

ESMA_QA_2189

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic

ELTIF

Subject Matter

ELTIF prospectus and the Prospectus Directive 2003/71/EC and Regulation 809/2004

Question

The reading of several NCAs of the article 23 of ELTIF Regulation is that, as far as prospectus EU legal framework is concerned (Directive 2003/71 and Regulation 809/2004), solely the provisions of such framework that are explicitly mentioned by the ELTIF Regulation shall be applied.

Hence, since the provision concerning the prospectus authorization is not quoted in the ELTIF Regulation, such an authorization is not due for the prospectus of an ELTIF.

The prospectus of the ELTIF is however scrutinized by these NCAs before its publication; such scrutiny is conducted in the context of the marketing procedure laid down in Article 31(4) of the ELTIF Regulation (marketing of units or shares of ELTIFs).

It is however unclear whether a different approach is adopted by other Member States, pursuant to which the authorization of the prospectus is put in place.

The difference between the two approaches is also relevant in the context of the update of the information included in the prospectus. Indeed, at the time of the update of the prospectus:

- if the authorization is not due, the updated version of the prospectus can be published and the NCA can put in place an ex post supervision;
- if the authorization is due, the updated version of the prospectus shall be authorized by the NCA before being published.

Which of these two possible legal interpretations should be considered as the correct one?