



European Securities and  
Markets Authority

# Final Report

**Draft implementing technical standards under the Regulation on cross-border distribution of funds**





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# 1 Executive Summary

## Reasons for publication

Article 5(3) of Regulation (EU) 2019/1156 of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings (the “Regulation”) provides that ESMA shall draft implementing technical standards (“ITS”) to determine standard forms, templates and procedures for the publications and notifications that national competent authorities (“NCAs”) are required to make in relation to national provisions concerning marketing requirements applicable within their jurisdiction.

Article 10(3) of the Regulation provides that ESMA shall draft ITS to determine standard forms, templates and procedures for the publications and notification that NCAs are required to make in relation to national provisions concerning fees and charges levied by them in relation to activities of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies.

Article 13(3) of the Regulation provides that ESMA shall draft ITS to specify the information to be communicated, as well as the standard forms, templates and procedures for communication of the information by the NCAs which is necessary for the creation and maintenance of the central database on cross-border marketing of AIFs and UCITS referred to in Article 12 of the Regulation, and the technical arrangements necessary for the functioning of the notification portal into which each NCA shall upload all documents necessary for the creation and maintenance of such central database.

On 31 March 2020, ESMA published a Consultation Paper (CP) on the proposed draft ITS relating to the publications to be made by NCAs on their websites. The public consultation closed on 30 June 2020. The consultation did not encompass the ITS on the communication of information by NCAs to ESMA, nor the ITS relating to the central database on cross-border marketing of AIFs and UCITS and on the related notification portal since the content of these ITS related only to the bilateral relationship between NCAs and ESMA for the purpose of the communication of information and ESMA considered that it would have been highly disproportionate to seek stakeholders’ views on these ITS. However, this final report includes all the relevant ITS required under the Regulation.

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Section 2 summarises the feedback received to the consultation that ESMA carried out and explains how ESMA has taken it into account.

Annex I contains the legislative mandates to develop draft ITS. Annex II sets out the cost-benefit analysis related to the draft ITS. Annex III contains the full text of the draft ITS.

## Next Steps

The draft ITS set out in this final report have been submitted to the European Commission for endorsement. From the date of submission, the European Commission shall take a decision on whether to adopt the ITS within three months. The Commission may extend that period by one month.

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## **2 Feedback from the public consultation**

1. On 31 March 2020, ESMA published a CP on the proposed draft ITS. The consultation closed on 30 June 2020.
2. ESMA received 14 responses, from asset managers (and their associations), investor representatives, and one public authority. The answers received are available on ESMA's website.
3. ESMA consulted the Securities and Markets Stakeholders Group (SMSG), but the SMSG chose not to opine on these ITS.
4. The detailed content of the responses and ESMA's feedback is outlined in the Feedback Statement below.

## **3 Feedback Statement**

5. The responses to the public consultation included some general comments that are summarised below.
6. Respondents generally welcomed the work carried out by ESMA. A majority of respondents agreed that the information to be disclosed by NCAs on their websites, as well as central databases and registers to be developed by ESMA, would create greater transparency on the framework applicable for the cross-border distribution of funds, and assist the cross-border distribution of funds. In this context, the majority of respondents called for harmonisation of the disclosures, to ensure comparability between websites.
7. One respondent specified that, while the ITS was directed to NCAs, the publications would have a direct impact and implication for fund managers. Two respondents specified that the information on the national rules governing marketing requirements and regulatory fees and charges was often difficult to find. One respondent insisted on the fact that gathering this information was costly and burdensome as it required seeking advice from local advisors and managing dedicated internal resources.
8. However, two respondents stressed that the transposition of the Directive may not prevent diverging practices at national level. One respondent mentioned that enhanced transparency of marketing requirements and regulatory fees and charges on ESMA's website would provide an opportunity to identify and adopt good or best practices, promote greater consistency and encourage reduction of complexity.
9. Overall, respondents generally agreed that the Regulation allows for a better transparency, which could lead to reducing barriers to cross-border marketing of funds within the single market. Two respondents emphasised the need to ensure that the information published by NCAs on their websites was complete and up to date. One respondent stressed that the

templates set out in the ITS for the publication of information on NCAs' websites should also cover the rules on de-notification and pre-marketing and asked that the publication also included best practices on pre-marketing.

10. One respondent highlighted that additional supervisory powers should be granted to ESMA to centralise the supervision of cross-border distribution practices across the EU to achieve more harmonisation.
11. Finally, one respondent insisted on the fact that NCAs should not use the obligations to publish information on their websites to impose additional administrative and/or reporting requirements on fund managers.

**ESMA's response:** ESMA took note of the support for the proposals set out in the CP and the needs from market participants for enhanced transparency regarding national rules governing marketing requirements and regulatory fees and charges, in particular since gathering this information is currently costly and time-consuming.

**Q1. Do you agree that the information to be published should concern not only requirements applicable specifically to the marketing of investment funds, but should also encompass a general statement relating to the potential application of other bodies of law applicable within the concerned jurisdiction, such as rules on the protection of consumers in general? If so, do you agree that this general statement could take the form of a general disclaimer which refers to a non-exhaustive list of relevant bodies of law?**

12. A vast majority of respondents agreed with ESMA's proposal to include a reference to other relevant national bodies of laws that could apply to the marketing of funds in the concerned jurisdiction, as this information was crucial for fund managers to determine the national rules that may be applicable when marketing funds in the concerned jurisdiction. One respondent insisted on the fact that having an exhaustive list would be crucial to avoid for fund managers the burden of going through numerous searches; otherwise the publication would lose its value.
13. As regards the scope of the national bodies of law to be disclosed, respondents expressed split views. On the one hand, some respondents would favour a comprehensive list of potentially applicable laws, regulations and administrative provisions, such as consumer law, tax reporting requirements to investors and tax authorities, or complaints handling. On the other hand, some respondents mentioned that the information should be complete but limited to national requirements pertinent to the distribution of funds and related consumer protection laws (additional references to other sources of law should be avoided).
14. In addition, several respondents suggested including some specific information in the publication, such as the national requirements transposing the provisions of the Directive in respect of pre-marketing and de-notification procedures, the marketing regimes existing under national law, such as national private placement regimes, unsolicited requests/reverse solicitation, retail options for AIFs, marketing rules for ELTIFs, the national requirements for non-EU AIFs and non-EU AIFMs, the national definition of "marketing communications", the obligations for UCITS to submit prior notification of marketing

communications, any additional notification obligations for cross-border marketing, the procedure and obligations for UCITS to de-notify the marketing of units or shares or any additional requirements concerning local investors facilities, and a link to the relevant tax requirements as NCAs generally do not set the tax policy.

15. As for the format of the publication, the majority of respondents were of the view that the publication of a mere general statement indicating other bodies of law that may apply to the distribution of funds in the concerned jurisdiction would not be sufficient. In particular, some respondents indicated that the list of relevant bodies of law should be accompanied by hyperlinks to the relevant websites where the full version of the relevant national laws could be found. In particular, one respondent suggested that the relevant parts of these laws should be clearly identified.

16. Finally, one respondent stressed that the list of other bodies of law should be reviewed on a regular basis to ensure that they remain up to date.

**ESMA's response:** ESMA took note of the interest expressed by respondents for the identification, within the publications to be made by NCAs on their websites on the national rules governing marketing requirements, of other bodies of law that may apply to marketing.

ESMA also noted that respondents expressed some appetite to have as complete information as possible. This would imply in particular that the relevant bodies of law that may apply in the context of marketing would not only be identified in a general statement, but would be accompanied notably by hyperlinks to the websites where the full version of the relevant bodies of law can be found. In this context, ESMA reminds readers that NCAs are not responsible for supervising or enforcing compliance with rules existing under national consumer law or tax law. Hence, ESMA is of the view that NCAs should not be obliged to disclose precise information on such bodies of law and therefore did not modify the ITS in this respect.

ESMA took note of the importance to ensure that NCAs publish on their websites comprehensive and up to date information on the rules existing at national level governing marketing requirements and agreed this should be reflected in NCAs' publications. ESMA therefore maintained the approach regarding the completeness of the information and added a reference to the date of the publication on NCAs' websites to ensure it is up to date.

**Q2. Do you agree with the proposed approach regarding the format of the publications to be made by NCAs on their websites in respect of marketing requirements for UCITS and AIFs? If not, please provide alternative suggestions.**

17. A vast majority of respondents agreed with ESMA's proposed approach, namely, to focus on the substance of the publications on national marketing requirements rather than on the form. However, respondents generally argued that the format of the publications should be standardised in order to allow comparison between Member States. Several respondents insisted on the fact that this harmonisation should ensure a comprehensive disclosure of national marketing requirements, as opposed to a mere "box-ticking exercise" by which NCAs would formally publish some generic information which would not be useful to stakeholders. Additionally, two respondents suggested that NCAs should include hyperlinks

to the applicable national laws, regulations and administrative provisions governing the marketing requirements in a standardised form in order to provide for even greater clarity and ensure easy access to these rules by market participants.

18. In order to facilitate the understanding of national marketing requirements, some respondents suggested developing a search tool. Three of these respondents also mentioned that the template for publication should also contain a “question tree” that would contain a series of questions and answers allowing fund managers to discover all the information needed for marketing in the concerned jurisdiction.

19. To ensure consistency of the publications on each NCA’s website, some respondents suggested that the publications should include harmonised categories of marketing requirements, such as:

- National rules on pre-marketing;
- Rules governing specifically the marketing of UCITS or of each type of AIFs;
- Rules governing the format and content of marketing material, in particular the identification of the information to be notified to the NCA along with the periodicity of the notification;
- Target market or product type specific provisions;
- Rules for marketing in the concerned jurisdiction under a national private placement regime;
- The definition of marketing communications, categories of automatically complex or non-complex funds, additional cross-border marketing notification requirements, language requirements for investor documentation, prospectus country supplements or additional specific disclosure obligations, regulatory reporting requirements, other local publication requirements, or other restrictions on the marketing of UCITS;
- Ex-ante verification of marketing communication;
- Rules for de-notification of marketing; and
- Rules for marketing to retail or to professional investors.

20. Some respondents proposed a template list for the disclosure.

21. One respondent mentioned that the information should be reviewed, updated at least annually, and stamped, to ensure that it is up to date.

22. Finally, three respondents insisted on the fact that the publication relating to national marketing requirements should be made in English.

**ESMA's response:** ESMA took note of the importance of standardised publications underlined by respondents, to ensure that the information is clear, complete and comparable from one website to another. In light of the broad support from respondents, ESMA did not modify its approach regarding the format of the publications to be made by NCAs on their websites in respect of marketing requirements for UCITS and AIFs.

ESMA also took note of the suggestions made by some respondents consisting in specifying certain categories of information to be included in the publications on NCAs' websites. ESMA agrees that the requirements set out in the ITS should be more specific as regards the information to be published. To this end, ESMA amended the annex of the ITS setting-out the standard form for the publication of national rules governing marketing requirements, to specify harmonised categories of rules governing marketing requirements which have to be published, such as the rules on the format and content of marketing material, or the passporting rules.

Finally, ESMA reminds firms that the Regulation foresees that publications should be made, at least, in a language customary in the sphere of international finance.

**Q3. Do you agree with the approach taken regarding the main characteristics of the summary of marketing requirements that NCAs shall publish on their websites? If not, please provide details on the elements that you would favour including in the text or in the table.**

23. Respondents generally agreed with ESMA's proposal to publish the summary of marketing requirements. The majority of respondents favoured the publication in the form of a table, which would, in their views, allow easier comparison across Member States.

24. However, respondents expressed split views on the length of the summaries. Two respondents expressed the need to have short summaries, the length of which should be limited by the ITS, while other respondents reminded that the summaries should be short and concise, or mentioned that NCAs should determine the appropriate length depending on the information they deem it relevant to ensure that stakeholders understand the marketing requirements applicable in the concerned jurisdiction.

25. As regards the format of the summary of marketing requirements, respondents also agreed that the publications should be harmonised. In this context, some respondents suggested that the information should be broken down into different categories, e.g. rules governing marketing of UCITS and AIFs, rules governing marketing to retail or professional investors, rules on private placement exemptions or the conditions for pre-marketing funds. Other respondents suggested that these summaries should include some minimum information, such as the obligation to translate the documents to be disclosed or notified, or the process for making payments to the relevant NCA. Two respondents provided a draft table listing all the information they considered essential to be included in the summary.

**ESMA's response:** ESMA took note that respondents agreed with the publication of the summaries of marketing requirements in the form of a table.

Regarding the length of the summaries of marketing requirements to be published by NCAs on their websites, as mentioned in the CP, ESMA believes that NCAs should be able to determine the appropriate length, in order to avoid preventing NCAs from including the information they deem to be relevant.

Therefore, in accordance with the majority of responses, ESMA agreed that the publications of the summaries of marketing requirements should be harmonised, in order to ensure the clarity and comparability of the information. To this end, ESMA amended the annexes of the ITS relating to the standard forms for the publication of information to specify harmonised categories of rules governing marketing requirements, summaries of which have to be published, such as the rules on notification and prior approval of marketing communications.

**Q4. Do you agree with the approach taken with respect to the scope of regulatory fees and charges to be published by NCAs on their websites?**

26. Respondents generally agreed with ESMA's proposal on the scope of the regulatory fees and charges that NCAs would have to publish on their websites, in particular with the disclosure of all types of fees and charges relating to both cross-border marketing and cross-border management. One respondent specified that the publications should concern all fees and charges, regardless of their names under national law, such as "taxes" that may be designed specifically in the case of marketing of funds. Two respondents mentioned that such information was usually difficult to find or to understand, depending on NCAs' websites, which was costly and time-consuming for asset managers.
27. Two respondents expressed their support for ESMA's proposal to include a statement specifying that there are no other fees or charges than those disclosed by NCAs on their websites. However, one respondent favoured including a disclaimer stating that other types of costs may be incurred for marketing, such as the cost of appointment of a local tax agent or of a local law firm.
28. As regards the content of the publications, respondents made various proposals. One respondent suggested that NCAs should have to publish not only the fees and charges they levy, and their calculation methodologies, but also explain the justification behind the calculation of these fees and charges. Two respondents suggested publishing also fees and charges related to pre-marketing or de-notification. One respondent mentioned that calculation methodologies should be accompanied by numerical examples. One respondent indicated that the publications should include details on the information necessary for the payment of fees (payment contacts, schedules, bank details). One respondent suggested that additional information should be disclosed along with the fees and charges mentioned in the Regulation. One respondent suggested including the details of fees and charges levied by other regulatory, supervisory or public bodies that may be incurred by funds as a result of marketing into the concerned Member State, and one respondent mentioned that the publications should be accompanied by a disclosure of the applicable tax liabilities for fund managers.
29. Some respondents made proposals to enhance the clarity of the publications. In particular, one respondent mentioned that, where the calculation methodologies were mentioned, they

should be accompanied by a maximum amount or at least some fee brackets. Another respondent recommended inserting some Q&As on topics which are of interest to most fund managers. Finally, one respondent suggested that the explanatory text should be understandable for a reasonable investor with a basic knowledge of finance.

**ESMA's response:** ESMA took note that respondents agreed with the proposal set out in the draft ITS, consisting in publishing all fees and charges, relating to both cross-border marketing and cross-border management. ESMA agrees that the fees and charges should comprise all the sums to be paid to NCAs in relation to cross-border marketing or cross-border management, regardless of the name under national law, and clarified this point in the recitals of the ITS.

ESMA noted that respondents agreed with the proposal to include a disclaimer according to which no fees and charges other than those listed may apply. However, ESMA acknowledges that the publications should concern only those fees and charges levied by NCAs, and recognises that it should also be made clear that other fees and charges may be applicable for cross-border activities within the concerned jurisdiction, such as the fees necessary for external advice. Hence, the publication should make it clear that it relates only to fees and charges levied by NCAs, without prejudice to other fees that may apply for other causes. This point was clarified in the Annex of the ITS setting out the publication template.

ESMA took note of the proposals made by respondents to include specific information along with the list of fees and charges levied by NCAs, such as the explanation on the calculation methodologies, the fees and charges relating to de-notification and pre-marketing, or the details of how payments should be made. In light of the general support for the approach set out in the draft ITS, ESMA did not modify it.

Because the information on regulatory fees and charges for cross-border activities of fund managers is directed at fund managers, which are professionals, ESMA did not deem it necessary to simplify the language used for the publication of regulatory fees and charges as suggested by some respondents.

**Q5. Do you agree that the publications to be made by NCAs under this ITS should be made in the form of a table? If not, do you have any alternative suggestion on the format of the publications on regulatory fees and charges?**

30. The vast majority of respondents agreed that a table would be the best format for the publication of regulatory fees and charges on NCAs' websites.

31. On the content of the table, one respondent suggested supplementing the fees and charges by examples of calculations listing sample fees and charges for different categories of regulatory transactions (e.g. notification filings, update filings, etc.), and two respondents suggested that all fees and charges should be recorded in the same currency, namely EURO.

32. On the format of the table, one respondent would support the introduction of a functionality enabling users to extract the fees table in an electronic format from NCAs' websites.

**ESMA response:** ESMA took note of the support from respondents for the publication of the regulatory fees and charges levied by NCAs in the form of a table and therefore did not modified the approach set out in the draft ITS.

ESMA also took note of the proposals made by respondents on the content of the table. While ESMA agreed that the table may be supplemented by examples, it may not be possible to impose a requirement to disclose the fees and charges in EURO, as Member States should, in principle, disclose the fees and charges applicable in their jurisdiction by using the legal currency.

**Q6. Do you agree that NCAs have the option to supplement the tables setting out the details of the fees and charges with a full text providing detailed information on the fees and the fee calculation, if a table would risk giving incomplete or misleading information?**

33. The vast majority of respondents agreed with ESMA's proposed approach, namely that some explanatory text should be encouraged where this allows to better understand the fee structure in the concerned jurisdiction, but one respondent specified that the text should not be too long and should refer to the table to ensure clarity.

34. Three respondents were of the view that explanatory texts should not be optional but mandatory for NCAs if the information included in the table is not entirely clear.

35. A respondent mentioned that the publications should include hyperlinks to the full version of the laws, regulations and administrative provisions applicable in this regard.

36. Finally, one respondent suggested highlighting the changes made to regulatory fees and charges on NCAs' websites and notifying funds that are actively marketing in the relevant Member State of any such change, in particular by email.

**ESMA's response:** ESMA took note of the support expressed by respondents in relation to the use of explanatory text supplementing the table listing regulatory fees and charges, the length of which should be limited. ESMA also agrees that the publication of the regulatory fees and charges should include a link to the webpage where the full version of the national laws, regulations and administrative provisions establishing such regulatory fees and charges is available. In light of this, ESMA did not modify the approach set out in the draft ITS.

Finally, ESMA took note of the proposal to notify funds of the changes to regulatory fees and charges but considered that such obligation would be too burdensome for NCAs. Indeed, it would imply an active monitoring of the funds which are actively managed and thus subject to regulatory fees and charges, and would not create any additional benefit for fund managers, as it will be up to them to monitor any changes to the applicable fees and charges, which will be updated by NCAs on a regular basis.

**Q7. Do you agree with the content of the table? Do you think any other information should be published by NCAs in relation to the regulatory fees and charges?**

37. In order to have more precise information available on NCAs' websites, respondents suggested further specifying the different categories of fees and charges, such as initial fees incurred upon receipt of a new cross-border marketing notification, periodic ongoing fees for cross-border marketing – including details of the periodicity – processing fees for updates to documentation submitted as part of a cross-border marketing notification (e.g. updates to the KIID, prospectus, etc.), supervisory fees arising from host NCA oversight of marketing, fees associated with de-notification/de-registration of marketing, or any other fees incurred as a result of fund marketing.
38. One respondent also suggested publishing information on how consistency with the overall cost relating to the performance of the functions of the NCA is assessed, as some indication of the logic applied would help fund managers better understand what leads some NCAs to apply fees and charges which are significantly different from those applied in other Member States. One respondent mentioned that NCAs should clearly explain how charges are determined.
39. One respondent suggested that NCAs could offer, on their websites, a calculator for fees and charges taking into account the fees disclosed in the table.
40. To ensure consistency of the publications on each NCA's website, some respondents suggested that the publications should include specific information, in particular:
- A clear distinction between initial fees and ongoing/annual fees;
  - The fees which may be due for the updates to the documentation submitted as part of a cross-border marketing notification;
  - The supervisory fees arising from the host NCA oversight of marketing;
  - The date on which initial fees have to be paid, i.e. whether it needs to be paid upfront or at a later stage, and whether initial fees have to be paid at the time of the initial passport notification;
  - The periodicity of fees, whether they are expected to change and, as the case may be, the frequency of potential changes;
  - Clear and concise details on how the regulatory fees are to be paid, both initial and ongoing;
  - Some details on the invoicing process: identification of each fee, will an invoice be issued? In what form, and to which entity? Will the requirement to pre-approve a number of funds currently registered in a Member State continue to exist as it currently does in some Member States? Full bank account details to be included in the table. Clarification on the payment route, what document or receipt constitutes acceptable evidence of payment.



- The consequences of a de-notification, in particular on whether ongoing fees will continue to be due;
- A statement on closed end funds' marketing authority can be withdrawn after the fund's final close and whether its obligation to pay further marketing fees therefore ends; and
- Contact details to obtain more information.

**ESMA's response:** In light of the feedback received, ESMA amended the template for the publication of the information on regulatory fees and charges to require NCAs to disclose detailed information on each category of fee or charge they levy.

ESMA also noted the suggestion to clarify the consistency of the fees and charges levied by NCAs with their supervisory duties, by indicating the logic applied for these fees and charges, or how charges are determined. However, such disclosure would have gone beyond the requirements set out in the Regulation and therefore ESMA did not modify the ITS in this respect.

ESMA also acknowledged that the publication by NCAs of a calculator for fees and charges would be useful for market participants to be able to clearly determine the amount of fees and charges that could be incurred by their activities in the concerned jurisdiction. However, imposing such a publication would also have gone beyond the requirements set out in the Regulation and therefore was not retained in the final ITS.

Finally, ESMA welcomed the proposals made by respondents as regards the information to be included in the table listing the regulatory fees and charges levied by NCAs to carry out their duties in relation to cross-border activities of fund managers within their jurisdiction. ESMA agreed that the ITS could specify in a detailed manner some minimum categories of fees and charges to be disclosed by NCAs in order to ensure comparability between NCAs' websites. To this end, ESMA amended the template for the notification of the information on the regulatory fees and charges to ensure that different categories of fees and charges are clearly identified.

**Q8. Please specify the use you would make of the information to be contained in the central database listing UCITS and AIFs marketed on a cross-border basis. Do you have any suggestion regarding the format of this central database?**

41. The majority of respondents welcomed the development of the central database listing funds marketed on a cross-border basis. In particular, respondents mentioned that the central database would serve several purposes.

42. On the one hand, some respondents mentioned that the central database could be useful for investors. One respondent indicated that this central database could be useful for investors to consider whether a fund has been passported into a particular jurisdiction, which would prevent mis-selling, and to carry out a due diligence before investing or compare investment products before making an investment decision. Another respondent

mentioned in a general manner that the central database could be useful to know if a fund is authorised for distribution in a given Member State. One respondent considered this database to be a step towards the development of tools to provide detailed information on a broader range of products (UCITS, PRIIPs and non-MiFID comparable products). According to this respondent, the development of this central database could also be a step towards the development of a single notification “hub” that would allow to proceed with notifications and filings through a single tool, hence reducing complexity and administrative burden.

43. On the other hand, some respondents believed that the central database could be useful for fund managers. Several respondents indicated that the information contained in the central database could be useful to reconcile internal registration against local regulators to ensure that necessary updates are shared with local regulators in order to remain compliant at all times. Similarly, two respondents indicated that this would allow reconciling the internal information of the fund manager and the information held by NCAs, in particular to seek validation from the relevant NCA of the passport approval; this could thus be a useful marketing compliance tool. According to another respondent, this could also help fund managers settle cases of marketing platforms selling funds to clients in unauthorised jurisdictions. Some respondents also indicated that the central database would be useful to access statistical information, to verify distribution footprints in Member States and to allow fund managers to verify that distribution is effectively occurring only in those jurisdictions where a fund has been notified.
44. Several respondents also insisted on the need to have machine-readable information in the database in a standardised format, and on the importance of updating the central database on a regular basis.
45. In addition to the use of the information contained in the central database, some respondents commented on the content of the central database.
46. Some respondents mentioned the importance of disclosing information at share class level, or at sub-fund level if no information on share classes is available for NCAs. One of these respondents also suggested specifying whether marketing is limited to certain investor segments only in accordance with MiFID or PRIIPs rules or in accordance with national legislations in some Member States. One respondent also suggests including information on where to find up-to-date information.
47. As regards the details of the funds, one respondent suggested disclosing the type of fund, the legal form and the type of assets (e.g. equities, fund of funds, master/feeder). Another respondent mentioned that the information should be limited to basic information (name of the fund, name of the fund manager and Member State(s) in which the fund is marketed) as this could allow preserving any commercially sensitive information.
48. Additionally, one respondent mentioned that retaining historic information, including funds no longer being marketed and noting when marketing authority was withdrawn would be helpful.



49. Finally, in order to help ESMA develop the central database, some respondents provided some template tables.

**ESMA's response:** ESMA took note of the views expressed by respondents in relation to the use of the central database listing funds marketed on a cross-border basis. These responses will be taken into account when developing the central database.

ESMA also took note of the responses relating to the content of the central database and will determine to what extent this information can be implemented when developing this new tool.

## 4 Annexes

### 4.1 Annex I: Legislative mandates to develop draft ITS

The Regulation (EU) No 1095/2010 establishing ESMA empowered the latter to develop draft ITS where the European Parliament and the Council delegate power to the Commission to adopt technical standards by means of delegated acts under Article 290 TFEU.

- Article 5(3) of the Regulation provides that:

*“ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the publications and notifications under this Article.*

*ESMA shall submit those draft implementing technical standards to the Commission by 2 February 2021.*

*Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.”*

- Article 10(3) of the Regulation provides that:

*“ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the publications and notifications under this Article.*

*ESMA shall submit those draft implementing technical standards to the Commission by 2 February 2021.*

*Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.”*

- Article 13(3) of the Regulation provides that:

*“ESMA shall develop draft implementing technical standards to specify the information to be communicated, as well as the forms, templates and procedures for communication of the information by the competent authorities for the purposes of paragraph 1, and the technical arrangements necessary for the functioning of the notification portal referred to in paragraph 2.*

*ESMA shall submit those draft implementing technical standards to the Commission by 2 February 2021.*



*Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.”*



## 4.2 Annex II: Cost-benefit analysis

### 1. Introduction

The Regulation, together with Directive (EU) 2019/1160, sets out a new harmonised framework for the distribution of collective investment undertakings on a cross-border basis within the EU.

In order to facilitate the cross-border marketing of UCITS and AIFs throughout the EU, the Regulation contains provisions which aim at enhancing the transparency of the regulatory framework applicable to the distribution of collective investment undertakings and of the funds which are made available to marketing in each Member State. To this end, it mandates ESMA to develop draft three sets of ITS to specify standard forms, templates and procedures for the publication of information by NCAs on their websites and for the notifications by NCAs to ESMA in relation to national marketing requirements, regulatory fees and charges, and funds distributed on a cross-border basis.

This final report includes draft rules relating to the publications to be made by NCAs on their websites with respect to marketing requirements and to regulatory fees and charges.

This CBA is qualitative by nature. Responses to the public consultation did not provide ESMA with quantitative data.

### 2. Technical options

The following options were identified and analysed by ESMA to address the policy objectives of the ITS required under the Regulation.

In identifying the options set out below and choosing the preferred ones, ESMA was guided by the relevant rules of the Regulation.

#### a) Draft ITS relating to marketing requirements

<b>Policy objective</b>	<p>The Regulation (Article 5) requires NCAs to publish and maintain on their websites up-to-date and complete information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS, and the summaries thereof, in, as a minimum, a language customary in the sphere of international finance.</p> <p>Under Article 5(3) of the Regulation ESMA is required to develop draft ITS to determine the standard forms, templates and procedures for the publications under this Article. ESMA has to submit those draft ITS to the Commission by 2 February 2021.</p>
<b>Baseline scenario</b>	<p>The baseline scenario should be understood for this CBA as the application of the requirements in the Regulation (i.e. the provisions of Article 5 of the Regulation) without any further specification. This would</p>

	<p>leave NCAs discretion to determine the content and precise outlook of the publication to be made in relation to the application national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS, and the summaries thereof, in their jurisdiction.</p> <p>The main benefit of the ITS is to ensure that market participants, whether fund managers or investors, will easily have access to clear and comprehensive information on marketing requirements applicable in each Member State. This will ultimately facilitate the decision-making for marketing, or investment in, a UCITS or an AIF in a given Member State.</p>
<b>Options</b>	<p>The ITS aim at ensuring consistent publications of the national laws, regulations and administrative provisions governing marketing requirements on NCAs' websites in a harmonised and consistent manner. In this context, ESMA considered providing a detailed table for the publication, including all the precise information to be included in the publications, hence focusing on the form of the publication, as well as the possibility to provide some more general guidance on the categories of information to be included in the publication without imposing a specific format for the publication (i.e. in the form of a list or of a table) which focused on the substance of the publication.</p>
<b>Preferred option</b>	<p>ESMA decided to consult on the option focusing on the substance of the publications to be made by NCAs on their websites pursuant to Article 5(1) of the Regulation, rather on the form of such publications.</p> <p>After having taken into account the feedback received from the consultation, ESMA decided that the ITS should focus on the substance of the publications, by indicating some specific categories of information to be disclosed by NCAs on their websites, which are crucial for stakeholders to determine the rules applicable to marketing in a given Member State, in order to achieve the best harmonisation possible.</p>
<b>Benefits</b>	<p>Ensure that stakeholders, whether fund managers or investors, will easily have access to clear and comprehensive information on marketing requirements applicable in each Member State. This will ultimately facilitate the decision-making for marketing, or investment in, a UCITS or an AIF in a given Member State.</p>
<b>Costs</b>	<p>Potential additional costs will be borne by NCAs only, as no action is required from fund managers or from investors. Depending on the current architecture and content of their websites, NCAs may have to publish additional content as regards the rules applicable within their jurisdiction for marketing UCITS or AIFs. While it is expected that they</p>

	will be limited, this should incur one-off costs as the publication will imply mobilising human and technical resources for updating their websites, and ongoing costs for monitoring that the relevant page of the NCA's website is up to date.
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b) Draft ITS relating to regulatory fees and charges

<b>Policy objective</b>	<p>The Regulation (Article 10) requires NCAs to publish and maintain on their websites up-to-date and complete information on their websites listing the fees or 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.</p> <p>Under Article 10(3) of the Regulation ESMA is required to develop draft ITS to determine the standard forms, templates and procedures for the publications under this Article. ESMA has to submit those draft ITS to the Commission by 2 February 2021.</p>
<b>Baseline scenario</b>	<p>The baseline scenario should be understood for this CBA as the application of the requirements in the Regulation (i.e. the provisions of Article 10 of the Regulation) without any further specification. This would leave NCAs discretion to determine the content and precise outlook of the publication to be made in relation to the regulatory fees and charges to be borne by fund managers in their jurisdiction.</p> <p>The main benefit of the ITS is to ensure that fund managers will easily have access to clear and comprehensive information on the regulatory fees and charges relating to their cross-border activities applicable in each Member State. This will ultimately facilitate the decision-making for marketing, or investment in, a UCITS or an AIF in a given Member State.</p>
<b>Options</b>	<p>The ITS aim at ensuring consistent and harmonised publications on the regulatory fees and charges levied by NCAs for carrying out their duties in relation to cross-border activities of fund managers on NCAs' websites. ESMA considered developing a detailed table for the publication of information on regulatory fees and charges, including all categories of information to be disclosed to the public, but also the possibility to provide more general guidance for the publication by focusing the requirements set out in the ITS on the explanation of the</p>

	amount or the structure of all regulatory fees and charges existing at national level.
<b>Preferred option</b>	<p>ESMA decided to consult on the option which aimed at providing more general guidance for the publication of the regulatory fees and charges, rather than on a detailed table listing all fees and charges to be disclosed by NCAs on their websites, since it acknowledged that there may be different types of fees and charges, and different fee structures existing at national level.</p> <p>After having taken into account the feedback received from the consultation, ESMA decided that the ITS should provide a harmonised template for the publication to be made by NCAs pursuant to Article 10(1) of the Regulation, by indicating a non-exhaustive list of fees and charges that should be disclosed on NCAs' websites. In addition, ESMA decided to provide a template to be used to describe the precise amount and structure of each fees and charges existing at national level, to ensure that the information is clear and complete.</p>
<b>Benefits</b>	Ensure that fund managers will easily have access to clear and comprehensive information on the regulatory fees and charges levied in relation to their cross-border activities in each Member State. This will facilitate the decision-making regarding whether to engage in cross-border distribution of funds in a given Member State.
<b>Costs</b>	Potential additional costs will be borne by NCAs only, as no action is required from fund managers. Depending on the current architecture and content of their websites, NCAs may have to publish additional content as regards the fees and charges relating to cross-border activities of fund managers within their jurisdiction. While it is expected that they will be limited, this should incur one-off costs as the publication will imply mobilising human and technical resources for updating their websites, and ongoing costs for monitoring that the relevant page of the NCA's website is up to date.

c) Draft ITS relating to communication of information by NCAs

<b>Policy objective</b>	<p>The Regulation (Articles 5 and 10) requires NCAs to communicate to ESMA the hyperlinks to their websites where the information they publish pursuant to these provisions is published. The Regulation also requires NCAs to communicate to ESMA any changes in the information they communicated.</p> <p>Under Articles 5(3) and 10(3) of the Regulation, ESMA is required to develop draft ITS to determine the standard forms, templates and</p>
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<p>procedures for the communications under these Article. ESMA has to submit those draft ITS to the Commission by 2 February 2021.</p>	
<p><b>Baseline scenario</b></p>	<p>The baseline scenario should be understood for this CBA as the application of the requirements in the Regulation (i.e. the provisions of Articles 5 and 10 of the Regulation) without any further specification. This would leave NCAs discretion to determine the precise procedure and outlook for the communication to be made to ESMA.</p> <p>The main benefit of the ITS is to ensure that ESMA receives information from NCAs on a consistent and clear manner, to ensure that all the relevant information will then be published on ESMA's website. This will ultimately facilitate the transparency and accessibility of the information on the national laws, regulations and administrative provisions governing the marketing of UCITS and AIFs, and the regulatory fees and charges levied by NCAs in relation to cross-border activities of fund managers.</p>
<p><b>Options</b></p>	<p>The ITS aim at ensuring smooth and consistent procedures for the communication of information by NCAs to ESMA.</p> <p>ESMA considered setting minimal requirements by letting NCAs decide the format and the procedure for the communications, but also developing more detailed forms and procedures for these communications to ensure that they are made in a consistent manner.</p>
<p><b>Preferred option</b></p>	<p>ESMA decided that the ITS should set out detailed forms and procedures for the communications to be made by NCAs, including a limited timeframe to notify changes in the information and precise fields to be specified when communicating information.</p>
<p><b>Benefits</b></p>	<p>Ensure that ESMA receives the correct information to be published on its website, in a timely manner, and is able to liaise in an efficient way with NCAs in case any technical issue arises at the occasion of any communication. This should ultimately ensure that the information published on ESMA's website is accurate.</p>
<p><b>Costs</b></p>	<p>Potential additional costs will be borne by NCAs only as the will need to designate a contact point and monitor any change in the information already communicated to ESMA. However, these costs are expected to be very limited and outweighed by the benefits.</p>

d) Conclusions



In light of what has been illustrated above, ESMA believes that the overall compliance costs associated with the implementation of the new tools to be developed with the draft ITS under the Regulation are fully justified by the objectives described above and will be largely compensated by the benefits for stakeholders, either fund managers or investors, in particular as regards transparency on the national frameworks for the cross-border distribution of funds and on the funds available for marketing within each Member State.

ESMA is also of the view that the costs incurred for NCAs due to the implementation of the draft ITS are necessary and ensue directly from their obligations to publish information.



## 4.3 Annex III: Draft ITS

### COMMISSION IMPLEMENTING REGULATION (EU) .../...

of **XXX**

**laying down implementing technical standards for the application of Regulation (EU) 2019/1156 of the European Parliament and of the Council with regard to publications by competent authorities, communication of information by competent authorities to ESMA and publication of a central database of UCITS and AIFs marketed cross-border**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014<sup>1</sup>, and in particular the third subparagraph of Article 5(3), the third subparagraph of Article 10(3) and the third subparagraph of Article 13(3) thereof,

Whereas:

- (1) It is appropriate to set out standard forms, templates and procedures for the publications and notifications by competent authorities pursuant to Articles 5(3) and 10(3) of Regulation (EU) 2019/1156 with regard to national marketing requirements and regulatory fees and charges. It is also appropriate to set out the information to be communicated by competent authorities to the European Securities and Markets Authority, as well as the forms, templates and procedures for communication of this information, for the purpose of the creation and maintenance of the central database on cross-border distribution of AIFs and UCITS referred to in Article 12(1) and the technical arrangements necessary for the functioning of the notification portal referred to in Article 13(2) of Regulation (EU) 2019/1156.
- (2) The information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS should be published by competent authorities on their websites in a clear and comprehensive manner. Since competent authorities' websites may have different structures, the publications of these national laws, regulations and administrative provisions governing marketing requirements may be split into two different webpages relating, respectively, to UCITS and to AIFs. The publications may take the form of a text listing all the requirements that would enable AIFMs, EuVECA managers, EuSEF managers and UCITS management companies to understand the national provisions relating to marketing funds in the Member State. To ensure comparability of the information published on their websites, competent authorities should use a common template setting out

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<sup>1</sup> OJ L 188, 12.07.2019, p. 55.

harmonised categories of information on the national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS.

- (3) In addition to up-to-date and complete information on the national provisions governing marketing requirements, competent authorities should also make reference to other bodies of domestic law which are not set out specifically for the marketing of UCITS and AIFs that may be applicable at the occasion of marketing. Such provisions could be mentioned in a general statement including an indicative list of the relevant bodies of national law that could apply, such as laws on the protection of consumers that may apply in the event of marketing to retail investors.
- (4) Competent authorities should also publish a summary of the national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS. In order to ensure the ease of access to the information, such summaries should be published on the same page of competent authorities' websites as the complete and up-to-date information on the applicable national laws, regulations and administrative provisions governing marketing requirements. Such summaries could take the form of a text, a table, or a combination of both, and should be set out in a clear and concise manner, that is easy to understand.
- (5) To help AIFMs, EuVECA managers, EuSEF managers and UCITS management companies in their decision-making regarding whether to engage in cross-border activities in a host Member State, competent authorities should publish on their websites the list of all regulatory fees and charges relating to cross-border activities that are levied by such authority whether cross-border marketing or cross-border management of AIFs and UCITS, regardless of the name that such fees and charges may have under national law.
- (6) The fees and charges should be published in a clear and comprehensive manner, which should make it possible to determine in advance the overall cost of cross-border activities within each Member State. To this end, the publications shall be made in a harmonised manner, in the form of a table, comprising the elements which are essential for determining the amount of the fees and charges to be paid, that may be complemented by explanatory text to ensure the clarity of the information, including a disclaimer indicating that other fees or charges than those levied by competent authorities may be incurred by marketing activities.
- (7) Competent authorities should use standardised forms to notify to ESMA the hyperlinks of their websites where they have published complete and up-to-date information on the applicable national laws, regulations and administrative provisions governing the marketing of UCITS and AIFs, the summaries thereof, and 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. The use of standardised forms should facilitate the notification process in order to ensure that ESMA has all the relevant information to be published on its website.
- (8) By 2 February 2022, ESMA shall publish on its website a central database on cross-border marketing of UCITS and AIFs using information communicated by competent authorities. As such information will not be published by ESMA before the publication of the central database, it is appropriate that the provisions of this Regulation specifying the information in this regard to be communicated by competent authorities to ESMA, as well as the forms, templates and procedures for the communication of information, apply as of the date on which the central database must be published on ESMA's website.

- (9) In order for the notification portal referred to in Article 13(2) of Regulation (EU) 2019/1156 to function smoothly and in a timely manner, it is necessary that technical arrangements include uploading accompanying data to the notification portal.
- (10) The provisions in this Regulation are closely linked, since they set out standard forms, templates and procedures for the notification to ESMA and publication of information by competent authorities on their websites relating to the cross-border distribution of AIFs and UCITS. It is therefore appropriate to include these implementing technical standards in a single Regulation.
- (11) This Regulation is based on the draft implementing technical standards submitted to the Commission by the European Securities and Markets Authority.
- (12) The European Securities and Markets Authority has conducted open public consultations on the provisions of the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>2</sup>. However, ESMA has not consulted on the draft implementing technical standards that specify the standard forms, templates and procedures for the communication of information by national competent authorities in relation to the national laws, regulations and administrative provisions governing marketing requirements and the regulatory fees and charges related to cross-border activities of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies, and on the draft implementing technical standards that specify the information to be communicated by competent authorities as well as the forms, templates and procedures for the communication of information by competent authorities to ESMA for the purpose of the creation and maintenance of the central database on cross-border marketing of AIFs and UCITS and on the technical arrangements for the functioning of the notification portal as the provisions related to these aspects only affect ESMA and national competent authorities,

HAS ADOPTED THIS REGULATION:

## **CHAPTER I**

### **Publication of information by competent authorities**

#### *Article 1*

#### **Publication of national provisions concerning marketing requirements**

1. Competent authorities shall publish the up-to-date and complete information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS referred to in Article 5(1) of Regulation (EU) 2019/1156 on their websites, using the template set out in Annex I.

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<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 25 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ([OJ L 331, 15.12.2010, p. 84](#)).



The information referred to in this paragraph shall be published by competent authorities either in full on a single dedicated webpage of their websites, or on separate webpages setting out respectively the information relating to the national laws, regulation and administrative provisions governing the marketing requirements for AIFs and those governing the marketing requirement for UCITS.

2. Competent authorities shall publish summaries of the information referred to in paragraph 1 in a clear and concise manner, using the templates set out in Annex II. These summaries shall be published on the same webpage as the information referred to in paragraph 1, either at the top or at the bottom of the relevant webpage.

#### *Article 2*

### **Publication of national provisions concerning fees and charges**

1. Competent authorities shall publish the up to date list of the fees and charges levied by them 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 such fees or charges, in accordance with Article 10(1) Regulation (EU) 2019/1156 on a dedicated webpage of their websites.

2. Competent authorities shall publish each fee or charge referred to in paragraph 1 separately using the template set out in Annex III.

#### *Article 3*

### **Notifications to ESMA**

1. Competent authorities shall notify the hyperlinks to their websites where the information referred to in Article 1 is published, and any change to these hyperlinks and to the information published on the relevant webpages, to ESMA using the templates set out in Annex IV.

2. Competent authorities shall notify the hyperlinks to their websites where the information referred to in Article 2 is published, and any change to these hyperlinks and to the information published on the relevant webpages, to ESMA using the templates set out in Annex V.

3. Any change referred to in paragraphs 1 and 2 shall be notified to ESMA within 10 working days following the implementation of the change on the competent authority's website.

#### *Article 4*

### **Contact point**

1. For the purposes of the notifications referred to in Article 3, each competent authority shall designate a single contact point for sending the information and for the communication of any issue relating to the submission of such information.

2. Competent authorities shall notify ESMA of the contact point referred to in paragraph 1.



3. ESMA shall designate a contact point for receiving the information referred to in Article 1 and 2 and for the communication of any issue relating to the reception of the information referred to in this Article.

4. ESMA shall notify competent authorities of the contact point referred to in paragraph 3.

## **CHAPTER II**

### **Information requirements to be communicated to ESMA for the purpose of the creation and maintenance of the central database on cross-border marketing of AIFs and UCITS and the timing of that communication**

#### *Article 5*

#### **Information to be communicated to ESMA for the purpose of the creation and maintenance of the central database on cross-border marketing of AIFs and UCITS**

For the purpose of the creation and maintenance of the central database referred to in Article 12 of Regulation (EU) 2019/1156, competent authorities shall send to ESMA, on a quarterly basis, the information specified in Table 1 of Annex VI and any update thereof.

#### *Article 6*

#### **Timing of the communication of information**

Competent authorities shall send to ESMA the information referred to in Article 5 no later than five working days after the end of every quarter ending on 31 March, 30 June, 30 September and 31 December.

## **CHAPTER III**

### **Technical arrangements for the functioning of the notification portal**

#### *Article 7*

#### **Transmission of information and upload of documents**

1. Competent authorities shall send the information referred to in Article 5 of this Regulation and the documents referred to in Article 13(1) of Regulation (EU) 2019/1156 electronically through the notification portal established by ESMA.

2. ESMA shall ensure that the notification portal maintains the completeness, integrity and confidentiality of the information during its transmission.



3. Competent authorities shall transmit, in a common XML format, the information referred to in Article 5, using the format defined in Table 2 of Annex VI to this Regulation.

#### *Article 8*

### **Processing of documents and accompanying data**

ESMA shall ensure that the notification portal automatically processes and checks all uploaded documents and accompanying data and sends feedback to the uploading competent authority notifying it of whether the upload was successful and of any error(s).

## **CHAPTER IV**

### **Final provisions**

#### *Article 9*

### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the date of entry into force, except for the following:

- (a) Articles 1 and 3(1) shall apply from 2 August 2021;
- (b) Articles 5 and 6 shall apply from 2 February 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

The President

*For the Commission*

## ANNEX I

### Template for the publication of national provisions governing marketing requirements for AIFs and UCITS

*[Indicate the date of the last modification of the information]*

In application of Article 1 of the Commission Implementing Regulation (EU) [XXX], this page contains the information on the national laws, regulations and administrative provisions governing marketing requirements referred to in Article 5(1) of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings.

#### **Marketing requirements for UCITS**

*(Insert up-to-date and complete information on the applicable national laws, regulations and administrative provisions governing marketing requirements for UCITS, including hyperlinks to the full versions of those laws, regulations and administrative provisions.*

*The information should include, at least, the following categories of rules governing:*

- a) The format and content of marketing material, including the identification of the information and documents to be notified to the authority prior to the commencement of marketing;
- b) Verification of marketing communications by the authority;
- c) Reporting obligations in relation to marketing;
- d) Passporting rules;
- e) De-notification of arrangements made for marketing;
- f) Other rules governing marketing of UCITS applicable within the jurisdiction of the NCA *[if applicable].)*

**Disclaimer:** *[Name of the competent authority]* has taken reasonable care to ensure that the information on the national provisions governing marketing requirements of UCITS in *[Name of the Member State]* included on this webpage is up-to-date and complete. *[Name of the competent authority]* is not responsible for maintaining external websites and shall not be liable for any error or omission on any external website to which hyperlinks are provided on this webpage.

### **Marketing requirements for AIFs**

*(Insert up-to-date and complete information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs including the hyperlinks to the full version of those laws, regulations and administrative provisions. In case any specific provisions apply for the marketing of certain categories of AIFs (e.g. real estate AIFs, private equity AIFs, etc.), insert the relevant national laws, regulations and administrative provisions for each of these categories.*

*The information should include, at least, the following categories of rules governing:*

- a) Prior authorisation for marketing
- b) Format and content of marketing material, including the identification of the information and documents to be notified to the authority prior to the commencement of marketing;
- c) Verification of marketing communications by the authority;
- d) Marketing to retail investors or to professional investors;
- e) Reporting obligations in relation to marketing;
- f) Passporting rules;
- g) Distribution of funds established in a non-EU Member State under the national private placement regime (if applicable);
- h) Distribution of open-ended AIFs and of closed-ended AIFs;
- i) De-notification of arrangements made for marketing.
- j) Other rules governing marketing of AIFs applicable within the jurisdiction of the NCA [*if applicable*].)

**Disclaimer:** [*Name of the competent authority*] has taken reasonable care to ensure that the information on the national provisions governing marketing requirements of AIFs in [*Name of the Member State*] included on this webpage is up-to-date and complete. [*Name of the competent authority*] is not responsible for maintaining external websites and shall not be liable for any error or omission on any external website to which hyperlinks are provided on this webpage.

### **Other requirements\***

In addition to the provisions referred to above, which are set out specifically for the marketing of [*UCITS/AIFs/UCITS and AIFs*], there may be other legal provisions that may apply at the occasion of marketing in [*Name of the Member State*], although they are not specifically designed for the marketing of [*UCITS/AIFs/UCITS and AIFs*], depending on the individual situation of the persons involved in the marketing of shares or units of [*UCITS/AIFs/UCITS or AIFs*]. Marketing in [*name of the Member State*] may trigger the application of other requirements, such as [*specify the relevant bodies of national law that could be applicable*].

**Disclaimer:** The foregoing is a non-exhaustive list of national law that could be applicable and [Name of the competent authority] shall not be liable for any omission in that list. The supervision of the requirements deriving from these laws is not under the supervision of [Name of the competent authority]. The applicability of these requirements, and any other legal requirements, should be assessed before marketing, or investing in, [a UCITS/an AIF/a UCITS or an AIF]. Where uncertainty exists, persons marketing, or investing in, UCITS or AIFs ought to obtain their own independent advice as to the applicable requirements to their individual situation.

*\* In case the marketing requirements for UCITS and the marketing requirements for AIFs are published on separate webpages on the website of a competent authority, the “other requirements” shall be published on both pages.*

## ANNEX II

### Template for the publication of the summaries of national provisions governing marketing requirements for AIFs and UCITS

*[Indicate the date of the last modification of the information if this summary is published on a separate webpage to the information of Annex I]*

#### **Summary of the marketing requirements for UCITS**

*(Insert the summary of marketing requirements for UCITS, identifying in particular the rules governing:*

- a) Notification and prior approval of marketing communications;
- b) Any other requirements for the marketing of UCITS that the authority considers appropriate *[if applicable]*.)

#### **Summary of the marketing requirements for AIFs**

*(Insert the summary of marketing requirements for AIFs, identifying in particular the rules governing:*

- a) Notification and prior approval of marketing;
- b) Notification and prior approval of marketing communications;
- c) Marketing to retail or to professional investors;
- d) Additional requirements applicable specifically to the marketing of certain categories of AIFs existing under national law (e.g. private equity or property AIFs);
- e) Any other requirements for the marketing of AIFs that the authority considers appropriate *[if applicable]*.)

## ANNEX III

### Template for the publication of regulatory fees and charges

*[Indicate the date of the last modification of the information]*

In application of Article 2(1) of the Commission Implementing Regulation (EU) [XXX], this page contains the information on the fees and charges levied by [*name of the competent authority*] for carrying out its duties in relation to the cross-border activities of AIFMs, EuSEF managers, EuVECA managers and UCITS management companies referred to in Article 10(1) of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings.

*[Competent authorities shall use this template for the publication of all fees and charges they levy for carrying out their duties in relation to cross-border activities of UCITS Management Companies, AIFMs, EuSEF managers and EuVECA managers, breaking down the fees and charges into, inter alia, the following categories, as applicable.]*

#### **Cross-border management fees and charges\***

- a) Registration fees;
- b) Fees levied for the notification of documents and for any subsequent update of prior notification;
- c) Passporting fees;
- d) Management fees;
- e) Any other applicable fees or charges established under the law of the Member State (*if applicable*).

#### **Cross-border marketing fees and charges\***

- a) Pre-marketing fees;
- b) Registration fees;
- c) Fees levied for the notification of documents and for any subsequent update of prior notification;
- d) Passporting fees;
- e) De-notification fees;
- f) Any other fees or charges established under the law of the Member State (*if applicable*).

*\* If no fees or charges are levied in relation to certain categories listed above, the following disclaimer shall be included: "No fees and charges are levied by [*name of the competent authority*] in relation to [*describe the relevant category of activity*]".*

*[In addition to the list of fees and charges they levy to carry out their duties in relation to cross-border activities of UCITS management companies, AIFMs, EuSEF managers and*

*EuVECA managers, which is set-out below, competent authorities may provide general information on the structure of these fees and charges.]*

**Template for fees and charges**

**(Name or a short description of the fee or charge)**

*(Legal basis and hyperlink to the full version of the relevant legal text)*

*(Entity liable for paying the fee or charge)*

*(Activity giving rise to the fee or charge)*

*(Description of the fee or charge structure, including, inter alia, the following information:*

- a) The amount – where it is set out as a fixed amount – or the calculation methodology for calculating the fee or charge – including, in particular, the percentage, calculation basis, and the indication, as applicable, of the minimum or maximum amount of the fee or charge, along with an example;
- b) Whether it is an initial or an ongoing fee or charge and, as applicable, the periodicity;
- c) The date on which the fee or charge has to be paid; and
- d) Any additional detail.)

*(Competent authorities may provide additional information on the structure, the periodicity, or the calculation methodology of the fee or charge. When the authority deems that the information contained in the above rows could be unclear or misleading, additional information is mandatory.)*

**Disclaimer:** The fees or charges listed above are those which are levied by [*name of the competent authority*]. However, marketing UCITS or AIFs in [*name of the Member State*] may incur other costs relating to administrative obligations, third party advice or commercial development. [*Name of the competent authority*] is not responsible for maintaining external websites and shall not be liable for any error or omission on any external website to which hyperlinks are provided on this webpage.



## ANNEX IV

### Template for the notification of information pursuant to Article 3(1)

**Form for the communication of information in accordance with Article 5(2) of Regulation (EU) 2019/1156**

**FROM:**

Member State:

Competent Authority:

Designated contact point:

E-mail:

*(Initial notification)*

Dear Sir/Madam,

In accordance with Article 5(2) of Regulation (EU) 2019/1156, I wish to provide you with the information referred to in this provision, namely:

- the hyperlink to [*name of the authority*]'s website where information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS, and the summaries thereof, is published; and
- the summary of marketing requirements for the purpose of publication on ESMA's website.

Please find this information in the below table.

<b>Hyperlinks to the competent authority's website</b>	
Hyperlink to [ <i>Name of the NCA</i> ]'s website where the information referred to in Article 5(1) of Regulation (EU) 2019/1156 is published in [ <i>specify the language customary in the sphere of international finance</i> ]	[ <i>Insert hyperlink</i> ]
( <i>If applicable</i> ) Hyperlink to [ <i>Name of the NCA</i> ]'s website where the information referred to in Article 5(1) of Regulation (EU)	[ <i>Insert hyperlink</i> ]

2019/1156 is published in [ <i>specify the other language</i> ]	
<b>Summary of marketing requirements</b>	
Summary of marketing requirements referred to in Article 5(1) of Regulation (EU) 2016/1156 in [ <i>specify the language customary in the sphere of international finance</i> ]	[ <i>Insert summary of marketing requirements</i> ]
Summary of marketing requirements referred to in Article 5(1) of Regulation (EU) 2016/1156 in [ <i>specify the other language</i> ]	[ <i>Insert summary of marketing requirements</i> ]

Yours sincerely,

[*Signature*]

(*If the notification concerns a change to information previously notified*)

Dear Sir/Madam,

In accordance with Article 5(2) of Regulation (EU) 2019/1156, I wish to notify a change to the information referred to in this provision, namely (*either*) the hyperlink to [*name of the authority*]'s website where information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS, and the summaries thereof, is published (*and/or*) the summary of marketing requirements for the purpose of publication on ESMA's website.

Please find in the below table the details of the change implemented on [*date of implementation of the change on the authority's website*].

<b>Hyperlinks to the competent authorities' websites</b>	
<b>Former hyperlink</b>	<b>Updated hyperlink</b>
Hyperlink to [ <i>Name of the NCA</i> ]'s website where the information referred to in Article 5(1) of Regulation (EU) 2019/1156 was published in ( <i>specify the language</i> )	Updated hyperlink to [ <i>Name of the NCA</i> ]'s website where the information referred to in Article 5(1) of Regulation (EU) 2019/1156 is published in ( <i>specify the language</i> )

<i>customary in the sphere of international finance</i> ):  [Insert former hyperlink]	<i>customary in the sphere of international finance</i> ):  [Insert updated hyperlink]
Hyperlink to [Name of the NCA]'s website where the information referred to in Article 5(1) of Regulation (EU) 2019/1156 was published in [specify the other language]:  [Insert former hyperlink]	Updated hyperlink to [Name of the NCA]'s website where the information referred to in Article 5(1) of Regulation (EU) 2019/1156 was published in [specify the other language]:  [Insert updated hyperlink]

And/or

<b>Summary of marketing requirements</b>	
<b>Former summary of marketing requirements</b>	<b>Updated summary of marketing requirements</b>
Former version of the summary of marketing requirements published in [specify the language customary in the sphere of international finance]:  [Insert former version of the summary of marketing requirements]	Updated version of the summary of marketing requirements published in [specify the language customary in the sphere of international finance]:  [Insert updated version of the summary of marketing requirements]
Former version of the summary of marketing requirements published in [specify the other language]:  [Insert former version of the summary of marketing requirements]	Updated version of the summary of marketing requirements published in [specify the other language]:  [Insert updated version of the summary of marketing requirements]

Yours sincerely,

[Signature]



## ANNEX V

### Template for the notification of information pursuant to Article 3(2)

#### Form for the communication of information in accordance with Article 10(2) of Regulation (EU) 2019/1156

**FROM:**

Member State:

Competent Authority:

Designated contact point:

E-mail:

Dear Sir/Madam,

In accordance with Article 10(2) of Regulation (EU) 2019/1156, I wish to provide you with the information referred to in this provision, namely the hyperlink to [*name of the authority*]'s website where information on fees or charges levied in [*Member State*] in relation to the cross-border activities of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies is published.

Hyperlinks to the competent authorities' websites	
Hyperlink to [ <i>Name of the NCA</i> ] website where the information referred to in Article 10(1) of Regulation (EU) 2019/1156 is published in [ <i>specify the language customary in the sphere of international finance</i> ]	[ <i>Insert hyperlink</i> ]
( <i>If applicable</i> ) Hyperlink to [ <i>Name of the NCA</i> ] website where the information referred to in Article 10(1) of Regulation (EU) 2019/1156 is published in [ <i>specify the other language</i> ]	[ <i>Insert hyperlink</i> ]

*(If the notification concerns a change to information previously notified)*

Dear Sir/Madam,

In accordance with Article 10(2) of Regulation (EU) 2019/1156, I wish to notify a change to the information referred to in this provision, namely the hyperlink to *[name of the authority]*'s website where information on fees or charges levied in *[Member State]* in relation to the cross-border activities of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies is published.

*(If applicable)* I would like to notify a change to the information published on *[name of the authority]*'s website as regard the regulatory fees and charges levied in *[Member State]* in relation to cross-border activities of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies.

Please find in the below table the details of the change implemented on *[date of implementation of the change on the authority's website]*.

<b>Hyperlinks to the competent authorities' websites</b>	
<b>Former hyperlink</b>	<b>Updated hyperlink</b>
Hyperlink to <i>[Name of the NCA]</i> 's website where the information referred to in Article 10(1) of Regulation (EU) 2019/1156 was published in <i>(specify the language customary in the sphere of international finance)</i> :  <i>[Insert former hyperlink]</i>	Updated hyperlink to <i>[Name of the NCA]</i> 's website where the information referred to in Article 10(1) of Regulation (EU) 2019/1156 is published in <i>(specify the language customary in the sphere of international finance)</i> :  <i>[Insert updated hyperlink]</i>
<i>(If applicable)</i> Hyperlink to <i>[Name of the NCA]</i> 's website where the information referred to in Article 10(1) of Regulation (EU) 2019/1156 was published in <i>[specify the other language]</i> :  <i>[Insert former hyperlink]</i>	<i>(If applicable)</i> Updated hyperlink to <i>[Name of the NCA]</i> 's website where the information referred to in Article 10(1) of Regulation (EU) 2019/1156 published in <i>[specify the other language]</i> :  <i>[Insert updated hyperlink]</i>

And/or

<b>Details of the regulatory fees or charges</b>	
<b>Former regulatory fees or charges</b>	<b>Updated regulatory fees or charges</b>
Former details of the regulatory fees or charges:  <i>[Insert former details of the relevant regulatory fees or charges]</i>	Updated details of the regulatory fees or charges:  <i>[Insert updated details of the relevant regulatory fees or charges]</i>

Yours sincerely,

*[Signature]*

## Annex VI - DATA TO BE PROVIDED TO ESMA

**Table 1 – Fields to be reported**

Number	Field	Content to be reported	Standard and format to be used
1	Name of the fund	Full name of the fund	{ALPHANUM-350}
2	National identification code of the fund	Unique identifier of the fund	{ALPHANUM-35}
3	LEI of the fund	Legal Entity Identifier of the fund	{LEI}
4	Share class ISIN	International Securities Identification Number of the share class	{ISIN}
5	Name of the management company	Full name of the management company	{ALPHANUM-350}
6	Management company LEI	Legal Entity Identifier of the management company	{LEI}
7	National identification code of the fund management company	Unique identifier of the fund management company assigned by the competent authority	{ALPHANUM-35}
8	Fund type	The type of fund	Choice from list of predefined fields: - [UCIT] for UCITS - [AIFS] for AIF - [ESEF] for EuSEF - [EVCA] for EuVECA - [LTIF] for 'ELTIF'
9	Sending Member State	Name of the sending Member State	{COUNTRYCODE_2}
10	Host Member State	Competent authorities shall indicate all the host Member States in which the fund has been notified for marketing	{COUNTRYCODE_2}
11	Notification date	For each host Member State, the competent authority shall indicate the date when it sent the notification of marketing of the fund to the competent authority of the host Member States.	{DATEFORMAT}

12	De-notification date	For each host Member State, the competent authority shall indicate the date when it sent the de-notification of marketing of the fund to the competent authority of the host Member States.	{DATEFORMAT}
13	Notification documentation as referred to in Article 93(1) of Directive 2009/65/EC and in Articles 31(2) and 32(2) of Directive 2011/61/EU	Competent authorities shall indicate the file name under which the notification documentation was reported.	Format that allows analysis of the document contents without the need to transform the document into another format.
14	Language of the notification documentation	The language in which the notification documentation is drafted	{LANGUAGE}
15	De-notification documentation as referred to in Article 93a(2) of Directive 2009/65/EC and in Article 32a(2) of Directive 2011/61/EU	Where applicable, indicates the file name under which the de-notification documentation was reported.	Format that allows analysis of the document contents without the need to transform the document into another format.
16	Language of the de-notification documentation	The language in which the de-notification documentation is drafted	{LANGUAGE}
17	Marketed	Competent authorities shall indicate, if available, whether the fund is actually marketed	Choice from list of predefined fields: - [Y] for YES - [N] for No - [NA] for Not Available

18	Form of the fund	Competent authorities shall indicate whether the fund is internally managed.	Choice from list of predefined fields - [Y] for YES - [N] for No
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**Table 2 – Field formats**

Number	Symbol	Data type	Definition
1	{ALPHANUM-n}	Up to n alphanumerical characters	Free text field
2	{LEI}	20 alphanumerical characters	Legal entity identifier as defined in ISO 17442
3	{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
4	{COUNTRYCODE_2}	2 alphanumerical characters	2 letter country code, as defined by ISO 3166-1 alfa-2 country code
5	{LANGUAGE}	2 letter code	ISO 639-1
6	{DATEFORMAT}	Dates in the following format: YYYY-MM-DD Dates shall be reported in UTC	ISO 8601 date format