managed by a third party, in which investors are entitled to the proceeds in cash of an individualized portion of those assets. Examples include a particular plot of a teak plantation, some tons of whiskey, or identified artwork.

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The consultations are open until 17 February 2014. It is not yet clear when the Royal Decree and the Regulation will be adopted, and whether they will be adopted in their current form.