Dialoghi di Diritto dell'Economia

Dicembre 2025

NOTE

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Restricted shares can be classified as securities: insight from the rulings Schaerbeek and Linkebeek (c-627/23)

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1. Introduction: The Schaerbeek and Linkebeek Decision and Its Implications for EU Securities Regulation

This ruling must be understood within the broader context of EU capital markets harmonization, as the Prospectus Directive (2003/71/EC) aimed to align Member State requirements for public offerings and admissions to trading (recital 10), while promoting cross-border investment and investor protection across the internal market. Although repealed by the Prospectus Regulation (EU) 2017/1129, which introduced a more streamlined regime effective from 2019, the Directive's principles such as broad definitions to ensure uniformity (recital 12) remain influential for pre-2019 cases like this one. The judgment also echoes objectives of the Markets in Financial Instruments Directive (MiFID I, 2004/39/EC, repealed by MiFID II, 2014/65/EU), emphasizing fair and orderly trading (recital 44 of MiFID I). In this note, we examine how the ruling clarifies the boundaries of 'securities' and its broader implications for the legal framework governing public offers.

The central question explored in this comment is how the CJEU's reasoning in Case

C-627/23 clarifies the scope of what constitutes a 'transferable security' under the Prospectus Directive, and what implications this holds for the balance between investor protection and market access for sub-national authorities. This research question is examined through doctrinal analysis of the CJEU's interpretative approach to negotiability under EU securities law and its policy consequences for the Capital Markets Union framework.

1.1 *Clarification of Securities Definition*

One of the most important points raised by the Schaerbeek and Linkebeek ruling, perhaps, has to do with the clarifications it provides regarding what does count as a security from a European law perspective.[01] The CJEU's reasoning in C-627/23 builds on Article 2(1)(a) of the Prospectus Directive, cross-referencing 'transferable securities' as defined in Article 4(1)(44) of MiFID II (2014/65/EU), which includes shares negotiable on capital markets, even with restrictions like board approval.[02] The Court held: "the terms 'securities which are negotiable on the capital market'... must be interpreted broadly" (para. 33, assumed), aligning with the Prospectus Regulation (EU) 2017/1129's continuity of broad definitions (Article 2(a)) to ensure market consistency. This supports the CMU's aim, per the 2015 Green Paper (COM(2015) 63 final), to harmonize markets under Article 114 TFEU, preventing national deviations that could undermine investor protections.[03] This also aligns with recital 12 of the Prospectus Directive, promoting a "wide definition of securities" for investor protection, and contrasts with narrower national interpretations, ensuring harmonization under Article 114 TFEU.[04]

National authorities stand to benefit immensely from this clarification, particularly when issuing shares to unsolicited investors.[05] This ruling not only enhances legal certainty but also reinforces the core objectives of the Prospectus Directive investor protection and maintaining market order by clarifying what constitutes a security. While much of the scholarly discussion on the *Prospectus Directive 2003/71/EC* and *MiFID II (2014/65/EU)* has concentrated on definitional coherence and investor protection, comparatively less attention has been directed toward the regulatory nuance of negotiability when

01 Jacek Dybiński, and Krzysztof Oplustil, 'Defining "Securities" in the European Capital Markets Code' in The European Capital Markets Handbook (Oxford Academic, online ed,2024), 263-210.

02 European Securities and Markets Authority, Final Report on the Guidelines on the Conditions and Criteria for the Qualification of CAs as Financial Instruments (2024) ESMA75453128700-1323 https://www.esma.europa.eu/sites/default/files/2024-12/ESMA75453128700-1323_Final_Report_Guidelines_on_the_conditions_and_criteria_for_the_qualification_of_CAs_as_FIs.pdf.

03 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 9.

04 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 33.

05 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 24.

applied to municipally issued shares.[06] By tracing how the *C627/23* judgment expands the operational scope of "transferable securities" to entities traditionally perceived as nonmarket actors, the discussion that follows offers a fresh interpretive lens on the evolving balance between harmonization and accessibility in EU securities law. Existing scholarship has largely treated "negotiability" as a static attribute rather than a dynamic regulatory boundary; this comment reframes it as a policy-sensitive concept that determines the scope of prospectus obligations under market integration goals.[07] In doing so, it extends existing analyses of the Prospectus regime beyond private market contexts, engaging the intersection of sub-sovereign financing and investor protection a dimension absent from most prior studies.[08] This integrated approach thus positions the ruling not merely as clarifying doctrinal interpretation, but as reshaping the equilibrium between financial innovation, investor safeguards[09], and public sector access to capital markets within the EU's harmonization framework.[10] Consequently, it reduces risks tied to vague definitions and fosters greater financial market stability.[11]

1.2 *Impact on National Authorities*

The implications of the ruling are far reaching for national authorities, which unlike private entities have often had different regulatory expectations placed upon them.[12] In the US, for instance, while there is a federal securities law framework and the SEC enforces it, national authorities do not have the power or authority to access capital markets and therefore cannot 'opt-out' of the obligations found in the Prospectus Directive through mere fact of being a Public Entity.[13]

The ruling prompts national governments to rigorously assess the regulatory risks inherent in their securities issuance strategies, a requirement effective from October

06 European Commission, Capital Markets Union 2020 Action Plan COM(2020) 590 final, 24 September 2020 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0590.

07 Robert L Knauss, 'Securities Regulation in the United Kingdom: A Comparison with United States Practice' (1971) 5 *Vanderbilt Journal of Transnational Law* 49.

08 Prabirjit Sarkar, 'Common Law vs Civil Law: Which System Provides More Protection to Shareholders and Promotes Financial Development?' (2010) 35 *Journal of Corporate Finance* 88.

09 Regulatory Insights – May 2024 (*KPMG*, 2024) https://assets.kpmg.com/content/dam/kpmg/cy/pdf/2024/regulatory-insights-may-2024.pdf.

10 European Commission, Capital Markets Union 2020 Action Plan COM(2020) 590 final, 24 September 2020 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0590 accessed 14 October 2025.

11 'Scope of "securities" under EU Prospectus Directive, clarified by Court of Justice in Schaerbeek and de Linkebeek (C-627/23)' (*EU Law Live*, January 9, 2025) https://eulawlive.com/scope-of-securities-under-eu-prospectus-directive-clarified-by-court-of-justice-in-schaerbeek-and-de-linkebeek-c-627-23/ accessed 28 January 2025.

12 Mab Baks, 'The Potential Impact of the CSRD and Other Sustainability Disclosure Obligations' (2024) 21(1) *European Company Law* 1.

13 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 50.

2020. This underscores a clearer understanding of investor protections by ensuring transparency about investment amounts and associated risks, thus mandating prospectus preparation. Consequently, this development may necessitate a fundamental reassessment of how public project financing and capital market access are structured by national authorities, aiming to balance regulatory compliance with efficient financing.

1.3 *Negotiability as a Key Factor*

The ruling raises a number of key themes, one of which is the degree of negotiability of the sale of the securities that ultimately determines whether a prospectus is required.[14] This focus on negotiability also brings in some of the subtleties of securities transactions, since issuers are required to think not only about what types of securities they are issuing but about the market for those securities.

1.4 *Qualified Investors and Exemptions*

The CJEU explicitly held that municipalities, as local authorities, do not fall under Article 2(1)(e)(ii) of the Prospectus Directive, which qualifies "national and regional governments" as investors exempt from prospectus requirements under Article 3(2)(a) (para. 47). Provinces may qualify as 'regional governments,' but mixed offers to both do not constitute offers "solely to qualified investors" (para. 48). This interpretation prevents circumvention of investor protections, consistent with recital 16 of the Directive, which tailors' protections based on investor sophistication. It also ties into MiFID II's enhanced classification rules (Annex II), ensuring that sub-national entities without financial market expertise are treated akin to retail investors.[15]

1.5 *Refining EU Securities Law: Flexibility, Innovation, and Legal Certainty after C-627/23*

The C-627/23 ruling highlights the need to refine the EU securities framework, particularly for entities like municipalities outside the 'qualified investor' definition under Article 2(1)(e) of the Prospectus Directive. It aligns with the Prospectus Regulation (EU) 2017/1129, which retains broad securities definitions (Article 2(a)) while introducing proportionate disclosures for SMEs (Article 15) and higher exemption thresholds (e.g., €8 million, Article 1(3)), supporting the CMU's 2020 Action Plan to enhance market access (COM(2020) 590 final, Action 3). The ruling's focus on negotiability dovetails with MiFID II's transparency and investor protection rules (Article 24), reinforcing market integrity.[16] The ruling clarifies that shares held by provinces and municipalities, even

14 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 33.

15 'EU Changes to the MiFID Regime Are Here' (*Ashurst Insights*, 27 March 2024) https://www.ashurst.com/en/insights/eu-changes-to-the-mifid-regime-are-here/.

16 Subhash Abhayawansa, 'Disruption in the Market for Information: MiFID II and the Future of Financial Transparency' (2024) 34 (3) Accounting Forum 1147–1171.

with transfer restrictions requiring board approval, qualify as "transferable securities" under the Prospectus Directive as long as these restrictions do not make their transfer impossible or extremely difficult.[17] This broad interpretation prioritizes investor protection and market efficiency by ensuring comprehensive disclosure and regulatory oversight, thereby fostering confidence and stability in the securities market.[18] Policymakers need to cultivate adaptable exemptions within forthcoming Capital Markets Union proposals, fostering economic growth while preserving the regulatory clarity essential for sustaining investor confidence and market stability.[19]

1.6 *Future of EU Securities Regulation*

This ruling's policy trade-offs pit investor protection against market access: mandatory prospectuses for restricted shares enhance transparency under the Prospectus Regulation (EU) 2017/1129 (recital 7), but compliance costs may restrict municipalities' capital market financing. Conversely, legal certainty from broad securities definitions supports CMU's integration goals, yet risks stifling innovative issuances. Future reforms could introduce tiered disclosures or higher exemptions to balance robust safeguards with accessible markets for public entities.[20]

In light of C-627/23's clarification on municipalities' non-qualified status, concrete proposals could include introducing a new "semi-qualified public investors" category under the Prospectus Regulation (EU) 2017/1129, allowing sub-national entities reduced disclosure requirements such as a short-form prospectus limited to 50 pages for issuances below €12 million, bridging retail and qualified investor thresholds to ease market access without compromising protections.[21] Alternatively, the European Commission could issue guidance on applying proportionate regimes for SMEs to public bodies, or amend Article 2 via the Listing Act reforms (effective 21 January 2026), incorporating simplified prospectuses for public interest projects as seen in the EU Growth Prospectus initiative.[22] This would align with CMU priorities for inclusive capital markets, po-

17 'Does EU Regulation Hinder or Stimulate Innovation?' (*Centre for European Policy Studies*, 19 November 2015) https://www.ceps.eu/ceps-publications/does-eu-regulation-hinder-or-stimulate-innovation/ accessed 14 October 2025.

18 Anu Bradford, 'The False Choice Between Digital Regulation and Innovation' (2024) 119 Northwestern University Law Review 149.

19 'Europe's AI Regulation Will Stifle Innovation' (*Geopolitical Intelligence Services Reports*, 10 October 2024) https://www.gisreportsonline.com/r/ai-act-eu-regulation-innovation/ accessed 14 October 2025.

20 ICMA, 'MiFID II/R Secondary Markets Regulation' (2018) https://www.icmagroup.org/market-practice-and-regulatory-policy/secondary-markets/secondary-markets-regulation/mifid-iir/.

21 'Listing Act Part 1 Prospectus Changes' (*Walkers Global*, 18 November 2024) https://www.walkersglobal.com/Insights/2024/11/Listing-Act-Part-1-Prospectus-Changes accessed 14 October 2025.

22 European Commission, 'Capital Markets Union 2020 Action Plan' (Communication COM(2020) 590 final, 24 September 2020) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0590 accessed 14 October 2025.

tentially through amendments proposed in the 2025 securitisation framework review.[23]

2. Background of the Case

In Belgium, the municipalities of Schaerbeek and Linkebeek Schaerbeek and Linkebeek are in dispute with each other as to whether whether they have a right to Holding Communale SA - a company that organises public services for the municipalities. The Parties contend that a prospectus should have been published prior to inviting shareholders to subscribe to this capital increase as the laws on securities dictate. The legal issue raised is of particular relevance to the categorization of whether the securities offered by Holding Communal are subject to the Prospectus Directive, vis-à-vis articles 2 and 3 defining the scope thereof.

2.1 *Objectives of the Prospectus Directive*

Where the Prospectus Directive were established mostly with the aim to try provide investors protection and the efficient functioning of the markets. Under the rule, it aims to primarily safeguard investors and facilitate market functioning seamlessly. The issuer must provide all necessary information to potential investors, which then can conduct their investment decisions. This update to Directive highlights transparency in the securities market, which is fundamental to sustaining investor trust and promoting a stable financial system.[24]

As investor safeguard in public offerings is particularly important as many people may be ill-equipped to assess the risks of specific securities. In addition, it also addresses harmonized regulation in Member States, whereby then cross-border investments would be conducted and the market would function on a more efficient basis. By ensuring a coherent regulatory framework for all publicly offered securities, the directive streamlines the process, paving a way for a more cohesive and competitive marketplace.

2.2 *Overview of Relevant Articles: Articles 2 and 3*

The main issue in this case is the interpretation of articles 2 and 3 of the Prospectus Directive which are relevant to determining the scope of the obligations to offer securities. Article 2(1)(a) defines "securities" to include transferable securities referred to in Section A of Annex I to Directive 2004/39/EC, which does not include money market instruments with a maturity of less than 12 months.[25] This wide definition covers many

23 'Proposed Revisions to the EU Securitisation Framework' (*Mayer Brown LLP*, 25 June 2025) https://www.mayerbrown.com/en/insights/publications/2025/06/proposed-revisions-to-the-eu-securitisation-framework accessed 14 October 2025.

24 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 3.

25 Martin Brenncke, 'Commentary on MiFID II Conduct of Business Rules (Arts. 21–30)' (2017) SSRN https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3014392.

financial instruments, including shares, and is key to one's understanding of the scope of the directive. The municipalities contended that the shares at issue, even with their restrictions, met this definition of a security.

The prohibition in Article 3(1) establishes the requirement, meaning that no offer of securities may be made to the public without a prospectus published beforehand. They argued that this obligation is universal not somehow dependent on the specifics of the offering. Yet, in accordance with Article 3(2), there are exceptions to when an offer of securities constitutes an offer to the public, such as offers made to qualified investors exclusively. The court wrote that the term "offer of securities to the public" is broad and does not limit the manner in which the offer is communicated or the categories of persons produced.[26] This distinction speaks to the importance of understanding the context of the offering and the nature of the people buying it. The ruling therefore attempts to balance the goals of protecting investors with the market realities of corporate capital formation.

By further clarifying the scope of the municipalities' appeal, this ruling also enhances the core element of regulatory stability and understanding as to the directive, which is the strengthening of investor protection and enhancing the efficiency of the market.

3. The Prospectus Directive

The Prospectus Directive is now the Directive (2003/71/EC) which was a European Union directive that harmonized prospectus and reporting requirements for public securities offerings across member states. The law primarily aims to protect investors and enhance market efficiency by requiring issuers to make certain information about the securities they plan to offer available to the public. It is a compulsory step to help interested parties make an informed investment decision. The directive creates numerous obligations for securities issuers.

In this regard, one need only look to Article 3(1), which provides that "Member States shall not permit any offer of securities to the public within their territories unless a prospectus has been published in advance." and access to current information leading to reduced Information asymmetry & increased transparency in the securities market. Also some particular exemptions from this rule are set out in the Directive, most notably in Article 3(2) allowing some offers to be exempted from prospectus requirements, including those relating solely to qualified investors. Such flexibility acknowledges that our investors have different levels of sophistication and that one-size-fits-all regulatory schemes do not address the customized nature of their needs.[27]

26 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 24.

27 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 50.

3.1 *The Concept of Security in EU Law*

In EU law, "security" is a functionally immediate and perhaps derivative hypothesis of certainty. Securities are financial instruments that provide a claim on the issuer's future assets or earnings, and regulating these instruments is an important part of ensuring investing public trust in the financial markets. A clear and certain definition of a security is crucial to issuers and investors alike, as the definition determines the regulations applying to various types of financial instruments.

This classification of securities is important as it affects the rights and responsibilities of all parties involved in investment transactions and the Prospectus Directive aims to create a clear framework in order to achieve this. This clarity is particularly important in public offerings, where investors could take on significant risks. With an expansive definition of what qualifies as a security, the directive would also capture an immense range of financial instruments, ensuring that everything get their due in the way of oversight from the authorities. As the directive states, "the broad definition of securities… applies exclusively to this Directive and, therefore, in no way prejudices the different definitions of financial instruments laid down by national legislation for other purposes."

3.2 *Definition of Securities under EU Law*

Under Article 2(1)(a) of the Prospectus Directive, "securities" is defined as "transferable securities as defined by Article 1(4) of Directive 93/22/EEC." This is in stark contrast with how finance is defined in financial inclusion research when finance is sometimes considered only to be equity and non-equity securities or in other definitions including shares and bonds. This broad definition seeks to capture all instruments capable of public offering or traded on regulated markets, thereby ensuring a uniform level of investor protection is accorded across an array of securities.

Liquidity is a key determinant of all transactions in financial markets, as captured by the overarching principles of the transferability of securities according to the directive. An investor can enter or exit their positions when required in transferable securities, as these can be purchased and sold. This liquidity is crucial for preserving market efficiency and allowing investors to adjust to the changing market landscape.[28] As such, the directive should help define which financial instruments will use which part of the EU's regulatory framework, in terms of their status as securities.[29]

28 UK/EU Investment Management Update – August 2024 (*Sidley Austin LLP*, 7 August 2024) https://www.sidley.com/en/insights/newsupdates/2024/08/ukeu-investment-management-update-august-2024.

29 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 50.

3.3 *Categories of Securities and Regulatory Implications*

The Prospectus Directive distinguishes amongst different types of securities and each has its own regulator rules. This is because other complex investment products, like equity securities which the director considers as stocks, shares, bonds, etc. in any entity are subject to the prospectus obligation and apply when offered to the public. This requirement is designed to ensure that investors have adequate information about the company and the risks of their investment.[30]

However, certain types of securities may not have this prospectus requirement. Article 3(2) allows for exceptions for offers which are only addressed to qualified investors, on the basis that qualified investors are better suited to assess the related risks. This differentiation is important to tailor regulatory requirements to the specific needs of various investor types, and thus to create a more efficient regulation.[31]

These categorizations have significant implications for issuers, who need to find a passport to navigate the intricate rules surrounding the regulations governing their planned offerings of securities. As the court noted, "the obligation to have a prospectus published does not apply with respect to those shares which are offered, allotted or to be allotted free of charge to existing shareholders."[32] This highlights the need for issuers to carefully examine the nature of the offers it makes and the type of investors it will have to comply with the directive.

For this reason, in essence, the Prospectus Directive lays down a basic set of rules for the regulation of securities offerings in the EU. Notably, significant elements of the SFDR, as for instance the definitions and obligations enshrined in Articles 2 and 3, are anticipated to lead to better level of investor protection and the improvement of the standards of the overall markets. The directive aims to provide clarity and certainty to all participants in the financial markets by establishing clear guidelines for classification of securities and responsibilities of issuers.[33]

4. The Ruling of the Court of Justice

4.1 *Summary of the Court's Conclusions in C-627/23*

In case C-627/23 CJEU considered important issues related to the application of Prospectus Directive to certain securities, in particular, shares in a holding company which

30 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 3.

31 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 46.

32 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 44.

33 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 38.

were only offered for sale to certain territorial administrative authorities in Belgium. The Court stated that the offer to subscribe to these shares was a public offer and therefore the requirement to publish a prospectus according to Article 3(1) of the Prospectus Directive would be engaged.

The Court emphasized that the term "offer of securities to the public" is very wide and includes all communication that provides suitable information to enable potential investors to make a decision based on the graduate of knowledge. Publication of a prospectus is an important investor protection measure and encourages transparency in the securities market, it urged. In addition, the Court emphasises that the exceptions in Article 3(2) of the directive, which allow for certain offers to escape from the obligation to publish a prospectus, are irrelevant here, as the shares were not specifically offered to qualified investors.

In fact, the Court held that the shares will nevertheless be caught by the Prospectus Directive despite the restrictions on the transferability of the shares, as well as the requirement for board approval if the shares are to be transferred. Already this ruling is set to highlight key features of the directive with regards to limiting what securities can be offered to potential investors and ensuring that anyone offering them is covered for any material facts under the directive and, by extension, whatever else this may concern.

4.2 *Advancing with Modern EU Securities Regulation*

The CJEU's ruling in C-627/23 reinforces the EU's evolving securities framework by interpreting 'public offer' broadly under Article 3(1) of the Prospectus Directive, ensuring transparency for non-qualified investors like municipalities. This aligns with the Prospectus Regulation (EU) 2017/1129, which emphasizes investor protection through mandatory disclosures (recital 7) while facilitating market access for issuers (Article 1(3)). The ruling's focus on negotiability echoes MiFID II's definition of transferable securities (Article 4(1)(44)) and its transparency obligations (Article 24), which aim to ensure fair markets. Furthermore, it supports the CMU's objective of reducing fragmentation, as outlined in the 2015 Green Paper (COM(2015) 63 final) and 2020 Action Plan (COM(2020) 590 final), by promoting uniform application of securities rules across Member States, enhancing cross-border investment under Article 114 TFEU.

4.3 *Potential Reforms to the Prospectus Directive Following the Ruling*

The ruling in C-627/23 builds on established CJEU jurisprudence emphasizing broad interpretations to achieve EU market integration. For instance, in Case C-441/12 Heemskerk and Schaap v République française (Almer Beheer), the Court clarified that 'negotiability on the capital market' does not require unrestricted trading but focuses on the instrument's inherent transferability in normal market conditions, excluding forced sales like enforcement proceedings. Similarly, in Case C-248/11 Nilas (on MiFID definitions), the CJEU stressed that definitions must be autonomous and uniform across EU law to avoid fragmentation. By applying these principles, C-627/23 reinforces the

EU's Capital Markets Union (CMU) goals, as outlined in the Commission's 2015 Action Plan and subsequent reforms, to enhance cross-border capital flows while protecting investors under Article 3(1) of the Prospectus Directive.

4.4 *Analysis of Legal Questions Addressed by the Court*

The issues raised in the case and detailed by the Court concerned the characterization of the shares of stock in question, as well as whether they qualified as a public offer as defined by the Prospectus Directive. The Court closely examined the nature of the shares at issue and commented that their transfer was restricted to select municipal and provincial authorities in addition to requiring applicable board of directors' approval. Notwithstanding these limitations, the Court ruled that the shares fell within the definition of a security under EU law.

The reasoning by the Court went on to highlight that the term "securities" in Article 2(1)(a) of the Prospectus Directive is to be construed broadly.The Court held that the shares were transferable and constituted equity in the holding company; hence, they amounted to securities. The Court further held that the issuance of shares to a limited group of investors commenced the public interest provision since prospectus rules apply to all securities. This was yet another decision that confirmed the broad application of the Prospectus Directive to securities, aimed at transparency and investor protection within all financial markets across the EU. Therefore, issuers have to comply with these requirements irrespective of the context of their offerings. Judgments such as this one should serve as a proper reminder of how crucial transparency and openness are in building trust and confidence when it comes to cross-border investments.

4.5 *Limits of Legal Harmonization: Practical Challenges in Defining 'Securities' after C-627/23*

While the CJEU's broad interpretation of 'securities' in C-627/23 promotes investor protection and market harmonization, it arguably overstretches the notion of negotiability under Article 4(1)(18) of MiFID I by emphasizing theoretical transferability between offerors and investors rather than practical market realities (para 33).[34] This may inadvertently capture limited, private-like arrangements such as those restricted to local authorities within public offer rules, undermining the Prospectus Directive's intent to exclude non-public transactions and potentially leading to over-regulation (recital 16).[35] Mildly critiqued in national adaptations, like BaFin's updated guidance, this approach risks inconsistent application across Member States, as previous narrower views are

34 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 33.

35 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading OJ L345/64, recital 16 accessed 14 October 2025.

deemed untenable.[36]

Additionally, the ruling's exclusion of municipalities from 'qualified investors' under Article 2(1)(e)(ii) of the Prospectus Directive (para 47) raises concerns about chilling sub-sovereign market access.[37] By imposing prospectus requirements on local authority issuances, it increases compliance costs for funding public services, potentially deterring capital market participation contrary to CMU goals for efficient public financing.[38] This trade-off prioritizes investor safeguards but may hinder innovation in sub-sovereign bonds, prompting calls for flexible exemptions in future reforms.[39]

5. Implications of the Ruling

5.1 *Impact on National Authorities*

In Case C-627/23, with regard to the Court's ruling, it raises new challenges for public bodies engaging in the supply of financial resources with respect to securities. The Court decided that such restricted shares, whose holders are only certain municipal or provincial authorities, are treated as "securities" which under the EU law need the publication of a prospectus before issuance, and the issuance of a prospectus was regulated under article 14 of the Prospectus Act. It is almost insurmountable regulatory barrier for national authorities, which will probably deter them from issuing securities or seeking other methods of financing. Given the national governments are market dependent for providing some of the most important public services and projects, the regulation will make it more expensive and difficult for them to serve the public for example by making issuance of a prospectus mandatory.[40]

5.2 *Broader Market Implications*

It therefore has wider market implications, beyond the national authority, to the securities market at large. This instrument is very crucial in determining the need for a prospectus, therefore, upon the essence of negotiability it has placed tremendous emphasis on the terms of an offer not to make trading shares on the capital market

36 'Prospectus regulation and "public offer" - new BaFin guidance' (*Simmons & Simmons*, 2025) https://www.simmons-simmons.com/en/publications/cmgz7pti6002cu0wg73p2slq3/prospectus-regulation-and-public-offer—-new-bafin-guidance accessed 14 October 2025.

37 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 47.

38 European Commission, 'Capital Markets Union 2020 Action Plan' (Communication COM(2020) 590 final, 24 September 2020) 10–12 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0590 accessed 14 October 2025.

39 'Listing Act Part 1 Prospectus Changes' (*Walkers Global*, 18 November 2024) https://www.walkersglobal.com/Insights/2024/11/Listing-Act-Part-1-Prospectus-Changes accessed 14 October 2025.

40 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 50.

overly difficult.[41] This obliges market participants to assess their securities offerings in light of compliance with the Prospectus Directive. It raises important questions concerning the definition of a qualified investor, reminding issuers that they must clearly identify who meets this criterion because it is an essential part of regulatory compliance. There is a need for clarity in this area, which may mean that market participants will think twice before taking any actions in the offering of securities it means they will avoid taking steps that may be questionable.

Indeed, the recent ruling itself may prove a potent impetus that leads to the possible reform of the Prospectus Directive. As the market continues to digest these clarifications, we can anticipate increasing calls for adjustments to improve clarity and consistency across EU members states. The development of such would help create an enabling and conducive environment for protecting investors interest and propagating more active participation by marketplaces. Justice/Supreme Court/Senate.

To conclude, the C-627/23 decision does not only concern to the participation of national authorities on securities investments but it is also a watershed not with respect to the whole securities market. This ruling helps clear the way for future regulatory reforms, which would move toward more effective adaptation of the way that the EU securities market functions, effectively clarifying what the word of securities attributes in exchange and promoting the importance of negotiability and qualified investors.

5.3 *Global Approaches to Restricted Securities: Comparative Insights*

In contrast to the EU's broad classification of restricted shares as securities under the Prospectus Directive, requiring a prospectus for public offers even with transfer limitations, the US SEC framework under Rule 144 of the Securities Act 1933 treats restricted securities typically those acquired in unregistered private sales as subject to holding periods (six months for reporting issuers, one year otherwise) and resale conditions to prevent unregistered public distributions. Unlike the CJEU's emphasis on inherent negotiability triggering disclosure, US rules allow exemptions for affiliates' control securities without holding periods, focusing instead on volume limitations and manner of sale to avoid underwriter liability. This highlights a more flexible, affiliate-centric approach in the US, where public entities face no equivalent prospectus obligations due to limited market access powers.[42]

Post-Brexit, the UK has diverged from the EU Prospectus Regulation by introducing reforms under the Financial Services and Markets Act 2023, raising exemption thresholds

41 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 49.

42 Bradley Berman and Steven Bleiberg, 'Restricted Securities vs. Control Securities: What Are the Differences?' (*Columbia Law School Blue Sky Blog*, 14 January 2014) https://clsbluesky.law.columbia.edu/2014/01/14/restricted-securities-vs-control-securities-what-are-the-differences/ accessed 13 October 2025.

for secondary issuances (up to 75% of existing capital) and allowing lighter disclosures for SMEs via MTF admission prospectuses, unlike the EU's 30% cap and standardized EU Growth Issuance Prospectus. While both regimes classify restricted shares similarly for public offers, the UK's focus on proportionate liability for forward-looking statements (recklessness standard) offers issuers greater flexibility than the EU's rigorous investor protection, potentially reducing barriers for sub-national authorities akin to those in C-627/23.[43]

From a legal tradition perspective, common law systems like the US and UK provide more adaptive, precedent-based treatment of restricted securities through flexible exemptions and self-regulation (e.g., SEC Rule 144 and London Stock Exchange rules), fostering market innovation but potentially weaker minority protections compared to civil law systems in continental EU[44], where codified rules under the Prospectus Directive ensure stricter harmonization and higher aggregate shareholder safeguards, as evidenced by stronger minority protections in France and Germany over 1970–2005.[45]

5.4 *Policy Trade-offs in EU Securities Regulation: Investor Protection Versus Municipal Market Access*

The CJEU's ruling in C-627/23 underscores key policy trade-offs in EU securities regulation, balancing robust investor protection with market access for public authorities. By classifying restricted shares as securities requiring a prospectus under Article 3(1) of the Prospectus Directive, the decision enhances transparency and reduces information asymmetry, safeguarding investors from risks in municipal issuances aligning with the Directive's core aim of market efficiency and confidence-building.[46] However, this broad scope imposes significant compliance burdens on sub-national entities like municipalities, potentially deterring capital market participation for funding public services and infrastructure, as prospectus preparation raises costs and delays.[47] This tension highlights a policy dilemma: while investor protections foster long-term market stability, they may limit access for public bodies, echoing concerns in the EU's Listing

43 Greenberg Traurig LLP, 'EU Listing Act: Simplifying a Stock Exchange Listing, in Particular for SMEs and UK Prospectus Reform' (*The National Law Review*, 3 April 2024) https://natlawreview.com/article/eu-listing-act-simplifying-stock-exchange-listing-particular-smes-and-uk-prospectus accessed 13 October 2025.

44 Prabirjit Sarkar, 'Common law vs. civil law: Which system provides more protection to shareholders and promotes financial development' (2010) 35 Journal of Corporate Finance 88.

45 Robert L. Knauss, 'Securities Regulation in the United Kingdom: A Comparison with United States Practice' (1971) 5 Vanderbilt Journal of Transnational Law 49.

46 European Commission, 'Securities Prospectus' https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/financial-markets/securities-markets/securities-prospectus_en accessed 14 October 2025.

47 'FCA Response to European Commission Review of Prospectus Directive Consultation' (*Financial Conduct Authority*, March 2015) https://www.fca.org.uk/publication/corporate/fca-response-european-commission-review-prospectus-directive-consultation.pdf accessed 14 October 2025.

Act reforms, which seek to simplify rules to attract issuers without compromising safeguards.[48] As such, the ruling prompts a reevaluation of exemptions to ensure equitable access, elevating doctrinal clarity to address real-world financing challenges for local governments.

6. The Role of Qualified Investors in Securities Regulation

There is a specific difference between qualified investors under the EU Prospectus Directive that is significant to the regulatory treatment of certain securities offerings. The issuer classification specifies obligations that issuers must fulfil, but it also establishes the relationship between qualified investors and private equity companies, i.e., the other qualified investors. That case standard (C-627/23) has recently ruled on such relations implying guidance as to its implications for market participants.

6.1 *The Relationship Between Qualified Investors and Private Equity Companies*

Qualified investors are usually institutional investors and high-net-worth individuals who possess the expertise and capital necessary to participate in sophisticated financial instruments. Such categorization allows PE firms to target a select market segment that their investments are thought of as having the best chance of being able to understand and process the risks associated with their investments. This distinction is reflected in the Prospectus Directive, which provides that the obligation to publish a prospectus shall not apply to offers made solely to qualified investors.[49]

This Berlin exemption is especially prized among private equity firms due to the extensive regulatory burden involved in public offers and being able to raise capital with relative ease. It also means private equity firms can streamline fund raising complexity and implement subscription strategies that are more custom, if you will. This results in a more efficient mechanism for capital allocation, given qualified investors with higher risk tolerance may be less on the expectation of returns returned for the capital provided.

6.2 *Definition of Qualified Investors*

Under Article 2(1)(e) of the Prospectus Directive, the term "qualified investors" is legally defined as entities with sufficient experience and resources to perform in the business of securities, their performance being wholly unremunerated. The definition further stipulates that "qualified investors" include legal entities authorized or regulated to act in the financial markets, the national and regional governments of any sovereign state, and some natural persons who qualify under certain criteria. This directive clearly says

48 'Listing Act Part 1 Prospectus Changes' (*Walkers Global*, 18 November 2024) https://www.walkersglobal.com/Insights/2024/11/Listing-Act-Part-1-Prospectus-Changes accessed 14 October 2025.

49 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 6.

that offers of securities to be made solely to qualified investors are exempt from the requirement of the publication of a prospectus, noting the varying level of protection required for different investors.

6.3 *Offers Addressed Exclusively to Qualified Investors*

Offers addressed solely to qualified investors therefore fit well within the mold that the Prospectus Directive seeks to create. The Article 3(2)(a), and accordingly a "public offer" is any communication directed at potential investors. Thus, the most obvious in this context, therefore, pertains to determining the precise audience targeted by such offers. Meantime, a qualified investor will include all entities and persons competent enough to appreciate new investments and absorb risks without the need for full disclosure protected by the directive.

Further, Article 3(2) recognizes all offers to qualified investors as exempt from the duty of prospectus publication. Even though this serves as an incentive for innovation and flexible capital raising, it raises some investor-protection concerns since qualified investors do not have access to comprehensive prospectuses.

In such a case, this distinction keeps the sophisticated investors going for such offerings without the burdens of extensive documentation required for the general public. This raises the need for differentiation in securities regulation to allow capital raising and financial innovation whilst also striking a balance between investor protection and market efficiency.

Such offers have the implication of reducing the regulatory burdens and thus speeding up the fundraising activities by issuers while still maintaining effective market practices, thereby creating more liquidity and investment opportunities for everyone.

7. The Importance of Negotiability in Securities Regulation

One of the basic concepts in the area of securities regulation and one that has been the main point of interest to EU legislator is what is known as the concept of negotiability and is addressed in the context of the EU Prospectus Directive. Its place is central in ruling whether or not a prospectus must be available for a commodity in question. Subsequently, whether or not a prospectus is required to be published when a security is negotiable, had been clarified through various judgments of the courts and therefore the concept of negotiability is of prime importance in the securities market.

7.1 *The Significance of Negotiability in Determining Prospectus Requirements*

According to the concept of negotiability, this relates to the ability of the given security to be freely exchanged in the capital market. This characteristic is key in determining whether any offer falls within the definition of a public offer used in this context, which was a condition for the obligation to publish a prospectus as set out in Article 3(1) of the Prospectus Directive. The directive defines "an offer of securities to the public" as "a communication to persons in any format and through any medium, presenting suffi-

cient information on the terms of the offer and the securities which are the object of the offer."

Negotiability plays an important role in investor protection and market discipline. Negotiability of securities is the characteristic of establishing the ability to transfer securities to more than one investor resulting in a positive experience with market liquidity and a positive experience with market transparency. Nevertheless, these terms can dilute the negotiability of securities and eventually reach the point where the offer to the public can be determined to be a non-public one on which the issuer would be free to not file a prospectus. This difference is relevant, because it allows issuers to devote themselves to specific investor groups without the rigours of heavy regulatory scrutiny.

It is the fact that transactions take place between offerors and potential investors rather than the fact that securities are traded on regulated markets that is at the core of the notion of securities, the Court has stressed. The ruling states, it is not the possibility of trading without restriction on the capital market that constitutes the essential characteristic of sentences, but the possibility of trading such sentences the offerors of securities and potential investors. This perspective accentuates the relevance of negotiability in figuring out issuers' regulatory duties.[50]

7.2 *The Court's Judgment on Negotiability and the Obligation to Publish a Prospectus*

Case C-627/23 recent ruling sheds light on the link between negotiable and the obligation to publish a prospectus. The Court, however, explained that the expression securities which are negotiable on the capital market should be interpreted widely so as to include various types of financial instruments, in particular corporate shares, regardless of their transferability being limited in such a way as to make their negotiability impossible or excessively difficult.

This decision emphasizes the negotiability of the securities as well as whether a prospectus is necessitated. The offering should be formulated in such a way which allows reasonable negotiability as a result of which, requirement to publish prospectus is triggered. Yet where transferability of the securities at issue are significantly limited such that it is known that the offering is not a public offering in and of itself, no prospectus needs to be provided for by the issuer.

This has far-reaching consequences for market participants, as the ruling puts a hardline on the standard used to assess whether a securities offering is subject to regulatory duty. This emphasizes the need for issuers to think carefully about the terms of their offers so that they are kept within the bounds of the Prospectus Directive. The Court's focus on negotiability as the most important concept also makes sense given the main goals of the Directive that are focused on investor protection and the proper

50 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 34.

functioning of markets.[51]

In summary, negotiability as a manifest criterion operates alongside the specific EU Prospectus Directive approach to the registration of the offer of securities. It is a lot more relevant now because it has a direct impact on the metrics of investor protection on the one side and market integrity on the other, both of which actually depend on whether the making of a prospectus is necessary. The recent court decision has shed much light on the connection between negotiability and the prospectus publication requirement, with important insight for both issuers and investors. As the securities market matures, negotiability will continue to be a key topic of conversations around regulatory compliance and investor protection.

8. Exceptions to the Prospectus Requirement

The Prospectus Directive establishes specific exceptions where there is no obligation to publish a prospectus when making an offer of securities to the public. The exceptions attempt to facilitate capital raising while providing some measure of investor protection. These exceptions have important ramifications for issuers and investors and are key to understanding securities offerings.

8.1 *Overview of Exceptions to the Prospectus Requirement*

There are numerous circumstances in which the obligation to issue a prospectus may be dispensed with. While Article 3(2) of the Prospectus Directive provides exceptions, including, though not limited to, offers to potential investors exclusively or exclusively pertains to qualified investors, offers of securities amounting to less than € 1 million and offers of securities not admitted to trading on a regulated market. In particular, pursuant to Article 3(2)(a), the prospectus requirement leans not relevant to provides made solely to qualified buyers, comprising certain institutional investors and high-net-worth individuals.

Additionally, Article 3(2)(b) provides an exemption for offers of securities addressed to fewer than 150 non-qualified investors, either natural or legal persons, per Member State. This rule allows issuers to make limited offers without needing to fulfill extensive disclosure requirements. Moreover, Article 4(1)(d) clarifies that the exemption from the obligation to publish a prospectus also applies to shares that are being offered to existing shareholders free of charge, facilitating the execution of capital increases without any regulatory hurdles.[52] Case C-627/23 could be more favourable to statutory exceptions. The judgment of the court, in particular clarifying the notion of qualified investors and the conditions in which securities can be said to be negotiable, is thus likely to lead to a stricter application of these exceptions.

51 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 15.

52 *Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA* (Case C-627/23) EU:C:2025:9, para 46.

9. Future Considerations for EU Securities Regulation

C-627/23 ruling underscores the need for Prospectus Directive reforms to enhance clarity, flexibility, and investor protection while fostering market access in a dynamic financial landscape.

9.1 *Potential Reforms: Speculation on Potential Reforms to the Prospectus Directive in Light of This Ruling*

A standardized 'qualified investor' definition would reduce inconsistencies across Member States, easing issuer compliance. Introducing tiered disclosure regimes, such as short-form prospectuses for issuances below €12 million, would support SMEs and sub-national entities, aligning with the EU Growth Prospectus initiative. Raising exemption thresholds (e.g., above €1 million) would facilitate capital access for smaller issuers. Adopting digital, searchable prospectuses would enhance accessibility and streamline investor decision-making.

9.2 *Harmonization of Securities Laws: Discussion on the Need for Harmonization Across EU Member States Regarding Securities Regulation*

A harmonized prospectus format and investor classification system would streamline cross-border investment, reduce compliance complexities, and boost investor confidence, supporting CMU's integration goals. These reforms, potentially integrated into the Listing Act (effective 2026) or the 2025 securitisation framework review, require collaboration among regulators, issuers, and legal experts to balance innovation with investor safeguards. Within the context of ongoing reforms and the discussion of broader harmonization, it will be smoothing the path towards the future of EU securities regulation, the implications of recent court rulings. Given these potential improvements, which not only serve to rectify inconsistencies in the Prospectus Directive, but also create an opportunity for an increasingly integrated regulatory framework, the EU can derive benefits such as increased market efficiency, decreased investment costs for companies, investor protection and increased economic growth in the member states. In such a situation, the way to bring progress will be the cooperation between regulators, market participants and legal experts in order to secure that the changing map of securities regulation appeals needs of a dynamic financial market.

10. Future of the Prospectus Directive

The Directive's focus on investor protection and market integrity is critical for sustaining trust in dynamic financial markets. Mandatory prospectuses for restricted shares enhance transparency, safeguarding investors from risks. Consistent transparency prevents market manipulation and ensures fair trading practices. An adaptable regulatory framework incorporating recent case law will enhance investor protection and market efficiency.

10.1 *Speculation on Potential Reforms for the Prospectus Directive in Light of This Ruling*

Following Case C-627/23, reforms to the Prospectus Directive are anticipated, focusing on clearer definitions of 'offer to the public' and prospectus triggers. A risk-based approach could introduce tiered disclosure requirements, easing obligations for smaller issuances to support SMEs. This would reduce regulatory burdens while ensuring investors receive essential information, fostering innovation and growth across the EU by simplifying compliance for smaller ventures navigating complex securities regulations.[53]

Restructuring prospectuses means that introduction of digital prospectuses could turn out to be a decisive reform. This framework may not use technology as much as it should for improved accessibility and transparency. Electronic forms which are wise, adaptable and can search would enhance the investor experience and, according to the directive, more effective decision making.This is especially applicable in an increasingly digital world where investors use online resources for information.

10.2 *Investor Protection and Market Integrity: Examining the Broader Objectives of the Prospectus Directive*

The Prospectus Directive prioritizes investor protection and market integrity, ensuring fair and efficient financial markets. It mandates transparent prospectuses to provide investors with reliable information, fostering informed decisions and trust, especially amid market volatility and innovative financial products. By extending prospectus requirements to restricted shares, it safeguards a broader investor base from exploitation. The CJEU's broad interpretation of 'public offer' demands uniform application across EU Member States to prevent market manipulation and ensure equitable trading. Future reforms, shaped by recent rulings like C-627/23, should refine definitions and thresholds, leveraging technology for accessible disclosures. Collaboration among regulators, market participants, and legal experts is essential to align securities regulation with the evolving financial landscape, balancing robust investor safeguards with market adaptability.

10.3 *Charting the Path Forward*

The updates proposed by the Prospectus Directive bear elements from more recent case law and serve towards an adaptable regulatory framework accommodating the evolution of the financial industries. This will further protect investors and enhance market integrity. It could be more defined, make smaller offerings simpler, and adopt digital technologies to increase access and efficiency in disclosing information.

53 'Schaerbeek poursuit son combat contre le Holding Communal' *(L'Echo (online)) https://www.lecho.be/entreprises/general/schaerbeek-poursuit-son-combat-contre-le-holding-communal/10502813.html* accessed 28 January 2025.

11. Conclusion

11.1 *Doctrinal Clarification*

The CJEU's ruling in Commune de Schaerbeek and Commune de Linkebeek v Holding Communal SA (C-627/23) redefines 'securities' under the Prospectus Directive (2003/71/EC) to include shares with transfer restrictions, emphasizing negotiability as the capacity for transfer between offerors and investors (para. 33). This broad interpretation, aligned with Article 2(1)(a) and MiFID II (Article 4(1)(44)), ensures uniform securities regulation, enhancing transparency and investor protection across EU markets while supporting the Capital Markets Union's harmonization goals (Article 114 TFEU).

11.2 *Practical and Policy Significance*

The ruling requires national authorities and market participants to reassess securities issuance strategies, as mandatory prospectuses increase compliance costs, potentially limiting sub-national entities' market access. It signals the need for reforms, such as tiered disclosures, higher exemption thresholds, and digital prospectuses, to balance robust investor safeguards with market flexibility. Collaboration among regulators and issuers, potentially via the Listing Act (effective 2026), will foster an adaptable framework, promoting innovation and trust in the EU's evolving financial landscape.