



FACILITATING FUND DISTRIBUTION ACROSS BORDERS

On 31 March 2020, ESMA published a consultation paper (**CP**) on draft implementing technical standards (**ITS**) under Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings (the Regulation).

Access full CP [here](#).

The document will be of interest to **managers of:**

Additionally to **distributors of:**

And to institutional and retail **investors** investing into:



- AIFs
- UCITS
- EuSEFs
- EuVEECAs
- Their trade associations



- UCITS
- AIFs
- EuSEFs
- EuVEECAs



- UCITS
- AIFs
- EuSEFs
- EuVEECAs

Background

The cross-border distribution of collective investment undertakings is further incorporated into [Regulation](#) which originally entered into force on 1st August 2019.

The Regulation, along with the associated [directive](#), aims to facilitate the cross-border marketing of UCITS and AIFs (including EuSEF's and EuVECA's), throughout the EU by removing existing barriers and enhancing protection for investors.

In order to achieve this goal, the Regulation contains various areas that ESMA needs to produce ITS on. These include:

- Standard forms, templates and procedures for marketing;
- Standard forms, templates and procedures for fees and charges; and
- A central database on cross-border marketing of AIFs and UCITS and the technical arrangements necessary for the functioning of the notification portal into which each National Competent Authority (NCA) must upload all documents necessary for the creation and maintenance of such central database.

Scope of the information to be published by NCAs on their websites

It is ESMA's view that the information to be published by NCAs on their website should encompass complete and precise information relating to the specific requirements for the marketing of investment funds, which are applicable within each Member State. This relates to both domestic and cross-border marketing. Hence, this information should cover home Member States' rules on marketing of domestic funds in the said Member State or in a host Member State, where applicable, and host Member States' rules on marketing of funds established in a home Member State.

In order to ensure transparency on all marketing requirements, ESMA considers that NCAs could also make reference, along with the requirements specifically designed for the marketing of investment funds, to other bodies of domestic law which are not specifically meant for the marketing of UCITS and AIFs, such as consumer protection laws for example, that could apply in the event of marketing to retail investors. This would enhance transparency and help stakeholders understand the extent of the requirements relating to the marketing of investment funds in each Member State.

Format of the publication of complete and up-to-date information on marketing requirements on NCAs' websites

The ITS will specify the standard forms and templates for the publication of the complete and up-to-date information on the applicable national laws, regulations and administrative provisions governing the marketing of UCITS and AIFs. Determining a common format aims to ensure that the information on national marketing requirements is easily accessible, identifiable as such and is harmonised between NCAs' websites.

Due to the difference between the structures of marketing requirements applicable within each Member State, ESMA considers that the format of the publication should be flexible and should focus on highlighting the requirements applicable to each type of fund, rather than focusing on the form of the publication (e.g. text or table).

In this context, the format proposed in the ITS is of a general nature and only requires NCAs to clearly identify the requirements applicable to the marketing of UCITS and those applicable to the marketing of each type of AIF existing under national law. This will be on both a domestic and cross-border basis.

Format of the publication of the summaries of marketing requirements

The proposed ITS also sets out the standard forms and templates for the publication of the summary of marketing requirements that NCAs must publish on their websites.¹

These summaries aim at providing stakeholders with a broad overview of the marketing requirements in a clear and simple manner. They should constitute:

- High-level guidance on the applicable requirements, giving sufficient information to understand the main steps to be taken with a view to marketing UCITS or AIFs in the concerned jurisdiction, and
- Include a reference to where more detailed information is available (e.g. hyperlinks to the full version of any relevant provisions of law, decree, circular, guidance on specific requirements applicable to each category of AIFs, etc.).

They should not be designed as exhaustive lists of the marketing requirements, nor constitute a legally binding document for the NCAs.



The ITS should not restrict the format of these summaries, which could take the form of a text setting out a general overview of the applicable requirements, of a table setting out different scenarios and a summary of the rules applicable to each one, or a combination of these two formats.

It is ESMA's view that the main focus should be to ensure that the summary is concise, clear, easy to read, and gives sufficient information to understand the main requirements for marketing in each Member State, notwithstanding the fact that the format for the submission of this information will also have to be harmonised.

Website publication of regulatory fees and charges (Article 10(3) of the Regulation)

The Regulation² requires NCAs to publish and maintain on their websites, up-to-date and complete information listing the fees and charges they levy for carrying out their duties in relation to the cross-border activities of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies, or, where applicable, the calculation methodologies for those fees or charges, in, as a minimum, a language customary in the sphere of international finance.

These publications shall be made in accordance with the standard forms, templates and procedures set out in the ITS that ESMA shall develop by 2 February 2021.

The purpose of this ITS is not to determine the type or the amount of fees and charges levied by NCAs in relation to cross-border activities carried-out by fund managers within their jurisdiction, as this is left to NCAs' discretion. The purpose of this ITS is limited to ensuring transparency on the applicable fees and charges in each Member State.

Scope of the regulatory fees and charges to be published by NCAs on their websites

The ITS relates to the publication of information on the fees or charges levied by NCAs in relation to cross-border activities of fund managers or, where applicable, the calculation methodologies for those fees and charges. ESMA must first determine the scope of the information to be published by NCAs on their websites.

ESMA is of the view that the provisions of Article 10(1) of the Regulation, which makes no distinction between cross-border marketing and cross-border management, should be understood as encompassing all existing regulatory fees and charges levied by NCAs in relation to any cross-border activities within their jurisdiction, whether inwards or outwards.

In some Member States, no fees or charges are levied in relation to certain activities, e.g. inwards cross-border marketing. For purposes of clarity, ESMA's view is that NCAs should make it clear that there are no other fees or charges other than those listed on their websites.

It should also be noted that Article 10(1) of the Regulation foresees the publication of the list of regulatory fees and charges "or, where applicable, the calculation methodologies for those fees and charges" (emphasis added). This wording seems to imply that NCAs have a discretionary option to publish either the list of regulatory fees and charges or the calculation methodologies thereof where such methodologies exist. ESMA is of the view that this alternative should be mentioned in the ITS, as the main objective of the ITS should be to ensure that stakeholders can easily determine the amount of the fees and charges that would be levied for their cross-border activities in the concerned Member State only by referring to the NCA's website.

Format of the information to be published by NCAs on their websites regarding regulatory fees and charges

Another aspect of the ITS is to determine the standard forms for the publication of information on regulatory fees and charges on NCAs' websites. ESMA considers that the publication should be made in a harmonised manner by NCAs, which could be made in the form of a table that may be accompanied by some explanatory text. Such table should be easy to read and provide at least:



A detailed breakdown of the different type of applicable regulatory fees and charges, including the amount to be paid as either a fixed fee or a percentage (and the basis for calculation, as applicable);



The type of activity to which the fee relates (e.g. marketing by a domestic manager of a fund established in another Member State to domestic investors, etc.);



The legal basis for levying the fee;



The frequency of the fee, as applicable; and



The person or entity who is liable for paying the fee.



It is important that the publication made by NCAs gives all relevant details of the fees and charges levied for cross-border activities of fund managers in a clear and comprehensive manner. As the structure of the fees and charges levied by NCAs may differ from one Member State to another, NCAs should be able to add some explanatory text to give some detailed information on the fees and charges (the structure of which cannot be summarised in a table).

Central database listing funds marketed on a cross-border basis (Article 13(3) of the Regulation)

Article 12 of the Regulation requires ESMA to publish on its website a central database on cross-border marketing of AIFs and UCITS, publicly accessible in a language customary in the sphere of international finance. It should list:

- All AIFs and UCITS that are marketed in a host Member State,
- Their AIFM, EuSEF manager, EuVECA manager, or UCITS management company, and
- The Member States in which they are marketed.

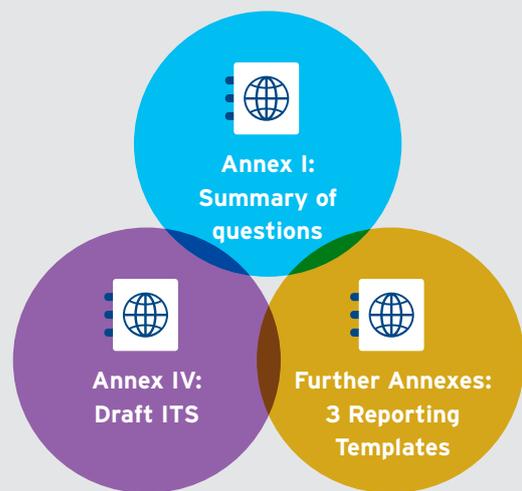
The creation and maintenance of this central database necessitates that NCAs communicate to ESMA some information regarding any notification, notification letter or information referred to in Article 93(1) and Article 93a(2) of the UCITS Directive and in Article 31(2), Article 33(2) and Article 32a(2) of the AIFMD, and any change to that information, if such changes would result in a change to the information in that central database.

Pursuant to Article 13(3) of the Regulation, ESMA needs to develop ITS to specify the information to be communicated, as well as the standard forms, templates and procedures for the communication of the relevant information by NCAs, and the technical arrangements for the functioning of the notification portal referred to in Article 13(3) of the Regulation.

Whilst the content of ITS under Article 13(3) of the Regulation relates only to the bilateral relationship between individual NCAs and ESMA for the purpose of the communication of information, the purpose of this communication of information is to develop and maintain an up-to-date central database listing funds marketed on a cross-border basis, which will be published on ESMA’s website by 2 February 2022.

In this specific context, stakeholders are invited to share their views on their use of the information to be contained in the central database.

Other sections of interest in the CP include:



Next Steps

ESMA will consider the feedback it receives to this consultation and expects to publish a final report by 2 February 2021.

¹ Pursuant to Article 5 (1) of the Regulation

² Under Article 10(1) of the Regulation

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