

REGULATION ON CROSS BORDER DISTRIBUTION OF FUNDS

Directive (EU) 2019/1160 on facilitating cross-border distribution of collective investment funds. It reviews the Directive 2009/65/EC (UCITS) and the Directive 2011/61/EU (AIFMD)

Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment funds. It reviews the Regulations (EU) No 345/2013 and (EU) No 346/2013 on EuVECA and EuSEF

1. Overview

As part of the implementation of the Capital Market Union (CMU), the EC published a regulatory initiative on Cross-border fund distribution.

In this legislative package, the EC amends:

- AIFM and UCITS Directives (draft Directive)
- and funds Regulations including EuVECA and EuSEF Regulations (draft Regulation)

Objectives

The EC's aim is to reduce regulatory obstacles to cross-border distribution of investment funds, notably by:

- improving transparency with regard to the legal and administrative requirements (notification, marketing material, local support to investors, etc.) requested by the European Union and Member States in this area as well as fees charged by national authorities
- guaranteeing more consistency in the method of calculating these costs
- proposing a harmonized definition of pre-marketing
- specifying the administrative requirements called "facilities" imposed by some national authorities

The EC expects from these measures a simplification of the procedures for distribution of funds as well as a reduction of induced costs, and correlatively an increase in the cross-border distribution of the latter.

Key topics

- requirements as regards marketing by Asset Managers (Regulation)
- increased transparency for information on national marketing requirements and fees from NCA (Regulation)
- alignment of procedures and conditions for the de-notification of UCITS and AIFs funds from national markets (Directive)
- Changes in relation to local facilities for UCITS and AIFs sold to retail investors: removing the requirement for physical presence; The choice of how facilities to support local investors are provided (local presence or electronically) is to be left with the asset manager (Directive)
- Amendments related to PRIIPs: PRIIPS review delayed by one year to December 2019 and 2-years extension of the UCITS exemption from PRIIPs until December 2021 (Directive)
- creation of ESMA Central database of all managers, AIFS and UCITS marketed in other EU countries (Regulation & Directive)
- introduction of pre-marketing for AIFs, EuVECA and EuSEF (Regulation & Directive)

2. Chronology of events: key dates

- ✓ 15/06/2018: Council published a revised version of the legislations focused mainly in the definition of pre-marketing.
- ✓ 18/09/2018 and 02/10/2018: ECON (the Parliament's Economic and Monetary Affairs Committee) published draft reports in which the rapporteur comments that he supports the EC proposals
- ✓ 03/12/2018: ECON vote to adopt ECON draft reports and to support the EC proposals
- ✓ 05/02/2019: Political agreement reached after Trilogues between the 3 bodies (EC, Council and Parliament)
- ✓ 16/04/2019: Parliament published the texts adopted at first reading on the proposed reforms
- ✓ 14/06/2019: Council adopted the regulations
- ✓ 12/07/2019: Directive and Regulation published in the Official Journal of the UE
- ✓ 01/07/2019: Both the Directive and the Regulation entered into force
- ✓ 31/03/2020: ESMA launched a consultation in order to draft ITS (Implementing Technical Standards) under the Regulation 2019/1156 on the cross-border fund distribution. Answers to the consultation were due by 30/06/2020. The consultation concerned standardized information to be published on the following topics:
 - Website publication of marketing requirements by NCAs
 - Website publication of regulatory fees by NCAs
 - ESMA Central database listing funds marketed on a cross-border basis

Following this consultation, ESMA final report for submission to the European Commission is due by 02/02/2021, with expected application from 02/08/2021

<https://www.esma.europa.eu/press-news/consultations/consultation-cross-border-distribution-funds>

- ✓ 09/11/2020: ESMA launched a consultation on guidelines on marketing communications under the Regulation on facilitating cross-border distribution of funds, UCITS and AIFs, including EuSEFs, EuVECAs and ELTIFs.. These requirements are that the material shall:
 - be identifiable as marketing material;
 - describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner; and
 - contain information which is fair, clear and not misleading.

The guidelines take into account the on-line aspects of marketing communications.

https://www.esma.europa.eu/sites/default/files/library/esma34-45-926_-_cp_guidelines_on_marketing_communications.pdf

Answers were due by 08/02/2021. Then ESMA will consider this feedback with a view to issue final guidelines by 02/08/2021.

- ✓ 01/02/2021: ESMA published a final report (dated 29/01/2021) on draft implementing (ITS) under the Regulation on the cross-border distribution of funds. It follows a consultation issued in March 2020. The ITS focus on:
 - publication of marketing requirements by NCAs on their websites
 - publication of regulatory fees by NCAs on their websites
 - ESMA central database listing funds marketed on a cross-border basis

https://www.esma.europa.eu/sites/default/files/esma-34-45-961_-_its_cross-border_distribution_of_funds.pdf

- ✓ 27/05/2021: Following ESMA consultation issued on 09/11/2020, ESMA published on 27/05/2021 a Final Report on Guidelines on marketing communications under the Regulation on cross-border distribution of funds.

Fund managers shall ensure that all marketing communications addressed to investors are identifiable as such, that they describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading. Furthermore, the Guidelines take into account the on-line aspects of marketing communications

https://www.esma.europa.eu/sites/default/files/library/esma34-45-1244_-_final_report_on_the_guidelines_on_marketing_communications.pdf

- ✓ By 02/08/2021: Directive to be transposed by Member States into their national law
- ✓ 02/08/2021: provisions of the Regulation become effective, except for some provisions which apply as of date of publication (NCA's check of marketing documents)
- ✓ 02/08/2021: ESMA published the Guidelines on marketing communications under the Regulation on cross-border distribution of funds (ESMA34-45-1244). The Guidelines will apply six months later, on 2 February 2022. All EU regulators have indicated that they will follow them.

https://www.esma.europa.eu/sites/default/files/library/esma34-45-1272_guidelines_on_marketing_communications.pdf

Link to the official translations of the Guidelines:

<https://www.esma.europa.eu/document/guidelines-marketing-communications-under-regulation-cross-border-distribution-funds>

3. Reference texts

[Directive Proposal](#)

[Regulation proposal](#)

[Legislative resolution on the proposed Directive on the cross-border distribution of collective investment funds](#)

[Legislative resolution on the proposed Regulation on facilitating the cross-border distribution of investment funds](#)

[Directive \(EU\) 2019/1160](#)

[Regulation \(EU\) 2019/1156](#)

[Guidelines on Marketing Communications](#)