



Luxembourg, 18 June 2021

PRESS RELEASE 07/2021

Judgment in Case E-10/20 ADCADA Immobilien AG PCC in Konkurs v the Financial Market Authority (*Finanzmarktaufsicht*)

EXISTENCE OF AN OFFER OF SECURITIES TO THE PUBLIC WITHIN THE MEANING OF THE PROSPECTUS REGULATION

In a judgment delivered today, the Court answered four questions referred to it by the Appeals Board of the Financial Market Authority (*Beschwerdekommision der Finanzmarktaufsicht*) (“the Appeals Board”) regarding the interpretation 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 (“the Prospectus Regulation”).

The case before the Appeals Board concerns an appeal brought by ADCADA Immobilien AG PCC in Konkurs (“ADCADA”) against a decision of the Financial Market Authority (*Finanzmarktaufsicht*), which deemed a bond issued in Liechtenstein by ADCADA to have been offered to the public and prohibited it in the absence of a prospectus.

The first two questions related to the interpretation of ‘offer of securities to the public’ within the meaning of point (d) of Article 2 of the Prospectus Regulation. In particular, based on which criteria it must be assessed whether 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.

The Court held that whether sufficient information is presented within the meaning of point (d) of Article 2, must be assessed on a case-by-case basis. However, in circumstances such as those in the main proceedings, the extent of the information must be considered as presenting sufficient information for the purposes of that provision. Furthermore, the Court found that if a communication already presents sufficient information, the inclusion of statements that further information may be obtained elsewhere will not be capable of altering its qualification as an “offer of securities to the public”.

The last two questions concerned the interpretation of the exemption in point (b) of Article 1(4) of the Prospectus Regulation. The Court held that in order to rely on that exemption, an offer of securities must actually be addressed to fewer than 150 natural or legal persons per EEA State, other than qualified investors. However, in circumstances where an offer of securities to the public has been published and promoted on the internet in a manner freely accessible to anyone, such an offer must be considered as being addressed to an unlimited number of persons for the purposes of point (b) of Article 1(4) of the Prospectus Regulation. The limit set out in that provision cannot be circumvented by disseminating the offer in an EEA State through various media.

The full text of the judgment may be found on the Court’s website: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.