

Belgium Launches Consultation Process on EU Prospectus Regulation

IN SHORT

The Situation: EU Member States must make key choices under the new EU Prospectus Regulation, which provides a new regime of prospectus requirements when securities are offered to the public or admitted to trading on a regulated market situated or operating within an EU Member State.

The Result: The Belgian Financial Markets and Services Authority has launched a public consultation on scope of application, applicable thresholds, and exemptions regarding information requirements under this new regulation.

Looking Ahead: Belgium's proposed legislative framework, in particular, would now require issuers to publish an information note for any domestic public offer of investment instruments for a total consideration of less than €5 million.

On November 24, 2017, the Financial Markets and Services Authority ("FSMA"), at the request of the Belgian Minister of Finance, launched a consultation on key choices to be made under the new EU Prospectus Regulation.

The new EU Prospectus Regulation (Regulation (EU) 2017/1129) of the European Parliament and of the Council of June 14, 2017, on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market ("EU Prospectus Regulation"), entered into force on July 20, 2017.

The EU Prospectus Regulation repeals and fully replaces the EU Prospectus Directive (Directive 2003/71/EC as amended) ("EU Prospectus Directive"), which was implemented into Belgian law by the Law of June 16, 2006, on public offerings and admission to trading of investment instruments ("Prospectus Law"). The EU Prospectus Regulation lays down requirements for the drawing up, approval, and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within an EU Member State.

While most provisions of the EU Prospectus Regulation are directly applicable in Belgium, certain key choices must be made at the Member State level. FSMA's newly launched consultation process focuses on Belgium's contemplated draft legislation to repeal and replace the Prospectus Law ("Draft Prospectus Bill") and its executing decree ("Draft Prospectus Decree").



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Key Proposals

The Draft Prospectus Bill contemplates the following main features and modifications:

Maintaining Broader Scope of Application

While the EU Prospectus Directive applied to the public offering and admission to trading of "securities," the scope of the Prospectus Law more widely refers to the notion of "investment instruments" (*instruments de placement/beleggingsinstrumenten*). This broader scope is maintained under the Draft Prospectus Bill, and the EU Prospectus Regulation will not change this approach.

Threshold

Pursuant to the EU Prospectus Regulation's new lowered threshold, no prospectus will be required for a public offer of securities with a total consideration of less than €1 million. Furthermore, EU Member States may now decide to exempt domestic public offers from a prospectus requirement, if the total consideration of such offer in the European Union does not exceed €8 million over a 12-month period.

In Belgium, the Draft Prospectus Bill takes a more cautious approach to information requirements on domestic public offers of securities. Under the more widely encompassing scope of "investment instruments," the draft bill sets a threshold of total consideration of less than €5 million in the European Union over a 12-month period for exempting such offers from a prospectus requirement. Such domestic public offers of investment instruments will instead be covered by a new information note requirement, as explained below.

New Requirement of Information Note for Domestic Public Offers under €5 Million

An information note (*note d'information/informatienota*) will be required for any domestic public offer of investment instruments for a total consideration of less than €5 million in the European Union over a 12-month period. While more concise than a prospectus, the information note is considered to still provide a sufficient level of information for investors.

The Draft Prospectus Decree sets out the minimum requirements for such information notes, which must contain information on: (i) the risk factors relating to the issuer and to the investment instruments to be offered; (ii) the issuer (including its annual accounts for the two preceding financial years); (iii) the offer and its rationale; and (iv) the investment instruments.

The information note, however, does not require advance FSMA approval.

Furthermore, toward ensuring consistency with the EU Prospectus Regulation, the exemptions on the obligation to publish a prospectus when securities are offered to the public under the EU Prospectus Regulation will be extended to the information note.

THREE KEY TAKEAWAYS

1. FSMA is conducting a consultation process until January 5, 2018, on Belgium's draft legislation, which will repeal and replace the Prospectus Law and implement the key choices made under the EU Prospectus Regulation.
2. The Draft Prospectus Bill will continue to use the notion of "investment instruments," which is broader-reaching than "securities" as provided under the EU Prospectus Regulation.
3. An information note (*note d'information/informatienota*) will now be required for any domestic public offer of investment instruments for a total consideration of less than €5 million in the European Union over a 12-month period.

CONTACTS



Matthieu Duplat
Brussels



Serkan Alhan
Brussels



Thomas Flament
Brussels



Roxane de Giey
Brussels

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