Royal decree "Transversal" : a damp squib?

Introduction

A year ago, on 12 June 2014, the royal decree imposing several obligations with respect to the information requirements as applicable upon the marketing of financial products to retail clients (the so-called "R.D. Transversal") was published.

This regulatory initiative, meant *inter alia* to anticipate the upcoming European regulation on key information documents for packaged retail and insurance-based investment products ("PRIIPs"), had two main objectives: (a) to impose the provision of a standard information sheet upon the marketing of financial products to retail clients and (b) to regulate advertising of financial products.

The entry into force of the R.D. Transversal was initially scheduled for 12 June 2015. However, on 27 March 2015, the FSMA organised a public consultation on a draft royal decree whose main purpose was to postpone the entry into force of several requirements of the R.D. Transversal in order to avoid discrepancies with the upcoming PRIIPs regulation and other European initiatives, such as the revision of the Insurance Mediation Directive (also known as “IMD II”).

On 10 June 2015 (*i.e.* two days prior to the entry into force of the R.D. Transversal), the royal decree of 2nd June 2015 amending the R.D. Transversal (hereinafter the “Amending R.D.”) was published in the Belgian Official Gazette. The deferral of the entry into force of most of the requirements provided in the R.D. Transversal is now officially confirmed.
The postponed requirements

Many requirements of the R.D. Transversal are postponed until an unspecified date, to be determined by the Belgian Federal Government (art. 16, 3° of the Amending R.D.).

The postponed requirements essentially relate to:

(i) the establishment and the provision of a standard information sheet (Title II of the R.D. Transversal);

(ii) the insertion of a regulated label on advertising materials relating to financial products (Article 12, § 1st, 4°, c) of the R.D. Transversal); and

(iii) the information on the future performance of financial products linked to several underlying assets, which will only be made available to clients through a website simulator (Article 22, e) of the R.D. Transversal).

What you should bear in mind

Savings account. The royal decree of 18 June 2013 imposing several obligations with respect to the information requirements upon the marketing of savings accounts (the “R.D. Savings”) will not be fully repelled by the R.D. Transversal, as initially intended.

New Article 32 of the R.D. Transversal merely repels Chapter III “promotional communications” of the R.D. Savings. Practically, this means that the provision of a standard information sheet upon marketing of savings accounts (as currently required by Chapter II of the R.D. Savings) will remain compulsory.

Advertising requirements. Most of the requirements of the R.D. Transversal relating to the advertising of financial products will be applicable as from 12 June 2015, as initially intended. Almost nothing changes in this respect.

Note however that the pre-approval of advertising by the FSMA will only be applicable to advertising materials relating to savings accounts (Article 26 R.D. Transversal).

Already distributed advertising materials. Former Article 33 of the R.D. Transversal provided that advertising materials and documents issued before 12 June 2015 could still be used by financial institutions even though such materials do not necessarily meet the R.D. Transversal requirements.

New Article 33, § 3rd of the R.D. Transversal limits this derogation in time; as from 1st January 2016, the advertising requirements will apply to all advertising materials. This limitation in time prevents financial products commercialised over a long period of time from being advertised in derogation to the R.D. Transversal for too long.
**Minor amendments.** The Amending R.D. includes several other minor amendments to the R.D. Transversal. It specifies *inter alia* that the R.D. Transversal also applies to issuers of financial products which directly market their product to retail clients.

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