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FSMA\_2022\_05 of 25/01/2022 (update 02/01/2023)

## National marketing requirements for UCITS and AIFs

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### **Scope:**

- UCITS governed by Belgian law;
- UCITS governed by the law of another EEA member state that intend to market their units in Belgium;
- AIFs governed by Belgian law, by EU law or by the law of a third country that are marketed in Belgium by AIF managers;
- AIFs governed by Belgian law that are marketed within the EEA or in third countries by AIF managers governed by Belgian law.

### **Summary/Objective:**

This Communication contains information about Belgian legal and administrative provisions governing the marketing requirements of AIFs and UCITS as referred to in Article 5 (1) of Regulation 2019/1156 on facilitating cross-border distribution of collective investment undertakings.

### **Structure:**

- A. marketing requirements for UCITS
  - B. marketing requirements for AIFs
  - C. summary of the marketing requirements for UCITS and AIFs
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## A. marketing requirements for UCITS

### I. UCITS governed by Belgian law

#### Marketing in Belgium

##### Marketing requirements

Units in Belgian UCITS and their investment compartments may be marketed to the public<sup>1</sup> in Belgium only if they are registered on the list referred to in Article 33 of the UCITS Law<sup>2</sup>, which list is drawn up by the FSMA. The FSMA keeps this list up to date on its website. The conditions that must be fulfilled in order to be registered are also laid out in the aforementioned Law (Article 34ff).

Financial arrangements must be made, in particular, for processing their subscription, payment, repurchase and redemption orders and making other payments and for information disclosure.

##### Form and content of marketing material

Units in a UCITS may be offered to the public only after a prospectus and a key information document have been published. The prospectus must receive prior approval by the FSMA; its form and contents are regulated by the UCITS Law and the UCITS Royal Decree.

The UCITS' instruments of incorporation/fund rules must also receive prior approval by the FSMA. The contents of these documents are regulated by the UCITS Royal Decree.

There are also specific rules for marketing communications relating to public offers of units in UCITS in Belgium:

- the UCITS Royal Decree sets out requirements for the form and contents of those marketing communications; Communication FSMA\_2022\_29 contains Q&As on marketing communications for UCIs.

Marketing communications relating to a non-public offer of units in UCITS and distributed to retail investors are subject to the marketing rules set out in Article 4 of the CBDF Regulation, regardless of whether they emanate from the designated management company or from other distributors.

##### The FSMA's supervision of advertising

Communication FSMA\_2022\_29 describes how the FSMA supervises marketing communications relating to units in UCITS marketed in Belgium.

##### Reports on marketing

Belgian public UCITS will be responsible for reports that relate at least in part to marketing:

- annual report and half-yearly report
- report by the executive managers on the internal control of self-managed open-ended investment companies (beveks/sicavs) (Circular FSMA\_2019\_23)
- statistical information (Circular FSMA\_2022\_16)

<sup>1</sup> "Public offer" is defined in Article 3, 13° of the UCITS Law. To determine whether or not an offer is public in nature, the UCITS should refer to the criteria listed in Article 5, § 1, of the UCITS Law.

<sup>2</sup> The full list of the legal and administrative provisions in this Communication as well as a hyperlink to those provisions are included on p. 9 of this Communication.

<b>De-notification of arrangements made for marketing</b>
Marketing of a UCITS or investment compartment may be withdrawn by removal of the UCITS or compartment from the list referred to in Article 33 of the UCITS Law. A UCITS or investment compartment may be removed from the list if, for example, the UCITS or compartment is liquidated or undergoes another form of restructuring. In each such case, the approval of the FSMA is required.
<b>Marketing in the EEA</b>
<b>Marketing requirements</b>
Belgian UCITS that intend to market their units in another EEA member state must follow the notification procedure described in Circular FSMA_2013_04.  In the event of a change in the information contained in the notification letter, or if there is a change in the class of the units to be marketed, the procedure laid down in Article 94/1 of the UCITS Law must be followed.
<b>The FSMA's supervision of advertising</b>
The laws of the host member state apply to the marketing communications that are disseminated in the other EEA member state.
<b>Reports on marketing</b>
The same reporting obligations apply to Belgian UCITS that market their units in another EEA member state as those that apply to Belgian UCITS marketed only in Belgium.

## II. UCITS governed by the law of another EEA member state

<b>Marketing in Belgium</b>
<b>Passporting rules</b>
UCITS governed by the law of another EEA state that wish to market their units in Belgium must follow the notification procedure described in Circular FSMA_2013_05.  Those UCITS must pay a contribution to the operating costs of the FSMA, as described on the FSMA website.  Financial arrangements must be made, in particular, for processing their subscription, repurchase and redemption orders and making other payments and for information disclosure.
<b>Form and content of marketing material</b>
The form and content of the marketing material of foreign UCITS that are marketed in Belgium are described in Circular FSMA_2013_05.  The same rules apply to the form and contents of marketing communications as those that apply to Belgian UCITS marketed in Belgium.

<b>The FSMA's supervision of advertising</b>
As regards supervision of marketing communications, the same rules apply to foreign UCITS marketed in Belgium as to Belgian UCITS marketed in Belgium.
<b>Reports on marketing</b>
Apart from the framework of the notification procedure and of the updating of the notification file, there is no obligation for foreign UCITS to report specific data to the FSMA.
<b>De-notification of arrangements made for marketing</b>
Foreign UCITS whose units are marketed in Belgium may denotify the FSMA if they wish to stop marketing their units or classes of units in Belgium.  To do so, the UCITS in question must submit a dossier to its home member state and must comply with the procedure and conditions laid down in Article 156/1 of the UCITS Law.

## B. Marketing requirements for AIFs

<b>Marketing in Belgium</b>
<b>Formalities prior to marketing</b>
<b><u>EU AIFs</u></b>
<p><u>AIF manager authorized under Belgian law</u>: The manager must submit a prior notification, pursuant to Article 86 of the AIF Law (Article 31 of the AIFM Directive) to the email address <a href="mailto:amc@fsma.be">amc@fsma.be</a>. There is no template for this notification, but the Law includes provisions governing the contents of the notification. At the latest twenty working days after receipt of the completed notification, the FSMA will inform the manager whether it can begin marketing units in the AIF. The manager may begin marketing as soon as the FSMA has informed it that it may do so.</p> <p><u>AIF manager authorized under the law of an EEA member state</u>: The competent authority of the manager's home member state must submit a notification pursuant to Article 32 of the AIFM Directive to the email address <a href="mailto:e-notification.passporting2@fsma.be">e-notification.passporting2@fsma.be</a>.</p> <p>The manager may, under Article 124 of the AIF Law, market AIF units as soon as the FSMA has received the documents referred to in Article 32 of the AIFM Directive. Financial arrangements must be made in particular, for processing their subscription, repurchase and redemption orders and making other payments and for information disclosure.</p> <p><u>Small-scale Belgian managers of private AIFs</u>: The registration procedure pursuant to Article 106 and following of the AIF Law is described in Communication FSMA_2017_07. The manager must send the registration form to the email address <a href="mailto:amc@fsma.be">amc@fsma.be</a>.</p>

The manager can start operations and thus begin marketing units in AIFs in Belgium as soon as the FSMA has informed it of its registration on the list of small-scale Belgian managers of AIFs.

The registered manager must inform the FSMA of any change to its registration dossier, including the management and/of marketing of additional AIFs.

Small-scale EEA managers of private AIFs: The manager must submit a prior notification, pursuant to Article 128 of the AIF Law, to the email address [notification.passporting2@fsma.be](mailto:notification.passporting2@fsma.be). There is no template for this notification, but the Law lays down the contents of the notification. The manager may begin marketing as soon as it has submitted the notification.

Units in Belgian AIFs, AIFs governed by the law of another EEA member state and their investment compartments may be marketed to the **public** in Belgium only if they are registered on the list referred to in Article 200 or 260 of the AIF Law, which list is drawn up by the FSMA. The FSMA keeps this list up to date on its website.

The conditions that must be fulfilled in order to be registered on the said list are also laid down in that Law (Articles 197ff, 263ff and 274ff of the AIF Law respectively).

### **Third-country AIFs**

Authorized AIF manager established in an EEA member state (including Belgium): The formalities to be completed before marketing, without a passport, to professional investors are described in Communication FSMA\_2017\_06 and its annexes. The manager must submit the notification form pursuant to Articles 494 to 496 of the AIF Law (Article 36 of the AIFM Directive) for each third-country AIF, and for each feeder established within the EEA whose master is an AIF established in a third country, that it intends to market in Belgium. The notification is to be sent to the email address [e-notification.passporting2@fsma.be](mailto:e-notification.passporting2@fsma.be).

The manager may begin marketing as soon as the FSMA has informed it in writing that it may do so.

Third-country AIF manager: The formalities to be completed before marketing, without a passport, to professional investors are described in Communication FSMA\_2017\_06 and its annexes. The manager must submit the notification form pursuant to Articles 497 to 499 of the AIF Law (Article 42 of the AIFM Directive) for each third-country AIF that it intends to market in Belgium. The notification is to be sent to the email address [e-notification.passporting2@fsma.be](mailto:e-notification.passporting2@fsma.be). The manager may begin marketing as soon as the FSMA has informed it in writing that it may do so.

The units in such AIFs may be offered to the public in Belgium only if the provisions of Article 504 of the AIF Law are complied with.

## **Form and content of marketing material**

### **AIFs of an open-ended type**

Specific rules apply to marketing communications relating to a public offer of units in AIFs offered in Belgium:

- the AIF Royal Decree sets out requirements for the form and contents of those marketing communications;
- Communication FSMA\_2022\_29 contains Q&As on marketing communications for UCIs.

Marketing communications relating to a non-public offer of units in AIFs and distributed to retail investors are subject to the marketing rules set out in Article 4 of the CBDF Regulation, regardless of whether they emanate from the designated management company or from other distributors.

### ***AIFs of an open-ended type governed by Belgian law***

Units in these types of AIFs may be offered to the public in Belgium only after a prospectus and a key information document have been published. The prospectus must receive prior approval by the FSMA; the form and contents are governed by the AIF Law and the AIF Royal Decree.

The AIF's articles of incorporation/fund rules must first be approved by the FSMA if the units in the AIF are to be offered to the public in Belgium. The contents of these articles of incorporation is laid down by the AIF Royal Decree.

If units in the AIF are not offered to the public, there is an obligation to draw up a key information document under the PRIIPs Regulation.

### ***AIFs of an open-ended type governed by foreign law***

Public AIFs are required to draw up a prospectus, a key information document and articles of incorporation/fund rules.

The prospectus must receive prior approval by the FSMA. Its form and contents are governed by the AIF Law and the AIF Royal Decree.

### ***AIFs of a closed-ended type***

Communication FSMA\_2021\_09 clarifies the cases in which a prospectus or information note may or may not be required. The communication also explains which rules apply to advertisements and other documents and announcements relating to an offer.

In addition, if necessary, a key information document should also be prepared as a result of the application of the PRIIPs Regulation.

The contents of the fund rules/articles of incorporation must be in line with the provisions of the AIF Royal Decree.

## **Supervision of advertising**

### ***AIFs of an open-ended type***

Communication FSMA\_2022\_29 describes how the FSMA supervises marketing communications relating to AIFs marketed in Belgium.

### ***AIFs of a closed-ended type***

Communication FSMA 2021\_09 of 1/04/2021 outlines which advertisements and other documents and announcements must receive prior approval by the FSMA.

## **Marketing reports**

AIF manager authorized under Belgian law: Circular FSMA\_2014\_09 informs managers of the contents and modalities for submitting the reports they are required to file with the FSMA in accordance with the provisions of the AIF Law ("AIFM reports").

Small-scale Belgian managers of private AIFs: Circular FSMA\_2014\_09 informs managers of the contents and modalities for submitting the reports they are required to file with the FSMA in accordance with the provisions of the AIF Law ("AIFM reports").

There are additional requirements for Belgian public AIFs, of which some aspects of the annual report and half-yearly report, the statistical information and the report of the executive management on the internal control of self-managed beveks/sicavs relate to marketing. Reporting on statistical information is also required for AIFs governed by foreign law of which the units are offered to the public in Belgium.

### De-notification of arrangements made for marketing

AIF manager authorized under Belgian law: The manager must notify the FSMA, pursuant to Article 88 of the AIF Law, of any material change to its initial notification (including withdrawal of the notification). It must send it in principle at least one month in advance to the email address [amc@fsma.be](mailto:amc@fsma.be).

AIF manager authorized under the law of an EEA member state: The manager must contact the supervisory authority of its home member state. The competent authority of the manager's home member state will then notify the FSMA pursuant to Article 32a of the AIFM Directive. The authority is to send the notification to the email address [e-notification.passporting2@fsma.be](mailto:e-notification.passporting2@fsma.be).

small-scale Belgian managers of private AIFs: The manager is required, pursuant to Article 107 of the AIF Law, to provide the FSMA without delay with the information needed to keep the registration file updated at all times. It is to send the update to the email address [amc@fsma.be](mailto:amc@fsma.be). If the manager no longer manages any AIFs, the FSMA will withdraw its registration.

small-scale EEA manager of private AIFs: The manager is required, pursuant to Article 129 of the AIF Law, to provide the FSMA without delay with the information needed to keep its file updated at all times. It is to send the update to the email address [e-notification.passporting2@fsma.be](mailto:e-notification.passporting2@fsma.be)

Denotification of a **public** AIF or investment compartment is possible by deletion from the list referred to in Article 200 or 260 of the AIF Law. In such a case, the approval of the FSMA is required.

### Rules for the distribution of AIFs of open-ended and closed-ended types

Please see the information on the form and content of the marketing material and the supervision of advertisements, which sets out a few differences between AIFs of an open-ended and of a closed-ended types.

Furthermore, for some types of AIFs of a closed-ended type that are offered to the public, there is an obligation to list these on a regulated market.

## Marketing within the EEA of EU AIFs by an AIF manager governed by Belgian law

### Formalities prior to marketing

AIF manager authorized under Belgian law: The formalities to be completed before marketing, **with a passport**, to **professional investors** are described in Communication FSMA\_2017\_05 and its annexes. The manager must submit the notification form pursuant to Articles 90 to 92 of the AIF Law (Article 36 of the AIFM Directive). The notification is to be sent to the email address [e-notification.passporting2@fsma.be](mailto:e-notification.passporting2@fsma.be).

At the latest 20 days after receipt of the *complete* notification file, the FSMA will forward it to the competent authorities of the member states where the AIF units are to be marketed. At the same time, the FSMA will inform the manager that

it has forwarded the file; as soon as this has been done, the manager may begin marketing the AIF units in the member states in question.

There is **no passporting regime** for the marketing of AIFs to retail investors in other member states.

Small-scale Belgian managers of private AIFs: There is **no passporting regime** for small-scale managers.

### Form and content of marketing material

The legislation of the host member state applies.

## Specific statuses of Belgian AIFs

status	supervisory authority	legislation
closed-ended real estate investment trust	FSMA	<a href="#">Royal Decree of 7 December 2010 on real estate investment trusts</a>
public privak/pricaf (private investment company with fixed capital)	FSMA	<a href="#">Royal Decree of 10 July 2016 on alternative investment funds investing in unlisted companies and in growth businesses</a>
institutional bevek/sicav (open-ended investment company)	Federal Public Service Finances	<a href="#">Royal Decree of 7 December 2007 on open-ended alternative investment funds that have the sole purpose of collective investment in financial instruments and liquidity under Article 183, first paragraph, 1° of the Law of 19 April 2014</a>
specialized real estate investment fund	Federal Public Service Finances	<a href="#">Royal Decree of 9 November 2016 on real estate investment trusts</a>
private privak/pricaf (private closed-ended investment company)	Federal Public Service Finances	<a href="#">Royal Decree of 23 May 2007 on private privaks/pricafs</a>
public and private starters' fund	FSMA/FPS Finances	<a href="#">Royal Decree of 5 March 2017 on public starters' funds and private starters' privaks/pricafs</a>
UCI that invests in securities and liquid assets	FSMA	<a href="#">Royal Decree of 25 February 2017 on certain public alternative investment funds and their management companies, and containing various provisions</a>



## List of Belgian legal and administrative provisions referred to in this Communication

Legislation	
Royal Decree of 23 May 2007	<a href="#">Royal Decree of 23 May 2007 on private privaks/pricafs</a>
Royal Decree of 7 December 2007	<a href="#">Royal Decree of 7 December 2007 on open-ended alternative investment funds that have the sole purpose of collective investment in financial instruments and liquidity under Article 183, first paragraph, 1° of the Law of 19 April 2014</a>
Royal Decree of 7 December 2010	<a href="#">Royal Decree of 7 December 2010 on real estate investment trusts</a>
UCITS Law	<a href="#">Law of 3 August 2012 on collective investment undertakings fulfilling the conditions of Directive 2009/65/EC and collective investment undertakings for investment in receivables</a>
UCITS Royal Decree	<a href="#">Royal Decree of 12 November 2012 on collective investment undertakings fulfilling the conditions of Directive 2009/65/EC</a>
AIF Law	<a href="#">Law of 19 April 2014 on alternative investment funds and their managers</a>
Royal Decree of 10 July 2016	<a href="#">Royal Decree of 10 July 2016 on alternative investment funds investing in unlisted companies and in growth businesses</a>
Royal Decree of 9 November 2016	<a href="#">Royal Decree of 9 November 2016 on specialized real estate investment trusts</a>
AIF Royal Decree	<a href="#">Royal Decree of 25 February 2017 on certain public alternative investment funds and their management companies, and containing various provisions</a>
Royal Decree of 5 March 2017	<a href="#">Royal Decree of 5 March 2017 on public starters' funds and private starters' privaks/pricafs</a>
Circulars and communications	
Circular FSMA_2013_04	Circular FSMA_2013_04 of 14 February 2013 on the notification procedure for undertakings for collective investment governed by Belgian law and fulfilling the conditions of Directive 2009/65/EC (available in <a href="#">French</a> and <a href="#">Dutch</a> only)
Circular FSMA_2013_05	<a href="#">Circular FSMA 2013 05 of 14 February 2013 on the notification procedure for undertakings for collective investment governed by the law of another member state of the European Economic Area and fulfilling the conditions of Directive 2009/65/EC</a>
Circular FSMA_2014_09	<a href="#">Circular FSMA 2014 09 of 1 September 2014 on the reporting obligations of alternative investment fund managers to the FSMA</a>
Communication FSMA_2017_06	<a href="#">Communication FSMA 2017 06 of 24 February 2017 on marketing AIFs in Belgium without a passport to professional investors</a>
Communication FSMA_2017_07	Communication FSMA_2017_07 of 27 March 2017 on registering small-scale Belgian private AIFs (available in <a href="#">Dutch</a> and <a href="#">French</a> only)
Circular FSMA_2019_23	Circular FSMA_2019_23 of 5 August 2019 on the report by the executive managers on the internal control of self-managed beveks/sicavs (available in <a href="#">Dutch</a> and <a href="#">French</a> only)
Communication FSMA_2021_09	<a href="#">Communication FSMA 2021 09 of 1 April 2021 on FAQs about advertisements for investment instruments when they are offered to the public, admitted to trading and distributed to retail clients</a>

<b>Circular FSMA_2022_16</b>	Circular FSMA_2022_16 of 24 May 2022 explaining the FSMA Regulation of 16 May 2017 on the statistical information to be transmitted by certain public undertakings for collective investment with a variable number of units (available in <a href="#">Dutch</a> and <a href="#">French</a> only)
<b>Communications FSMA_2022_29</b>	<a href="#">Communication FSMA 2022 29 of 12 December 2022 containing Q&amp;As on marketing communications for UCIs</a>

**disclaimer**

The FSMA has taken reasonable care to ensure that the information on the national provisions governing the marketing requirements for UCITS and AIFs in Belgium included in this Communication is up-to-date and complete. The FSMA is not responsible for maintaining external websites and is not liable for any error or omission on any external website to which hyperlinks are provided on this webpage.

In addition to the provisions referred to above, which are set out specifically for the marketing of UCITS and AIFs, there may be other legal provisions that apply when marketing them in Belgium, although they are not specifically designed for the marketing of UCITS and AIFs, depending on the individual situation of those involved in the marketing of shares or units in UCITS and AIFs. Marketing in Belgium may trigger the application of other requirements, such as those arising under the Code on Companies and Associations, the Code of Economic Law, anti-money laundering legislation, tax legislation and the specific statuses referred to on page 8 above.

## C. Summary of national legal and administrative provisions on the requirements for marketing UCITS and AIFs

<b>UCITS</b>
This summary covers only the marketing in Belgium of UCITS governed by foreign law.
<b>Passporting rules</b>
UCITS governed by foreign law must follow the notification procedure described in Circular FSMA_2013_05. They will have to make a contribution to the operating costs of the FSMA, as described on the FSMA website. Financial arrangements must be made, in particular, for processing their subscription, repurchase and redemption orders and making other payments and for information disclosure.
<b>Form and content of marketing material</b>
The form and content of the marketing material for foreign UCITS that are marketed in Belgium are described in Circular FSMA_2013_05. There are also specific rules for <u>marketing communications</u> relating to a public offer of units in UCITS offered in Belgium: <ul style="list-style-type: none"> <li>• the UCITS Royal Decree sets out requirements for the form and contents of those marketing communications;</li> <li>• Communication FSMA_2022_29 contains Q&amp;As on marketing communications for UCIs.</li> </ul> <ul style="list-style-type: none"> <li>• Marketing communications relating to a non-public offer of units in UCITS and distributed to retail investors are subject to the marketing rules set out in Article 4 of the CBDF Regulation, regardless of whether they emanate from the designated management company or from other distributors.</li> </ul>

## The FSMA's supervision of advertisements

Communication FSMA\_2022\_29 describes how the FSMA supervises marketing communications relating to units in UCITS marketed in Belgium.

## Reports on marketing

Apart from the framework of the notification procedure and of the updating of the notification file, there is no obligation for foreign UCITS to report specific data to the FSMA.

## De-notification of arrangements made for marketing

Foreign UCITS whose units are marketed in Belgium may denotify the FSMA if they wish to cease marketing their units or classes of units in Belgium. To do so, the UCITS in question must submit a dossier to its home member state, and must comply with the procedure and conditions laid down in Article 156/1 of the UCITS Law.

## AIFs

This summary covers only the marketing in Belgium of AIFs governed by foreign law.

## Marketing in Belgium

- Professional investors: application of the AIFM notification procedure (see below under Prior authorisation for marketing)
- Retail investors: the units or shares in the AIFs can be marketed in Belgium to retail investors without any public offer if this marketing is done by the means of a private placement as defined in the Belgian Law. Marketing under the same conditions as to professional investors.

In the event that units in AIFs are marketed as part of a public offer:

- Units in AIFs governed by the law of another EEA member state and their investment compartments can be traded publicly in Belgium only if they are registered on the list referred to in Article 260 of the AIF Law, which list is drawn up by the FSMA and published on its website. The conditions that must be fulfilled in order to be registered on the said list are laid down in that Articles 263ff and 274ff of the AIF Law.
- Units in third-country AIFs may be offered **to the public** in Belgium only if the provisions of Article 504 of the AIF Law are complied with.

Passporting fees are levied for the inward marketing in Belgium of public AIFs.

## Prior authorization for marketing

- EU AIFs managed by an EU AIFM: application of AIFM notification procedure (Art. 32 of the AIFMD). Prior authorization from the FSMA is not required.
- EU small-scale managers: application of Belgian notification procedure (Art. 128 of the AIFM Belgian Law). Prior authorization from the FSMA is not required.
- Non-EU AIFs managed by an EU AIFM: application of AIFM notification procedure (Art. 36 AIFMD). Prior authorization from the FSMA is required.
- Non-EU AIFs managed by non-EU AIFM: application of AIFM notification procedure (Art. 42 AIFMD). Prior authorization from the FSMA is required.

In the event that units in AIFs are marketed as part of a public offer, prior authorization from the FSMA is required.

<b>Verification of marketing communications by the authority</b>
In the event that units in AIFs are marketed as part of a public offer: <b>AIFs of an open-ended type</b> Communication FSMA_2022_29 describes how the FSMA supervises marketing communications relating to units in AIFs marketed in Belgium <b>AIFs of a closed-ended type</b> Communication FSMA_2021_09 of 1/04/2021 outlines which advertisements and other documents and announcements must receive prior approval by the FSMA.
<b>Marketing to retail investors or to professional investors</b>
See above (marketing in Belgium).
<b>Legislation on specific AIF statuses</b>
See above (under heading “legislation on specific AIF statuses”)