

## **EFTA COURT**

### **Request for an Advisory Opinion from the EFTA Court by Beschwerdekommission der Finanzmarktaufsicht in the case of ADCADA Immobilien AG PCC v Finanzmarktaufsicht**

**(Case E-10/20)**

A request has been made to the EFTA Court dated 29 July 2020 from Beschwerdekommission der Finanzmarktaufsicht (Board of Appeal of the Financial Market Authority), which was received at the Court Registry on 5 August 2020, for an Advisory Opinion in the case of ADCADA Immobilien AG PCC v Finanzmarktaufsicht on the following questions:

- 1. On the basis of what criteria is it to be assessed, whether in accordance with Article 2(d) of Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, sufficient information on the terms of the offer and the securities to be offered has been issued, so as to enable an investor to decide to purchase or subscribe for those securities?**
- 2. Is it significant for the assessment whether an offer to the public exists within the meaning of Article 2(d) of that regulation if the promotion includes the clearly visible direction ‘HIER INFORMIEREN’ (‘GET FURTHER INFORMATION HERE’) or ‘Unverbindlich informieren’ (‘Get further information without obligation’) and the full bond terms are not accessible online or otherwise generally available?**
- 3. Is it significant for the purposes of Article 1(4)(b) of that regulation if the offeror takes appropriate measures to ensure that the full terms of the bond are communicated to prospective buyers only upon request, whilst at the same time it is ensured that the communication is made only to a maximum of 149 natural or legal persons per Member State, which are not qualified investors?**
- 4. Is it significant for the purposes of Article 1(4)(b) of that regulation that the offer is disseminated in a Member State through various media? If so, under what conditions is the offer presented in various media to be regarded as a consolidated offer of the same security to the public and under what conditions is there a new offer? It is**

**possible to fall below the number of 150 natural or legal persons per Member State by dividing the offer across different media?**