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IMPACT ASSESSMENT

Accompanying the document

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on facilitating cross-border distribution of collective investment funds and amending Regulations (EU) No 345/2013 and (EU) No 346/2013.

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2009/65/EC of the European Parliament and of the Council and Directive 2011/61/EU of the European Parliament and of the Council with regard to cross-border distribution of collective investment funds.

{COM(2018) 92 final} - {COM(2018) 110 final} - {SWD(2018) 55 final}

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GLOSSARY

Alternative Investment Fund (AIF): is a legal structure to pool assets and hold investments. It usually has no economic life on its own; the key decisions in relation to the management and marketing of AIF are taken by the AIFM. AIF span a wide range of legal structures, including closed and open-end funds and partnerships.

Alternative Investment Fund Manager (AIFM): is responsible for the management of investment portfolios of AIFs. Typical tasks include, for example, the provision of internal governance structures, risk management, the delegation of functions to third parties and relations with investors.

Alternative Investment Fund Manager Directive (AIFMD): The AIFMD was voted by the co-legislator in 2011 and entered into application in July 2013. This Directive covers managers of alternative investment schemes designed for professional investors. AIFs are funds that are not regulated by the UCITS Directive. They include hedge funds, private equity funds, real estate funds and a wide range of other types of institutional funds.

Anti-Money Laundering (AML) Directive: The main objectives of the AMLD are to strengthen the internal market by reducing complexity across borders and to safeguard the interests of society from criminality and terrorist acts.

Assets under management: value of assets that an investment company manages on behalf of investors.

Asset weighted expense ratio: weighted average is simply a matter of calculating the expense ratio you are incurring on two or more funds. It takes into account not only the different expense ratios that apply to each fund, but also the amount of your holdings.

Capital Market Union (CMU): CMU is a plan of the European Commission to mobilise capital in Europe. It will channel it to all companies, including SMEs, and infrastructure projects that need it to expand and create jobs.

Competent authority: Any organization that has the legally delegated or invested authority, capacity, or power to perform a designated function. In this impact assessment it refers to the body which is in charge of supervising securities markets.

ELTIF: European Long Term Investment Fund.

EFAMA: European Funds and Asset Managers Association

ESMA: The European Securities and Markets Authority (ESMA) was founded as a direct result of the recommendations of the 2009 de Larosière report which called for the establishment of a European System of Financial Supervision (ESFS) as decentralised network. It began operations on 1 January 2011 and replaced the Committee of European Securities Regulators (CESR). ESMA is an independent EU Authority that contributes to safeguarding the stability of the European Union's financial system by enhancing the protection of investors and promoting stable and orderly financial markets. It achieves this by: assessing risks to investors, markets and financial stability, completing a single rulebook for EU financial markets, promoting supervisory convergence. As well as fostering supervisory convergence amongst securities regulators by working closely with the other European Supervisory Authorities competent in the field of banking (European Banking Authority – EBA) and Insurance and occupational pensions (European Insurance and Occupational Pensions Authority - EIOPA). http://www.esma.europa.eu

EuSEF: European Social Entrepreneurship Fund.

EuVECA: European Venture Capital Fund.

Expense ratio: the expense ratio is the annual fee that funds charge.

Home competent authority: refers to the competent authority of the Member State where the fund is domiciled or authorised/registered.

Host competent authority: refers to the competent authority of the Member State where the fund is marketed other than the Member State where the fund is domiciled or authorised/registered.

Key information Document (KID): refers to the document under the PRIIP Regulation, containing the key information necessary for retail investors to make an informed investment decision and compare different PRIIPs.

Key Investor information Document (KIID): refers to the document under the UCITS Directive containing appropriate information about the essential characteristics of the UCITS concerned, which is to be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them.

Know Your Customers (KYC): is a process to confirm a customer's identification and profile.

MiFID: This Directive is a cornerstone of the EU' regulation of financial markets. The directive was initially introduced in 2011 and reviewed once. It governs the provision of investment services in financial instruments by banks and investment firms and the operation of traditional stock exchanges and alternative trading venues.

MiFID 2: The Directive on markets in financial instruments was voted 15 May 2014 amending the Directives of 2002 and 2011.

MiFIR: The Regulation on markets in financial instruments was voted 15 May 2014 which complements MiFID 2.

MMF: Money Market Funds are collective undertakings that invest in short-term assets and have distinct or cumulative objectives offering returns in line with money market rates or preserving the value of the investment.

Net Asset Value (NAV): value of a fund's total assets, minus its liabilities. The NAV per share is used to determine prices available to investors for redemptions and subscriptions.

Open-ended fund: is a collective investment scheme which can issue and redeem shares at any time. Investors can buy or sell shares directly from the fund.

PRIIPs: Packaged Retail Investment and Insurance Products.

Round Trip Fund: means the situation where a manager domiciles a fund in another Member State and then distributes it only back into the market where the management company is domiciled.

Transferable security: means classes of securities which are negotiable on the capital market such as shares in companies and other investments equivalent to shares in companies, partnerships or other entities or capital return and interest investments known as bonds.

UCITS: Undertakings for Collective Investment in Transferable Securities, a standardised and regulated type of asset pooling.

UCITS Directive: the UCITS Directive is the main European framework covering retail collective investment schemes. The first UCITS Directive was adopted in 1985, and since then the framework has continuously developed. The last amendment took place in 2014 with

the UCITS V Directive, where the role and mission of the depositary was clarified and strengthened. The UCITS Directive is seen as the benchmark in terms of retail investment funds, as the Directive requires strict diversification rules and eligible assets are restrictive to transferable securities in order to ensure that retail investors can easily redeem their investment.

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

1.1. Background

The initiative under consideration aims at reducing the regulatory barriers to cross-border distribution of investment funds within the EU, by addressing unnecessary complexity and legal uncertainty associated with cross-border distribution. This should reduce the cost of going cross-border and should support deepening the single market for EU investment funds.

This initiative fits in with the more general objective of creating a deeper single market for capital – a Capital Markets Union (CMU)[1] – which is one of the European Commission's priorities. It is also a key element of the Investment Plan for Europe[2], which aims to strengthen Europe's economy and encourage investment in all 28 Member States. The CMU is intended to mobilise capital in Europe and channel it to companies in order to facilitate stronger economic growth and job creation. Deeper and integrated capital markets will improve the access to capital for companies while aiding in the development of new investment opportunities for savers.

Investment funds have an important role to play in achieving the aim of CMU. Investment funds are investment products created with the sole purpose of pooling investors' capital, and investing that capital collectively through a portfolio of financial instruments such as stocks, bonds and other securities. As such, investment funds are first an important instrument to foster investment and increase funding possibilities for companies. Secondly, investment funds that are distributed cross-border will help to allocate capital efficiently across the EU, and contribute to deep and more integrated capital markets. Increased competition across national markets will in turn help to deliver greater choice and better value for investors.

The CMU Action Plan[3] envisages that the Commission would gather evidence on the barriers to the cross-border distribution of investment funds. Following an open consultation that was conducted for this purpose from July until October 2016, the Commission announced in its Communication on the CMU Mid-Term Review[4] that it would launch an impact assessment with a view to considering a possible legislative proposal to better facilitate the cross-border distribution of investment funds.

In the EU, investment funds can be broadly categorised as UCITS (Undertakings for Collective Investment in Transferable Securities)[5] and AIFs (Alternative Investment Funds)[6]. EU investment funds have seen rapid growth, resulting in a total of €14,310 billion asset under management (AuM) in June 2017, of which 60.8% is invested in UCITS and 39.2% in AIFs.[7] The creation of a single market for investment funds – which started with the introduction of the UCITS Directive[8] in 1985 – has resulted in a strong and quickly expanding EU investment fund industry. Although the market is increasingly organised on a pan-European basis, it has not exploited its full potential in terms of cross-border distribution: only

[1] https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union_en
[2] http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1507119651257&uri=CELEX:52014DC0903
[3] http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1507119301191&uri=CELEX:52015DC0468
[4] http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1507119301191&uri=CELEX:52017DC0292
[5] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0091
[6] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0061
[7] EFAMA, Quarterly Statistical Release Q2 2017.
[8] http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1507119586151&uri=CELEX:31985L0611

37% of UCITS are registered for sale to more than 3 Member States. For AIFs, available data suggests that only about 3% of AIFs are registered for sale in more than 3 Member States.[9]

Industry feedback indicates that regulatory barriers represent a significant disincentive to cross-border distribution. These barriers have been identified in response to the Capital Markets Union[5] green paper, the Call for Evidence on the EU Regulatory Framework for Financial Services[6] and the public consultation on barriers to cross-border distribution of investment funds[10] as including (national) marketing requirements, regulatory fees, administrative requirements and notification requirements. Eliminating unjustified (regulatory) barriers would support fund managers to engage more in cross-border distribution of their funds, increase competition and choice, and potentially reduce costs for investors.

In addition to this initiative – that focuses solely on cross-border distribution of funds – the Commission has just started an overall review of the Alternative Investment Fund Managers Directive (AIFMD). The review started with a tender for an external study on the functioning of the Directive, which was awarded to a contractor in September 2017. An overall review of the UCITS Directive may take place once enough experience is gained with the practical application of elements introduced with the most recent amendments to the Directive. For both reviews, therefore, there is not enough evidence to be able to decide at this point whether any legislative changes would be merited. This is the reason why this initiative on cross-border distribution of funds is clearly delineated and will be pursued now on a stand-alone basis. The potential to make significant progress in reducing barriers and bolstering the single market for investment funds – thus providing a tangible contribution to CMU in the short term – justifies taking action now instead of waiting for the broader reviews.

Feedback to the consultations indicates that, besides regulatory barriers, other factors also provide significant disincentives to cross-border distribution of investment funds.[11] These include the impact of vertical distribution channels, cultural preferences for domestic products (home and familiarity bias), and national tax rules. Results from the randomized follow-up survey which focuses on differences between large and small funds shows that fund managers agree on the importance of regulatory barriers and taxation as important barriers, while there is less consensus regarding the importance of local demand and vertical distribution channels.

Given that factors related to vertical distribution channels, cultural preferences for domestic products and national tax rules are out of the scope of this initiative, there are inherent limitations to the impact of this initiative. However, other actions under the CMU Action Plan aimed at facilitating cross-border investment and fostering retail investment will seek to (partially) address these factors. Ongoing work streams in this area include a study on distribution systems of retail investment products across the EU[12]; work by the European Supervisory Authorities (ESAs) on increasing the transparency and comparability of costs and performance of retail investment and pension products[13]; and the work with national tax experts on best practice and a code of conduct for withholding tax relief principles.

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[9] Source: Morningstar database - June 2017.

[10] https://ec.europa.eu/info/publications/consultation-cross-border-distribution-investment-funds_en

[11] This is supported by the regression analysis in annex 6 which demonstrate that both cost considerations and factors related to the attractiveness of the local market affect the cross-border distribution of funds.

[12] Results of the study on distribution systems of retail investment products across the EU are expected by the end of 2017.

[13] There will be recurrent reporting by the ESAs of cost and performance of the principal categories of long-term retail investment and pension products. Furthermore, a feasibility study on the development of a centralised hub for mandatory disclosure requirements and related services will be launched in the near future.

The impact assessment aims at providing an unbiased, comprehensive and evidence-based assessment of cross-border distribution of funds and possible barriers, in spite of some inherent limitations.[14] We rely on 3 methodological approaches (desk research, qualitative analysis and quantitative analysis) to provide a comprehensive impact assessment. Details are presented in Annex 4. The stakeholder consultation strategy relies on 3 types of stakeholder consultation, being (i) an open public consultation, (ii) a randomized sampling-based survey and (iii) targeted individual consultations to ensure that the impact assessment is open to stakeholders' views. Each of the methodological approaches has its merits but we are also confronted with some limitations. A detailed discussion of the methodological approach, its limitations, and the steps undertaken to mitigate its effect is presented in Annex 4. In general terms, limitations are related to the representativeness of data inputs and lack of (historical) data coverage, especially for alternative investment funds (AIFs), unavailability of total cost data and granular data on cost components for individual Member States.

Significant efforts have been undertaken to support the analysis of cross-border distribution of funds in the EU and the evaluation of policy options based on 3 methodological approaches. Each of them has its merits but also its limitations and we discussed our approach to mitigate the effect and its effect on the analysis.

Overall, the collective evidence stemming from the various methodological approaches can be considered to be sufficiently sound as a basis for the impact assessment.

1.2. The EU investment fund market and its legal framework

The fund market in the EU can be divided into UCITS funds and all other funds that are labelled Alterntative Investment Funds (AIFs)

Since its origin in 1985, the UCITS Directive has been the basis on which the success of the European investment fund market has been built. The UCITS Directive introduced – for the first time - a genuine European retail investment fund 'product', providing a strong investor protection framework which ensures that funds are suitable for retail investors. UCITS are open-ended funds with strict transparency requirements toward their investors[15]. They need to invest in a diversified manner in transferrable securities or in other liquid assets. Ever since the introduction of the UCITS framework, eligible funds benefit from a cross-border marketing passport with the aim of allowing them to market without barriers to all investors across the EU while using the UCITS label. Since 1985 the UCITS Directive has been revised several times. With the introduction of UCITS IV[16] managers also benefit from a fully-fledged management passport, allowing them to be domiciled anywhere in the EU.

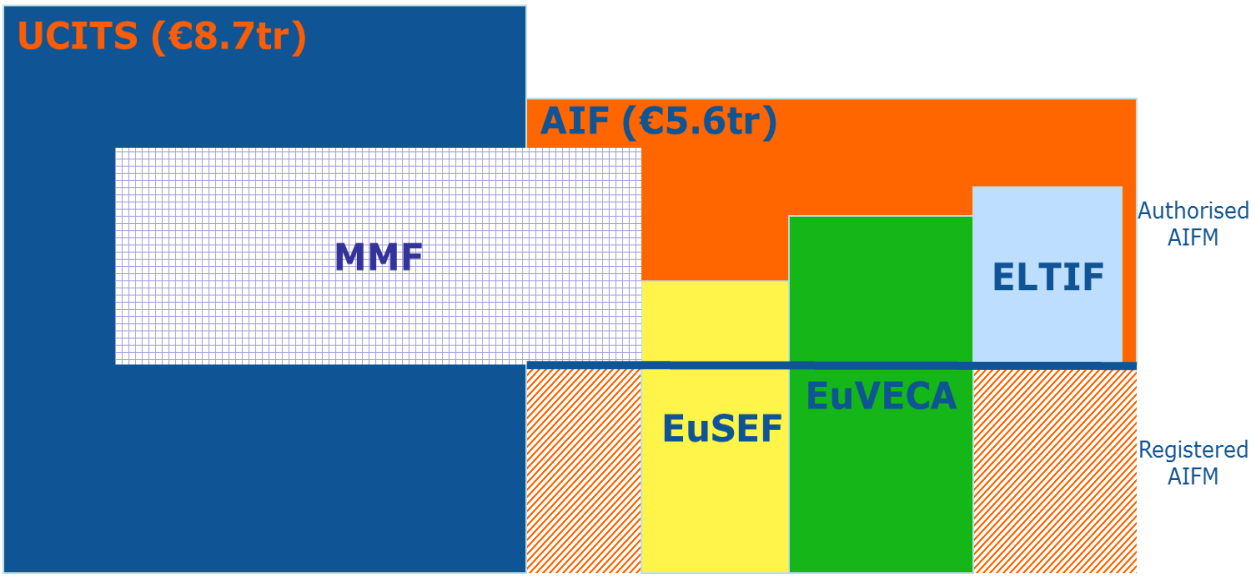
In 2013, the AIFM Directive[17] introduced a framework for the authorisation, supervision and oversight of managers of non-UCITS funds (AIFs[18]). Managers whose aggregate assets under management are above a certain threshold[19] are subject to authorisation and compliance with reporting and operational requirements set out in the AIFMD. In exchange, EU managers

[14] The impact assessment is constructed according to the Commission's Better Regulation Guidelines.
[15] The UCITS III Directive introduced the simplified prospectus, while the UCITS IV Directive went one step further with the concept of the Key Investor Information Document.
[16] Directive 2009/65/EC
[17] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011.
[18] Alternative Investment Funds (AIF) cover all the investment funds that are not UCITS such as private equity funds, hedge funds, venture capital funds but also more traditional funds.
[19] The threshold is €100 million for managers managing leveraged funds and for manager managing unleveraged funds with no redemption rights for a period of at least 5 years the threshold is €500 million.

benefit from an EU-wide passport to manage and market AIFs to professional investors on a cross-border basis. Managers below the thresholds are subject to a set of minimum rules and consequently do not benefit from the passport, unless they opt in and fully apply the AIFMD. Unlike UCITS, marketing to retail investors is only possible at Member State discretion.

Figure 1 provides an overview of the complete EU legislative framework for investment funds. More details on the Regulations for European Venture Capital funds (EuVECA), European Social Entrepreneurship Funds (EuSEF), European Long Term Investment Funds (ELTIF) and Money Market Funds (MMF) can be found in Annex 6.

Figure 1 – EU legislative framework for investment funds in June 2017[2021]



Source: European Commission and EFAMA Quarterly Statistical Release Q2 2017 for the figures

In total, in June 2017, the European investment fund industry (AIFs and UCITS) represented €14,310 billion AuM – of which 60.8% was invested in UCITS and 39.2% in AIFs[22].

In particular UCITS has developed into a strong brand over the years and is nowadays recognised globally. This success is evidenced by the rapid growth of assets that are managed in UCITS compliant funds. Total assets under management (AuM) in the EU grew from €3,403 billion at the end of 2001 to €8,704 billion by June 2017[23].

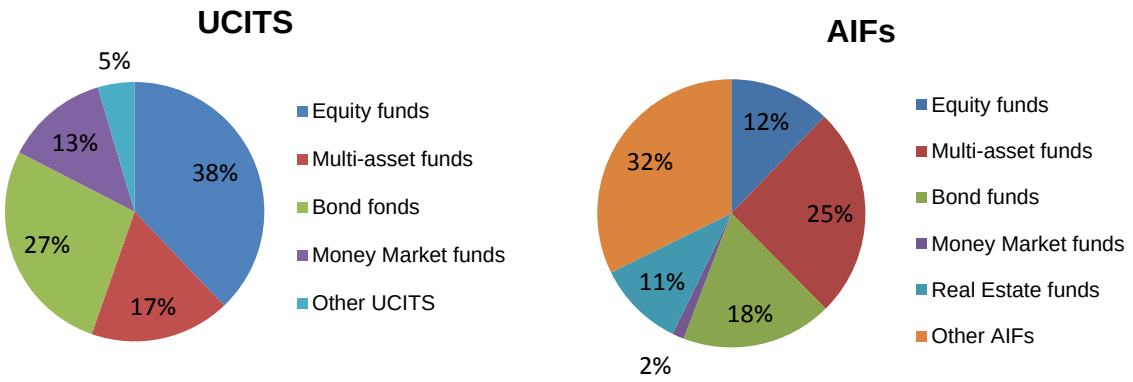
AIFs have not yet reached the same take-up as UCITS but there is evidence that the market for AIFs is growing steadily. Total assets under management grew from €4,075 billion at the end of 2014 to €5,606 billion by June 2017[24]. Before 2014, the asset under management of non-UCITS funds were less than €3,000 billion.[25] This may be due at least in part to the fact that the AIFMD framework does not have a long history compared to the UCITS framework as it came into application only on 22 July 2013.

A breakdown of the EU investment fund market shows that equity and bonds are asset managers' preferred holdings for UCITS, while AIFs are a more heterogenous class of

[20] This chart takes into account the recently adopted review of the EuVECA and EuSEF Regulations.
[21] See footnote 19.
[22] Source: EFAMA European Quarterly Statistical Release Q2 2017.
[23] Source: EFAMA European Quarterly Statistical Release Q2 2017
[24] Source: EFAMA European Quarterly Statistical Release Q2 2017
[25] The AuM for non-UCITS was about €2,922bn by end 2013 and €2,686bn by end 2012.

investment funds, investing in a wider variety of asset types (see figure 2) and employing different investment strategies. These include, hedge funds, private equity funds, infrastructure funds, commodity funds and real estate funds.

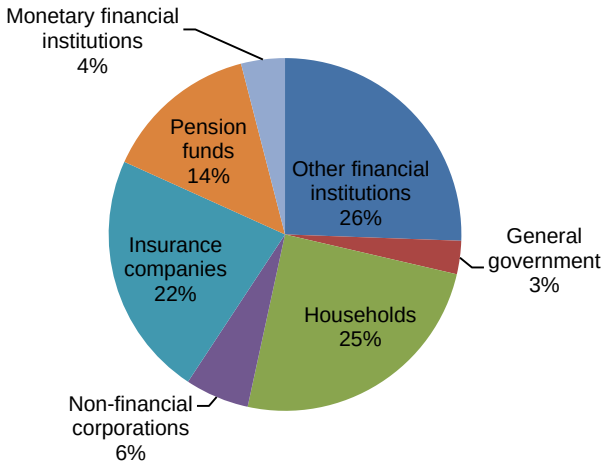
Figure 2 – Breakdown of UCITS and AIF by investment type (based on net assets)



Source: EFAMA Quarterly Statistical Release Q2 2017

To understand the importance and potential of investment funds as an investment opportunity for savers across the EU, it is useful to provide some insight on investment fund ownership. By end of 2016, institutional investors (insurance companies, pension funds, and monetary financial institutions, and other financial institutions) together held most (66%) of the investments in investment funds. Households accounted for a quarter of all investments in funds, making them the second largest holder of investment funds after other financial institutions (see figure 3).

Figure 3– Investment Fund Ownership end 2016



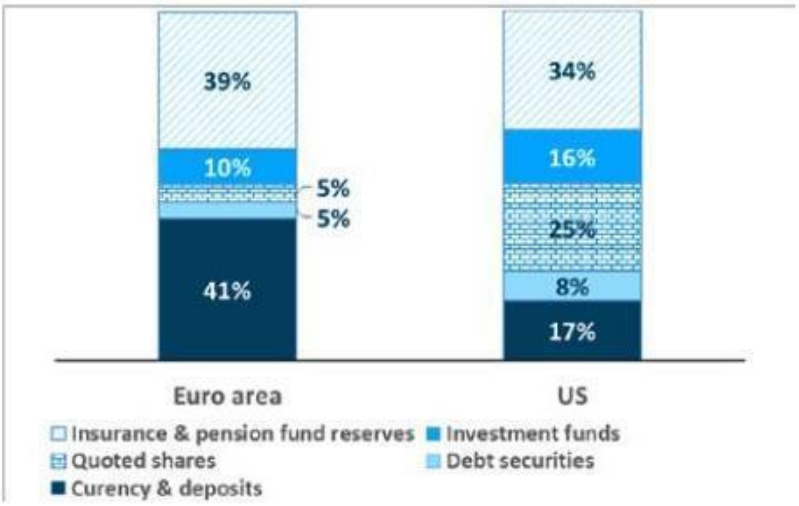
Source: EFAMA Fact Book 2017

Nevertheless, a closer look at households' financial assets shows that banking deposits and insurance and pension fund reserves still dominate household savings in the EU (see figure 4 and 5), representing about 70% of households' total financial assets. In the US, households hold only half of their total financial assets in the form of currency and deposits and insurance and pension fund reserves.

While investment funds also play an important role in households' financial assets in the EU, most of the investment in investment funds currently goes through insurance and pension

products, compared to the US, where households have more direct holdings of equity and investment funds units (see figure 4).

Figure 4 – Comparison EU versus US for households' financial assets (share in total, end 2015)



Source: ECB, EFAMA

About 71% of UCITS are domiciled in five Member States, with Luxembourg being the largest domicile (33%), followed by Ireland (14%), France (11%), the United Kingdom (7%) and Germany (6%). These represent 84% of the UCITS assets under management. For AIFs this picture is slightly different, with 75% of AIFs domiciled in the following five Member States: France (28%), Luxembourg (17%), Germany (15%), Ireland (9%), and the Netherlands (6%). These represent 77% of the AIFs assets under management.[26]

Investment fund domiciles

It is common for both UCITS and AIFs to be administered and domiciled in a different Member State than the one from where they are managed. For example, a German UCITS manager may choose to domicile a fund range in Luxembourg and to market them in France and Spain. In that case the home domicile of the fund is Luxembourg and the host domiciles of the funds are France and Spain. There are a number of reasons why the manager may choose such a structure, including legal and regulatory factors (regulatory approach of the domicile, expertise and responsiveness of the supervisor, range of fund vehicles), financial and business factors (favourable tax environment, costs of doing business, concentration of fund administration expertise and services) and market and distribution factors (speed to market, investors' perceptions, reputation and longevity as funds centre).

Although the EU investment fund market is the worlds' second largest market behind the US in terms of AuM[27], there are considerably fewer funds in the US (15,415) than in the EU (58,125)[28], implying a significantly smaller average fund size. This has an impact on the economies of scale that can be realised by asset managers in the EU. Furthermore, EU investors pay higher fees than their counterparts in the US; the average asset-weighted

[26] Source: EFAMA European Quarterly Statistical Release Q2 2017.
[27] According to the Investment Company Institute (ICI) Fact Book 2017, the US investment fund market reached a total of $19.21 trillion (€16.21 trillion) in 2016.
[28] EFAMA Fact Book 2017.

expense ratio of US domiciled mutual equity funds was 0.63%[29] versus 1.27% for European domiciled equity funds in 2016.[30]

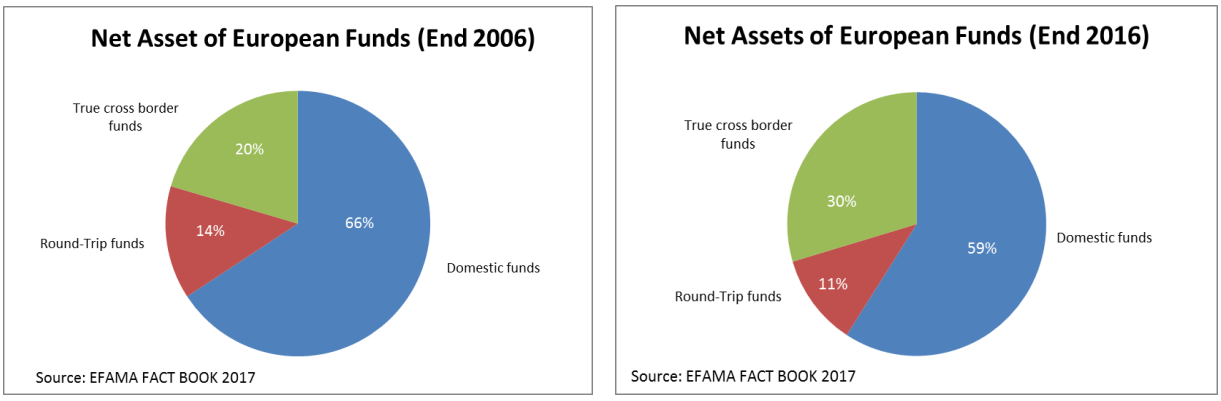
As mentioned in section 1.1, cross-border distribution is an important area where the single market has not exploited its full potential. This has been confirmed in the lost potential analysis (see annex 5, i.e. evaluation annex). Figure 5 (below) shows that cross border distribution of EU investment funds has grown gradually over the last ten years. However, it also shows that the EU investment fund market is still predominantly organised along national lines, with 70% of the total AuM held by investment funds registered for sale only in its domestic market – which includes so-called 'round-trip' funds (see box below).

Round-trip funds

Where a manager domiciles a fund in another Member State and then distributes it only back into the market where they are based, this is known as an 'round-trip' fund. This impact assessment distinguishes between round-trip funds and more widely distributed cross-border funds. Round-trip arrangements are legitimate arrangements from which managers and investors can both benefit. EU legislation allows for such arrangements; and they rely on availability of the managing and marketing passports. However, round-trip funds don't represent a re al deepening of the single market or an increase in investor choice; a manager is still only marketing a fund in one Member State (plus the fund domicile). A better indication of cross-border activity for the purpose of this exercise is where a fund markets to at least one Member State outside the home market of its manager and domicile. Therefore, for the purpose of this Impact Assessment we consider round-trip funds as domestic funds - even if round-trip funds are only possible because of the existence of the marketing passport.

For the purpose of this impact assessment, only investment funds that are marketed in two or more Member States other than the fund domicile are considered cross-border funds. This is to exclude round-trip funds (see box above). Although round-trip funds are legitimate arrangements from which managers and investors can both benefit, they do not represent a true deepening of the single market.

Figure 5 – Assets under management of cross-border investment funds



Data on the numbers of funds marketed cross-border across the EU supports the observation that the European investment fund market is still fragmented. In July 2008, the Commission noted in its impact assessment on UCITS IV that only 20% of UCITS were notified for sale in at least two countries other than their fund domicile.[31] By June 2017 this number reached 37%

[29] ICI Fact Book 2017; http://www.icifactbook.org/
[30] Morningstar, "European Fund Expenses Are Decreasing in Percentage", August 2016.
[31] http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2008/sec_2008_2263_en.pdf

according to data from Morningstar (see figure 6). The proportion of AIFs that are registered for sale in two or more Member States other than the fund domicile was only 3% by June 2017.

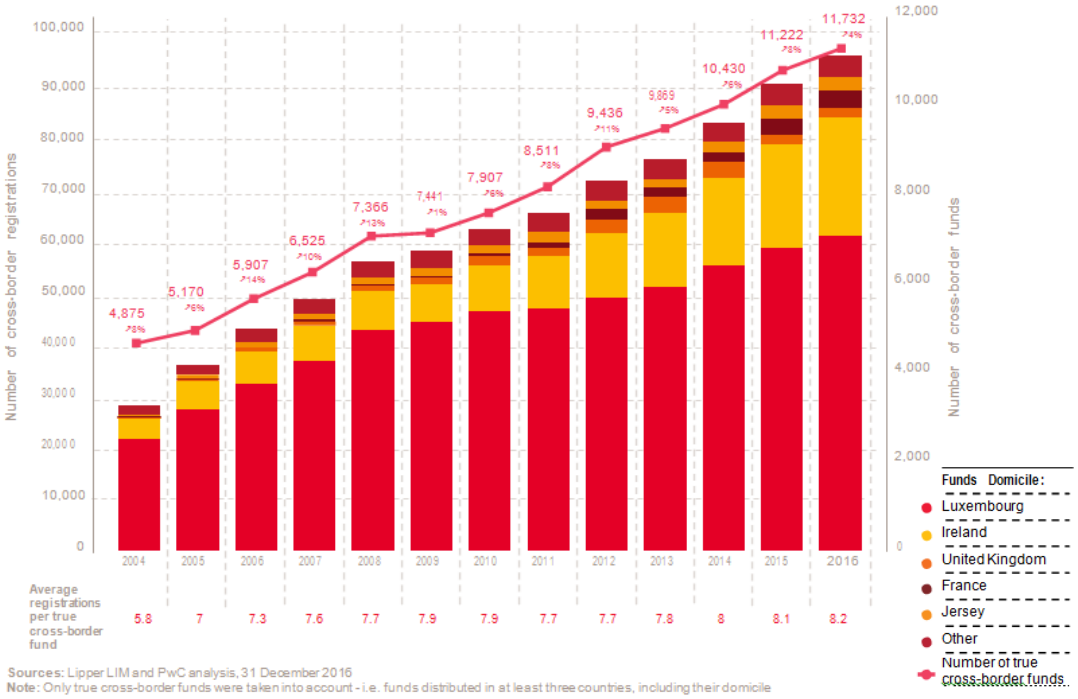
Figure 6 - Percentage of UCITS and AIFs registered for sale across the EU

Country registered for sale	Number of UCITS registered for sale		Number of AIF registered for sale	
Domestic only	11,650	**46%**	9,455	**91%**
2 countries only	4,326	**17%**	586	**6%**
3 to 5 countries	3,440	**14%**	246	**2%**
More than 5 countries	5,897	**23%**	112	**1%**
TOTAL	**25,313**	**100%**	**10,399**	**100%**

Source: Morningstar database, June 2017

Figure 7 (below) provides an indication of the growth rate of the number of cross-border funds and registrations[32] over the last twelve years. If Jersey is excluded, the number of cross-border funds in the EU (excluding round-trip funds) was 11,380 by end of 2016. Setting this number off against the total number of funds in the EU by end of 2016 (58,125), indicates that cross-border funds accounted for less than 20% of the total number of funds – confirming that the single market for investment funds is still fragmented.

Figure 7 – Evolution of cross-border distribution (numbers of funds and registrations)



[32] Regarding the number of cross-border funds, figure 7 includes investment funds domiciles outside the EU (e.g. Jersey and possibly others). The same applies to the number of cross-border registrations, as it includes registrations in non-EU countries like Switzerland and other regions of the world. For an overview of the number of cross-border registrations in the EU, see figure 6 in this impact assessment.

A more detailed overview and assessment of cross-border distribution of investment funds can be found in section 2.3 of this impact assessment.

2. PROBLEM DEFINITION

European legislation allows asset managers to passport their investment funds across the EU, with the objective of creating a single market for investment funds. However, as demonstrated in the evaluation (annex 5), there are still binding barriers for asset managers to distribute their investment funds cross-border across the EU. As a case in point, in the randomized survey at least 69% of the fund managers indicated that a positive change in each of the barriers separately[33] (regulatory barriers, taxation, local demand or the distibution network) would increase their level of cross-border activity. Relatively speaking, large funds found local demand factors more important than small funds.

This initiative aims to reduce the regulatory barriers to cross-border distribution of funds within the EU. This section describes the underlying drivers of this problem, assesses the magnitude of the problem and explains the consequences that necessitate action at EU level.

A fund manager's decision to distribute a fund cross-border will be influenced by discretionary strategic considerations on the one hand and the attractiveness of the local market on the other hand. The latter include the (i) marginal costs of going cross-border to a specific national market; (ii) structural factors of the local market; and (iii) expected demand.

In this initiative we focus on regulatory cost, while factors related to (ii) and (iii) are considered out of scope. A problem tree that summarizes the problem drivers, problems and consequences under consideration in this impact assessment can be found at the end of this section.

2.1. In-scope problem drivers

Feedback to the consultations indicate that there are a range of national requirements and regulatory practices regarding the use of the EU marketing passports for investment funds that diverge and can be hard to find and interpret for fund managers. Furthermore, responses from industry suggest that certain (national) requirements regarding the use of the EU marketing passports are burdensome, but have little added value. The areas which were identified by respondents to the consultations and consequently qualify as the problem drivers within the scope of this initiative are: (**D1)**

- Marketing requirements;
- Regulatory fees;
- Administrative requirements;
- Notification requirements.

Relatively speaking, results from the randomized survey show that national marketing rules were considered the most important barrier, closely followed by the existence of a local agent. Regulatory fees and notification requirements were deemed relatively less important.[34]

A brief description of the problem drivers is presented below; a more detailed description can be found in the evaluation annex (see annex 5).

[33] Under ceteris paribus conditions (i.e. without any change in the other barriers than the single one under consideration.

[34] Total score for these barriers were 25% lower than the one for national marketing. Overall, results also indicated towards the fact that other barriers are considered to be important.

2.1.1. Marketing requirements

National marketing requirements and supervisory practices differ and are sometimes unnecessarily burdensome - When EU funds are marketed cross border to investors in another EU Member State, they are required to comply with the host Member State's national marketing requirements, including national implementation of the requirements in the UCITS and AIFM Directives. Respondents to the open consultation indicated that in practice, there is a wide divergence in the activities Member States considered to be marketing for both Directives. Activities which may or may not be considered to be marketing depending on the Member State practices include, for example, pre-marketing[35] and reverse solicitation[36]. A considerable majority of industry respondents considered this to have a material impact upon the cross-border distribution of investment funds.

Using the marketing passports, asset managers can start marketing funds without any marketing material and just rely on the documents which meet their legal obligations concerning information to be provided to investors[37]. However, in practice asset managers generally also use marketing material, such as flyers, websites, e-mails and radio/TV spots. In at least six Member States[38] national competent authorities check or approve marketing material to retail investors for some or all funds on an ex-ante basis. The ex-ante checks or approval can, according to some industry respondents, be significantly more time-consuming in some Member States than others and can take up to four months, delaying marketing activities and rendering the material outdated when informing clients on evolving market conditions. However, this is not supported by feedback from competent authorities, which indicate that pre-checks or pre-approval of marketing material usually only take a few days, and exceptionally up to 15 days.

Lack of transparency over national marketing requirements – As outlined in the evaluation annex, fund managers and industry associations responding to the open consultation indicated that it is often not clear at first glance which (national) marketing requirements apply exactly unless a manager or distributor has very detailed knowledge of the applicable local law. National regulators and supervisors often give additional guidance on how to interpret local law which is not always in a single rule book. There are also Member States that refer to non-financial legislation (such as regulation on advertising and marketing practices). In practice this means that external counsel needs to be engaged to determine how to comply with national rules. Regular changes to marketing requirements introduce additional cost, meaning such costs are incurred on an ongoing and recurring basis.

2.1.2. Regulatory fees

Regulatory fees differ and can be complex – When asset managers make use of the marketing passport, 21 Member States require paying regulatory fees to competent authorities of the host Member State when funds are marketed to investors on a cross-border basis. Respondents to the Call for Evidence and the CMU Green Paper have referred to the range of regulatory fees charged by host Member States as hindering the development of the cross-

[35] Pre-marketing is a market practice used in particular asset management segments targeting professional investors or high net worth individuals, such as private equity or venture capital, and is used to test investors' appetite for upcoming investment opportunities or strategies.

[36] Reverse solicitation is where an prospective investor contacts a management company on his/her own initiative, seeking to purchase units of shares of a fund without having been first marketed to by that company.

[37] E.g. for UCITS this covers the prospectus, periodic reports and key information.

[38] Belgium, Italy, France, Greece, Bulgaria, Finland, and Spain.

border marketing of funds across the EU. A preliminary assessment by the Commission services showed that the level of fees levied by host Member State on asset managers varies considerably, both in absolute amount and how they are calculated (see Annex 8). This implies that the process to determine the level of fees that have to be paid by an asset manager when marketing his fund cross-border can be very complex.

Lack of transparency over regulatory fees – As outlined in the evaluation annex, the majority of industry respondents to the open consultation did not consider the requirement to pay regulatory fees as such as a significant barrier, but rather the lack of transparency over how these fees are calculated and levied. Respondents indicated that it is difficult to find out and understand what the regulatory fees in a certain host Member State are, as this information is often not available on the website of the national supervisor or only in the local language. As a result, asset managers need the services of external counsel to determine the exact level and structure of regulatory fees. Furthermore, some asset managers responding to the open consultation indicated that they did not receive invoices for regulatory fees. This can create accounting difficulties and even delay the passporting process as a proof of payment is required by some host competent authorities to be sent to them before marketing commences.

2.1.3. Administrative requirements

National requirements to have local facilities are costly, but have limited added value given use of digital technology - Where UCITS are marketed across borders to retail investors, at least 17 Member States require – as part of the transposition of Article 92 of the UCITS Directive – that facilities are present in their territory for making payments to unit-holders, repurchasing or redeeming units and making available the information which funds are required to provide.[39] A few Member States also require these local facilities to perform additional tasks, like handling complaints or serving as local distributor (e.g. GR) or being the legal representative (including vis-à-vis the national competent authority, e.g. DK).

As outlined in the evaluation annex, responses by industry to the consultations suggest that the costs to comply with the requirement to have local facilities present in each Member State are significant. Feedback from industry also suggests that the appointment of local facilities is time-consuming and can lead to significant delays in marketing funds, as negotiating the agreement involves the management company's legal and business teams as well as the fund's depository and operational oversight teams.

While the costs of local facilities are significant, asset managers and one investor association indicated that in practice facilities nowadays mostly play a passive role and are rarely used by the investors, as the preferred method of contact has shifted to direct contacts with the manager and payments and redemptions are done through other channels, either online or by telephone. Besides questioning the need to have local facilities nowadays, many industry respondents also considered the diverging requirements between Member States regarding the appointment and role of local facilities a barrier.

[39] Article 92 of the UCITS Directive requires UCITS to, in accordance with the laws, regulations and administrative provisions in force in the Member State where their units are marketed, take the measures necessary to ensure that facilities are available in that Member State for making payments to unit-holders, repurchasing or redeeming units and making available the information which UCITS are required to provide.

2.1.4. Notification requirements

Requirements for updating notifications are either not standardised or applied differently across the EU and types of funds – Before a fund manager can use the marketing passport under the UCITS and AIFM Directives, it is required to notify the competent authority of the home Member State of its intention to market the fund(s) cross-border in another Member State. As outlined in the evaluation annex, whereas feedback through the consultations on the initial notification process was rather positive, industry respondents found the process for updating/ modifying documentation burdensome. A majority of these responses reported difficulties with the UCITS process for updating notifications, as this process is managed by the host Member State and is not harmonised or standardised. As for AIFs, several industry respondents noted that the requirement under AIMFD to update notifications when there are material changes[40] can create difficulties as it is unclear which timeframe is applicable to the notification; what constitutes a material change; and whether marketing activities are allowed during that period.

No harmonised de-notification process – Another issue highlighted by industry stakeholders in the open consultation was the absence of a de-notification process in some Member States, as well as differences between existing national de-notification procedures. More precisely, when a fund wishes to stop its marketing activity and exit the market of one or several Member States[41], different procedures can apply across Member States depending on whether there are still local investors in the fund and on whether the number of investors drops below a specific threshold. In addition, five Member States allow de-notification only after certain publication requirements are fulfilled. According to responses from industry, difficulties with de-notification result in a lack of an exit strategy, which considerably influences the decision of a fund manager to access a market in the first place.

2.1.5. Out-of-scope problem drivers

There are other significant problem drivers that impact the problem under consideration. As indicated in the introduction of this section, the decision to go cross-border is determined by cost considerations and factors related to the attractiveness of the market. This is supported by the regression analysis in annex 6 which demonstrates that both cost considerations and factors related to the attractiveness of the local market affect the cross-border distribution of funds.

The out-of-scope drivers are summarised briefly below, together with an explanation why they are considered to be out of scope.

Taxation (D2) – Many industry representatives and asset managers responding to the CMU Green Paper and open consultation on cross-border distribution of funds pointed to taxation as an important barrier. Respondents reported that investment funds often lack or have difficulties with obtaining access to double tax treaties, due to their tax status in the territory where they are domiciled or because they cannot demonstrate that their investors meet particular residence or nationality requirements. When they did have access to double tax treaties, respondents reported several difficulties due to inconsistent and burdensome withholding tax recovery processes, which are defined and applied at a national level.

Other tax issues highlighted by industry respondents and investors were diverging national tax reporting requirements – in particular reporting on investor income tax – and tax

[40] Article 32(7) and Annex IV AIFMD

[41] The fund continues to exist and pursues its marketing activities in one or several other Member States.

discrimination of non-domestic investment funds, which discourages (retail) investors from investing cross-border.

Taxation barriers are out of scope as these would need to be addressed on a different treaty base and are already the subject of other Commission work streams. This includes the work with national tax experts, which has led in December 2017 to the publication of a code of conduct on more efficient WHT relief and refund principles as part of the CMU Action Plan.

Market structure (D3) - The closed architecture of distribution and intermediation channels has also been cited by industry representatives, investor associations and national competent authorities as a significant barrier for cross-border distribution. In many Member States banks and insurance companies are the biggest distributors of retail investment funds, offering in some cases predominantly in-house funds. Economic research[42] indicates that financial advice might be biased when financial advisors also act as sellers of financial products, thereby not improving investors' portfolio allocations[43]. In Europe, such dependent advisors are also unlikely to consider cross-border funds from other distributors (on an equal footing).

Market structure is out of scope of this initiative for two reasons:

- Recent legislative initiatives: MiFID II and PRIIPs are intended to alter inducement incentives and provide greater clarity over costs. The impact of these measures will need to be evaluated before further steps are considered.
- As part of the CMU Action Plan, a follow-up to study on distribution systems of retail investment products across the EU is currently underway and further steps will be considered following this.

Investors' behaviour (D4) – Economic research[44] has demonstrated that fund investors are subject to several behavioural biases, including home and familiarity bias. It is argued - and indirect evidence is provided - that investors might be willing to buy high fee funds with which they have become familiar, possibly through localized marketing efforts. As such, home and familiarity bias have a negative impact on the demand from investors for cross-border funds, as they are more likely to invest in domestic funds.

These behavioural biases also act as a disincentive for managers to engage in the cross-border distribution of funds: fee competition could not be as effective as these investors are willing to pay higher fees for funds they are familiar with and may therefore not switch funds solely because of lower fees. In addition, it will require more (marketing) efforts for non-domestic funds to be as noticeable in a market as local funds, making it difficult to sufficiently increase investors' familiarity with their fund.

The broader issue of (retail) investors' behaviour is out of scope as this cannot be addressed through this targeted initiative. Recent legislative initiatives, like PRIIPs, already aim to address investors' behaviour more broadly by providing simpler and comparable information on investment products, which is expected to significantly improve investors' decisions.[45]

[42] See e.g. Bolton, P., Freixas, X., & Shapiro, J. (2007). Conflicts of interest, information provision, and competition in the financial services industry. Journal of Financial Economics, 85(2), 297-330.

[43] See e.g. Bergstresser, D., Chalmers, J. M. R., & Tufano, P. (2009). Assessing the Costs and Benefits of Brokers in the Mutual Fund Industry. The Review of Financial Studies, 22(10), 4129-4156. doi: 10.1093/rfs/hhp022

[44] See e.g. Bailey, W., Kumar, A., & Ng, D. (2011). Behavioural biases of mutual fund investors. Journal of Financial Economics, 102(1), 1-27.

[45] Consumer Decision-Making in Retail Investment Services: A Behavioural Economics Perspective, November 2010; http://ec.europa.eu/consumers/archive/strategy/docs/final_report_en.pdf

Online and direct distribution (D5) – Divergent, paper-based requirements, such as Know-Your-Customer (KYC) and Anti-Money Laundering (AML) checks in many Member States were reported by a significant number of asset managers as a costly complication where managers are seeking to market directly online across borders. The current process is regarded as costly and labour-intensive, requiring renewing and maintaining Know Your Customer processes, monitoring, maintenance of sanctions lists, on-site visits etc.

An additional factor is the need for managers of existing funds to maintain relationships with their existing distributors when launching online or other direct distribution channels. A number of managers have reported that this can act as a disincentive either to launch these channels or severely limits the possibility to compete by offering lower prices. See also the section on market structure.

KYC and AML requirements are out of scope of this initiative as this is a horizontal issue, which applies to all financial services. Work in this area is already ongoing on a broader basis, for example by addressing the interoperability of identity authentication through the eIDAS initiative. In this initiative Member States cooperate in order to reach interoperability and security of electronic identification schemes. A shift to more online distribution in general may also have the potential to overcome some of the investor behavioural biases towards buying funds offered across borders.

2.2. Problems

As discussed in section 2.1 and described in more detail in the evaluation annex, there are several areas (corresponding to the problem drivers) where national requirements and regulatory practices regarding the use of the EU marketing passports for investment funds diverge and can be hard to find and interpret for fund managers. As a result, they add **unnecessary complexity and legal uncertainty to distributing cross-border, resulting in higher costs** for asset managers who want to market their funds cross-border across the EU.

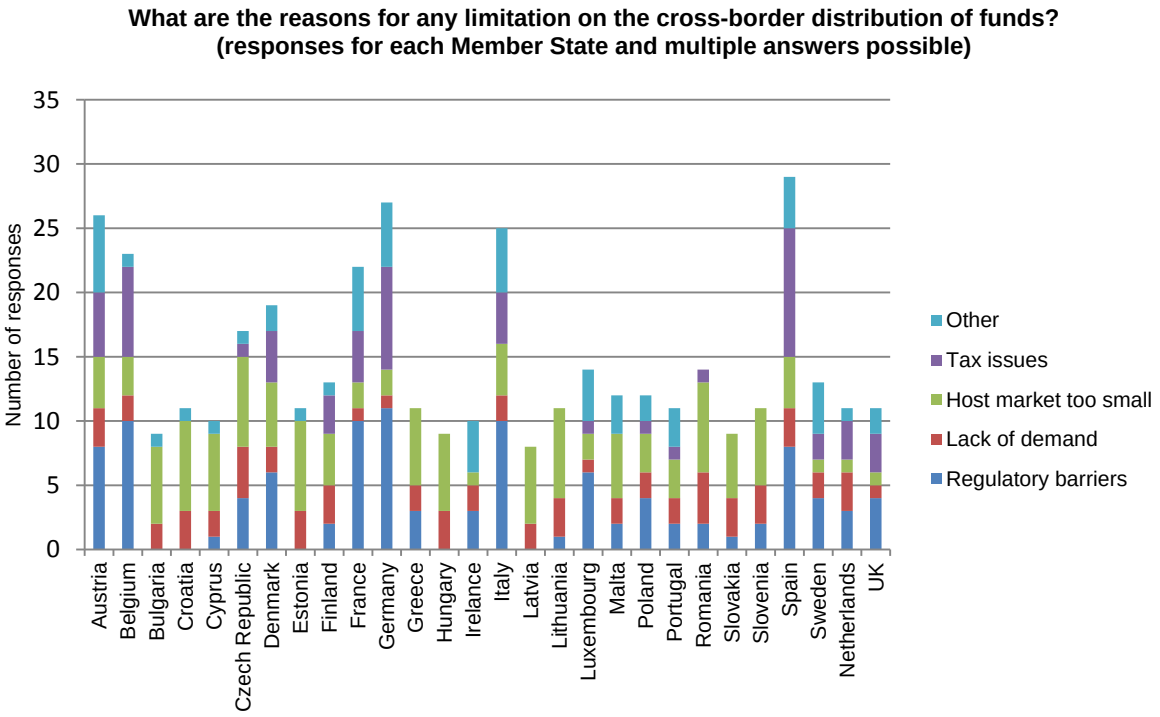
Feedback from the consultations indicates that asset managers need to seek legal advice to understand and comply with different national regulatory frameworks. Costs for legal advice are incurred on a one-off basis when first accessing the market, but also on an ongoing basis to keep up with changing requirements. Furthermore, requirements like the mandatory appointment of local facilities can be burdensome according to industry respondents, given the direct fees that have to be paid to these facilities and the time needed to negotiate appropriate arrangements.

In practice, this means that there are **(regulatory) barriers for asset managers to distribute their investment funds cross-border**.

In order to get a sense of the magnitude of this problem, it is first useful to look at feedback to the open consultation, where respondents – in particular asset managers – were asked to indicate what the reasons were for any limitiation on the cross-border distribution of their funds for each Member State. Figure 8 indicates that for asset managers, the (most important) reasons for not distributing to a certain country differ between Member States. Nevertheless, for 23 Member States regulatory barriers were mentioned as a reason not to distribute in that country. This seems to indicate that regulatory barriers are binding for asset managers in the sense that they negatively influence their decision to market cross-border in the EU for almost all Member States. This is confirmed by the results of the randomized survey in which 77% of the respondents agree that a positive change with regard to regulatory barriers would increase their level of cross-border activity, even without any change in the other barriers. Relatively speaking, large funds found local demand factors more important than small funds.

Targeted follow-up consultations of asset managers and industry representatives that were conducted after the public consultation, have confirmed that regulatory barriers are an important factor – and sometimes even a deciding factor – when determining their distribution strategy across the EU.

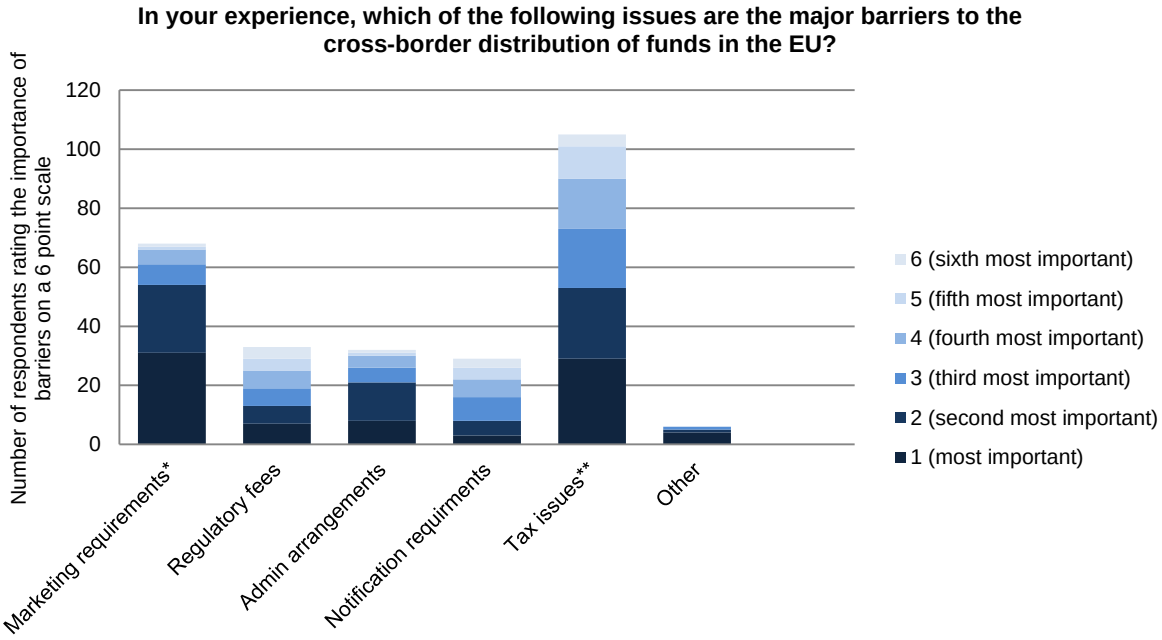
Figure 8- Feedback from stakeholders



Source: Open consultation, European Commission, 2016

The chart below (figure 9) provides an indication of the importance respondents to the open consultation attributed to each of the problem drivers identified in section 2.1. It suggests that marketing requirements and tax issues (out of scope) are the most important barriers to cross-border distribution according to respondents, followed by administrative requirements, regulatory fees and notification. However, these results should also be considered in light of strong feedback from these respondents that rather than any individual one of these problem drivers being the major difficulty, it is their cumulative effect that increases complexity and in doing so acts as a major barrier.

Figure 9 – Feedback from stakeholders



* Respondents could vote twice on marketing requirements; the average score was 1.9.
** Respondents could vote four times on tax issues; the average score was 2.7.

Source: Open consultation, European Commission, 2016

In order to confirm the feedback from the open and targeted consultations that regulatory barriers act as an important disincentive for asset managers to distribute their funds cross-border, a random stratified sampling was conducted among a sample of 60 funds (see annex 4 for details on the methodology). The asset managers of the selected funds were asked to answer a questionnaire with six questions on the importance of the various barriers to cross-border distribution of funds, including out of scope drivers. The responses received in the context of the stratified sampling[46] indicate that a large majority of asset managers feel that regulatory barriers hinder cross-border distribution. These responses also indicate that a large majority of managers would increase cross-border activity if regulatory barriers are reduced.

The statistical analysis of the impact of costs on cross-border distribution set out in Annex 11 also supports the hypothesis that costs have a negative effect on cross border distribution of funds. As there is only anecdotal evidence available on the overall compliance costs of cross-border entrance, the statistical analysis only considers direct regulatory fees. The results show that there is a limited but distinct negative effect on cross border distribution. The analysis furthermore shows that ongoing costs have a considerably stronger impact than one-off fees.

Based on the results of the analysis of regulatory fees it can be deduced that other costs arising on cross border entrance (search costs, legal fees etc.) will also have a significant effect. Given that stakeholders have indicated that regulatory fees are only a minor barrier to cross border distribution, this effect is likely to be larger than that of regulatory fees. Direct and indirect costs are therefore shown to hinder the growth rate of cross border distribution of funds thus lowering the potential increase in competition throughout the Member States.

[46] Due to the low response rate, the results of the stratified sampling are statistically not representative. The sample size of 60 investment funds was chosen to provide a confidence level of 90%. Responses are still informative given that we have an equal split between large funds and small funds.

Besides feedback from stakeholders and the statistical analysis confirming the bindingness of regulatory barriers as a disincentive for cross-border distribution, a quantification of the costs asset managers incur for marketing cross-border also provides an indication of the magnitude of the problem. Figure 10 (below) shows the average costs for two types of asset managers: Scenario A describes an asset mangement company relying on in-house legal advice and in-house fund administration, whereas Scenario B shows an asset management company outsourcing legal advice and fund administration to third parties. More details on the costs and the methodology used for calculating them can be found in Annex 12.

Figure10

Type of cost	**One-off (per fund and host jurisdiction)**	**Ongoing (per fund and host jurisdiction)**
Compliance costs: external (legal) services for determining: • **marketing requirements** • **administrative requirements** • **notification requirements** • **regulatory fees**	Scenario A : €4,297 Scenario B: €8,150	Scenario A: €1,146 Scenario B: €6,983
Compliance costs: external services for local facilities	€ 4,930	€ 4,930
Charges: regulatory fees	€ 1819	€ 2194
TOTAL per fund	Scenario A: €11,046 Scenario B: €14,899	Scenario A: €8,270 Scenario B: €14,107
TOTAL for all cross-border funds[47]	Scenario A: € 679 million Scenario B: €916 million	Scenario A: € 508 million Scenario B: €867 million
Estimated Costs as % of overall fund expenses (*)	1-4 % in total	

(*) According to estimates provided by a number of industry associations in response to the open consultation, the different regulatory barriers sum up to total costs between 1 and 4% of the overall fund expenses[48]. Anecdotal evidence provided in response to the open consultation, also indicated that for a single asset manager total costs linked to national requirements can correspond to 2 basis points (0.02%) of its reported AuM[49].A recent study by Morningstar of the fees charged by investment funds found that the average asset-weighted expense ratio for the full European fund universe was 1% (of AuM) in 2016.[50]

Applying these industry estimations to the €4.19 trillion AuM held by cross-border investment funds[51] implies fund expenses of circa €41.9 billion, with regulatory barriers costing somewhere between €419 million to €1.67 billion. This corresponds with the range

[47] Source: PwC, Benchmark your Global Fund Distribution, March 2017. The total costs for all cross-border funds is calculated by using the total number of cross-border funds registered in at least two Member States besides its fund domicile (11,380) and the average number of EU host jurisdictions (5.4) a cross-border fund is registered for sale.

[48] This figure applies to funds using the expense model, as there is direct impact of costs on the Total Expense Ratio of the fund. The alternative model, i.e. all-in fee model, is also negatively affected by the barriers.

[49] This figure was calculated by a big European asset manager with over €1,000 billion AuM.

[50] Morningstar Research Paper, "European Fund Expenses Are Decreasing in Percentage", August 2016.

[51] Source: EFAMA Fact Book 2017.

estimated in the cost calculations in figure 10, which is based on detailed anecdotal evidence provided by asset managers and private companies through targeted consultations.

2.3. Consequences

The problems described in the section above lead to disincentives for asset managers to distribute funds on a cross-border basis[52]. As a consequence, and despite a trend towards further integration, the European market for investment funds is still a fragmented market with less competition than one would expect in a fully functioning single market. Ultimately, this leads to less investment opportunities for investors in the EU. This section provides a description of these consequences, first by exploring more in-depth the current cross-border distribution of funds (building on section 1.2), and second by estimating the lost potential for the single market and ultimately investors.

To get a better indication of current cross-border distribution of investment funds, it is necessary to consider cross-border distribution from two perspectives:

- Assets under management held by cross-border funds provide the magnitude of investments in these funds compared to domestic funds.
- The number of funds marketed cross-border gives an indication of choice available to investors.

Assets under management – As illustrated in figure 5 in section 1.2, by the end of 2016, the proportion of AuM held in funds registered for sale in at least two other Member States other than their fund domicile was 30% of the total AuM of investment funds in the EU.[53] This had grown from 20% by the end of 2006. These figures indicate that – although the AuM in cross-border funds has grown – the EU investment fund market is still predominantly domestic.

Although a complete overview of the proportion of AuM held by cross-border funds in each (domestic) market is not available, data from EFAMA[54] provides some indication of this. Available data shows that in most Member States the market share of cross-border funds in terms of AuM seems to lie somewhere between 5 and 25%, with some outliers – like Italy – where the market share of cross-border funds is 67%. It should be noted that this data included round-trip funds; hence the market share of true cross-border funds will be overrepresented in most Member States.

Number of funds – Various sources provide indications of the number of funds distributed cross-border. As already included in section 1.2 (see figure 6), Morningstar data indicated that the proportion of UCITS funds that are registered for sale in at least three Member States is 37% (which excludes round trip funds). The proportion of AIFs that are registered for sale in at least three Member States is 3%.

Recent statistical data collected by ESMA from national competent authorities[55] (see Annex 8), indicates that on average, only 22% of UCITS domiciled in a Member State are marketed in other Member States (median 16%). However, large differences can be observed between Member States. While in Luxembourg (85%) of the UCITS domiciled there were marketed in other Member States, this percentage is significantly lower for all other Member

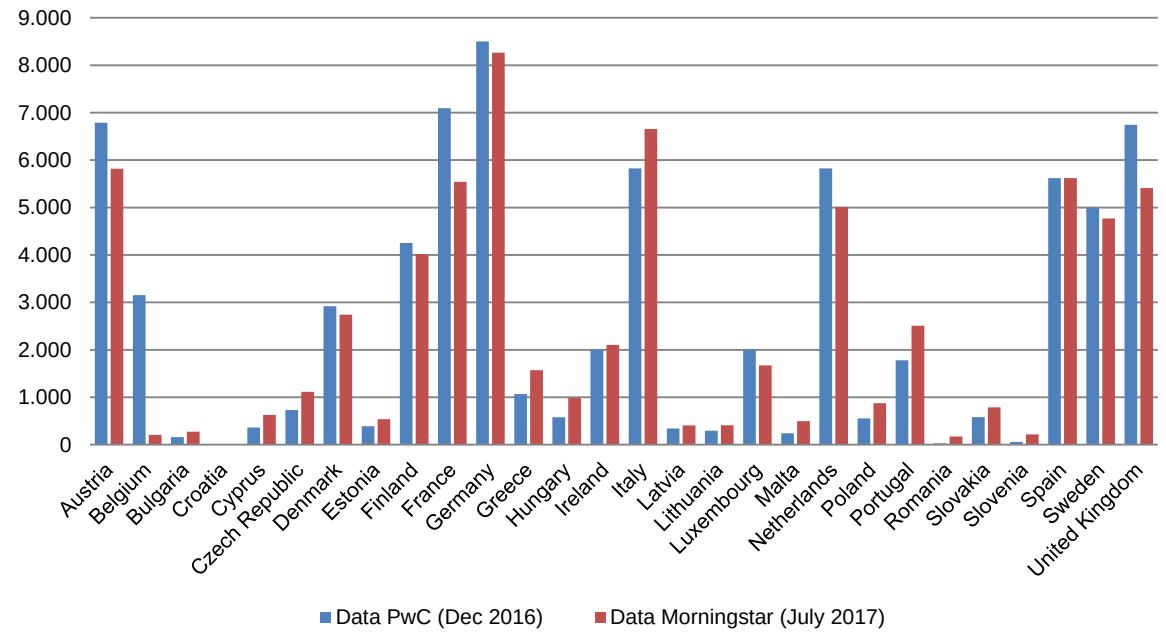
[52] Besides these disincentives it needs to be recognised that managers have less incentives to distribute funds, in Member States with limited demand, which is (partially) covered by section 2.1.5 on out of scope drivers.
[53] EFAMA Fact Book 2017
[54] EFAMA Fact Book 2017, Section Country Reports.
[55] ESMA, Notification frameworks and home-host responsibilities under UCITS and AIFMD - ESMA Thematic Study among National Competent Authorities, 7 April 2017.

States. For example, in Germany this was only 5%. In terms of numbers of UCITS, in only six Member States more than 100 of the funds domiciled there were marketed cross-border. Five Member States reported that none of the UCITS domiciled in their territory were marketed on a cross-border basis. Differences between the data from ESMA and Morningstar can be explained by the fact that not all competent authorities contributed statistical data to ESMA, including Ireland – which is the second largest domicile for UCITS.

Furthermore, data reported by national competent authorities to ESMA seems to confirm data from Morningstar that uptake of the AIFMD marketing passport is significantly lower as compared to UCITS, with only three Member States reporting numbers of more than 100 AIFs marketed on a cross-border basis and 11 Member States stating that less than 10 AIFs domiciled in their jurisdiction were marketed across the border.

The **distribution of cross-border funds into individual Member States** can also be considered as an indication that the single market is not functioning optimally, with some Member States receiving relatively few cross-border funds. Figure 11, which collates data from two different sources, illustrates that while in several Member States a high number of cross-border fund are registered for sale, in most Member States that number is (relatively) low.

Figure 11– Number of cross-border registrations, funds sold into a Member State (per Member State)



Source: PwC, Benchmark your Global Fund Distribution – March 2017, Morningstar database – July 2017

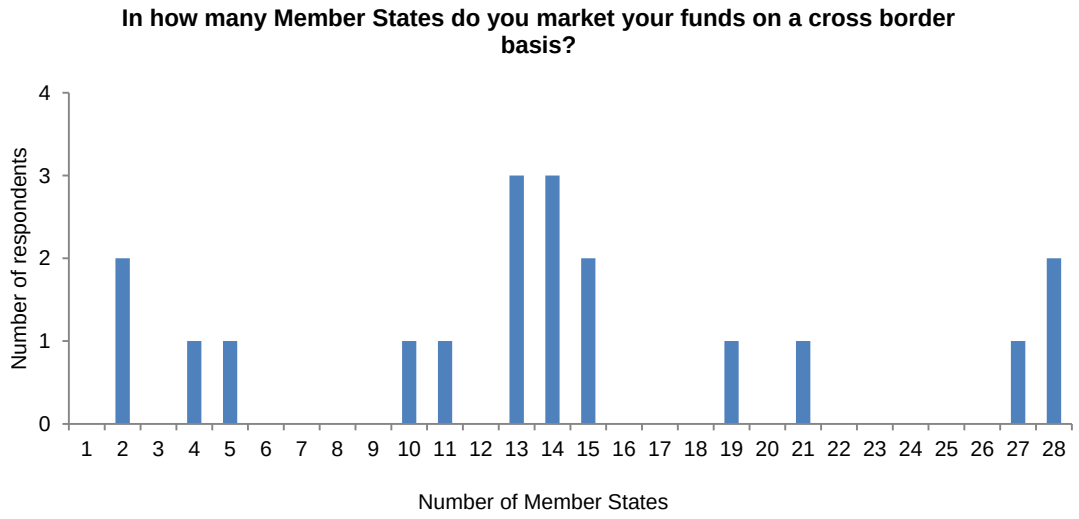
Estimates made from EFAMA data (Annex 7[56]) suggest that the proportion of cross-border funds registered for sale in Member States compared to domestic funds (market penetration rate), strongly vary, e.g. 12% in Spain, 19% in Belgium and 76% in Hungary. However, in practice, these figures are likely to over-represent the proportion of non-domestic funds, due to the inclusion of round-trip funds.

The open consultation also provides an indication of distribution across the EU – albeit anecdotal given the sample size, showing that managers choose not to market their funds in all Member States, with only 3 managers (15% of those responding) choosing to market in 27

[56] This annex also includes data from Morningstar.

or 28 Member States, and with the majority of managers marketing in half or fewer Member States (see figure 12).

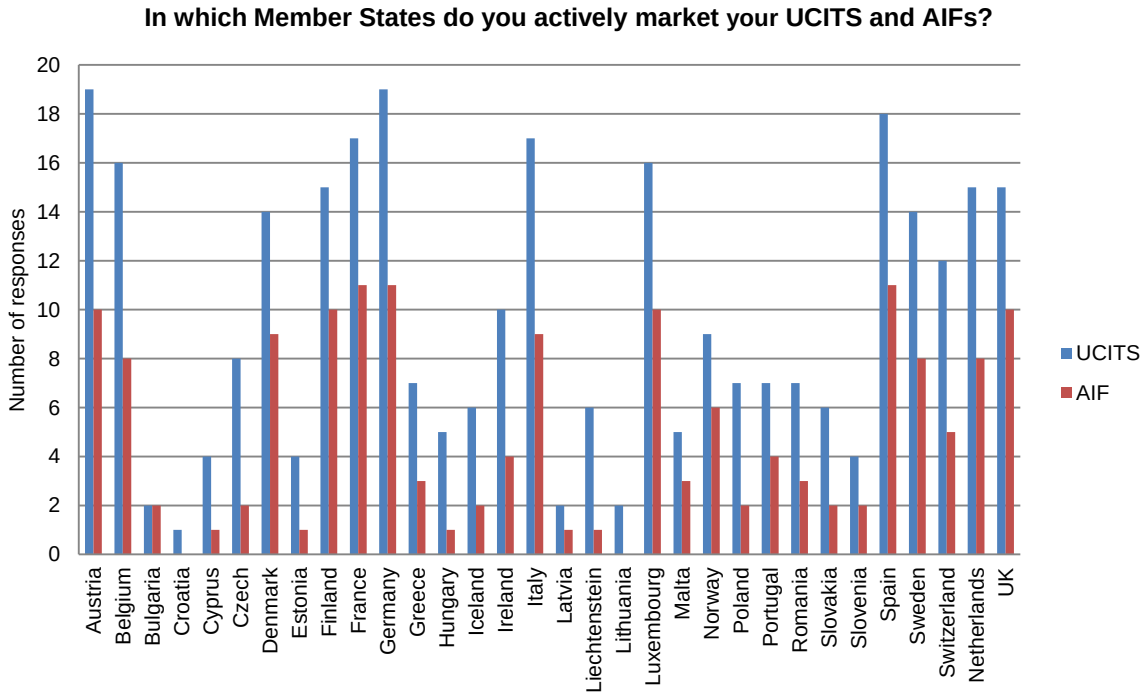
Figure 12 – Feedback from stakeholders



Source: Open consultation, European Commission, 2016

Results from the open consultation also suggest that the Member States where fund managers do not market at all tend to be smaller; and these markets are possibly characterised by a lack of demand. There is a marked difference in distribution; while 19 of the managers responding market to Germany, only 2 market to Latvia and Lithuania, for example (see figure 13).

Figure 13 – Feedback from stakeholders



Source: Open consultation, European Commission, 2016

In a fully functioning single market, it could be expected that a large majority of managers would distribute their funds without unnecessary cost across the EU. Current arrangements

clearly fall short of this. Increased distribution of cross-border funds has the potential to decrease the fragmentation of the market for EU funds, to increase competition in the national markets through new entries and to improve investment opportunities for investors in the EU. For a market to be competitive, new entry should take place and the entry should affect the behavior of incumbents and the economic setting in which they compete.

Economic research[57] shows that new entry impacts incumbents through price and quantity competition, with the effect of new funds entering depending on competition intensity in the market.[58] Incumbents facing high competitive intensity engage in price competition by reducing management fees.

It should be noted that this research also concludes that investors did not benefit from the price competition in terms of lower fees as the lower management fees were offset by an increase in distribution fees. However, where funds enter the market and face low levels of competition for incumbents, investors still profit from increased diversification opportunities.[59] This is particularly the case for the smaller markets that currently benefit less from the cross-border distribution of funds.

Evidence provided in a recent analysis by Deloitte[60] in the context of a study on the retail distribution channels in the EU, indeed suggests that fees are higher in markets that are underserved by asset managers. For example, in Estonia, where only 1,918 investment funds are available, the average fee is 2.72%, while in France - where 39,822 investment funds are available – the average fee is 1.59. It is possible that the differences in fees may be partly due to a lack of competitive pressure where markets are underserved by cross-border funds, though there are of course other significant differences between jurisdictions that could explain some of the divergence in fees.

In order to estimate the lost potential for the single market due to regulatory barriers to cross-border distribution, an economic analysis was conducted. Even small increases in the growth rate of cross-border funds potentially have a significant effect on the total number of funds marketed over the course of several years. This will increase the choice for investors and will have positive effects on the level of competition, which will in turn put pressure on the fees charged by investment funds.

Figure 14 shows the impact of increased growth rates of cross-border UCITS funds in terms of total number of UCITS funds marketed across the EU for 4 different scenarios (for a 1%, 3%, 5% and 10% increased growth rate). The baseline in the graph depicts the development under the assumption that the current 5-year average growth rate in each Member State is maintained. Meanwhile, the box plots indicate the strong dispersion across Member States given that average 5-year growth rates vary considerably (from 1.55% in Slovakia to 11.75% in the United Kingdom).

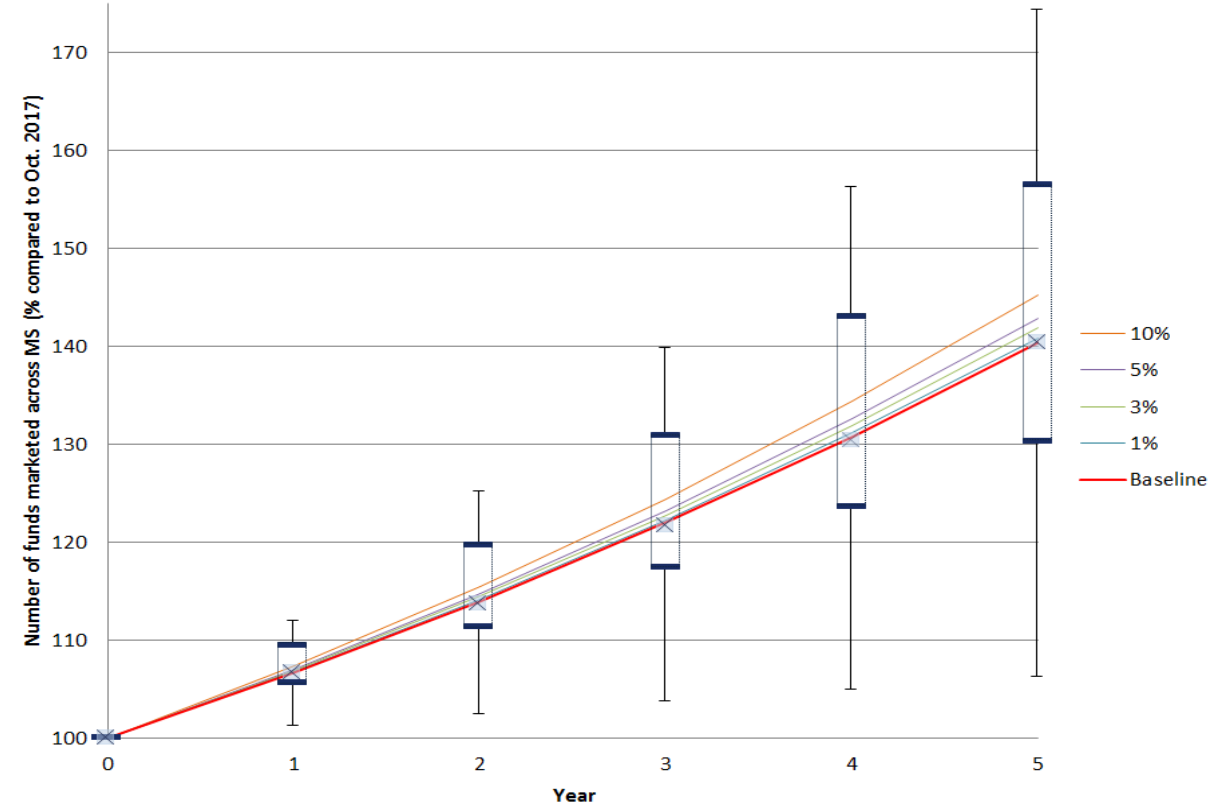
[57] Wahal, S., & Wang, A. Y. (2011). Competition among mutual funds. Journal of Financial Economics, 99(1), 40-59.

[58] The overlap in portfolio holdings is used as a measure of competitive intensity. The effect also depends on the extent that market entry is profitable: it was only documented in the US market after the 1990 when the US fund market became more saturated and the competition with incumbents for revenues and inputs intensified.

[59] This does only refer to the supply of non-overlapping investment opportunities. Retail investors are known to hold under diversified portfolios (see e.g. Goetzmann, W. N., & Kumar, A. (2008). Equity portfolio diversification. Review of Finance, 433-463).

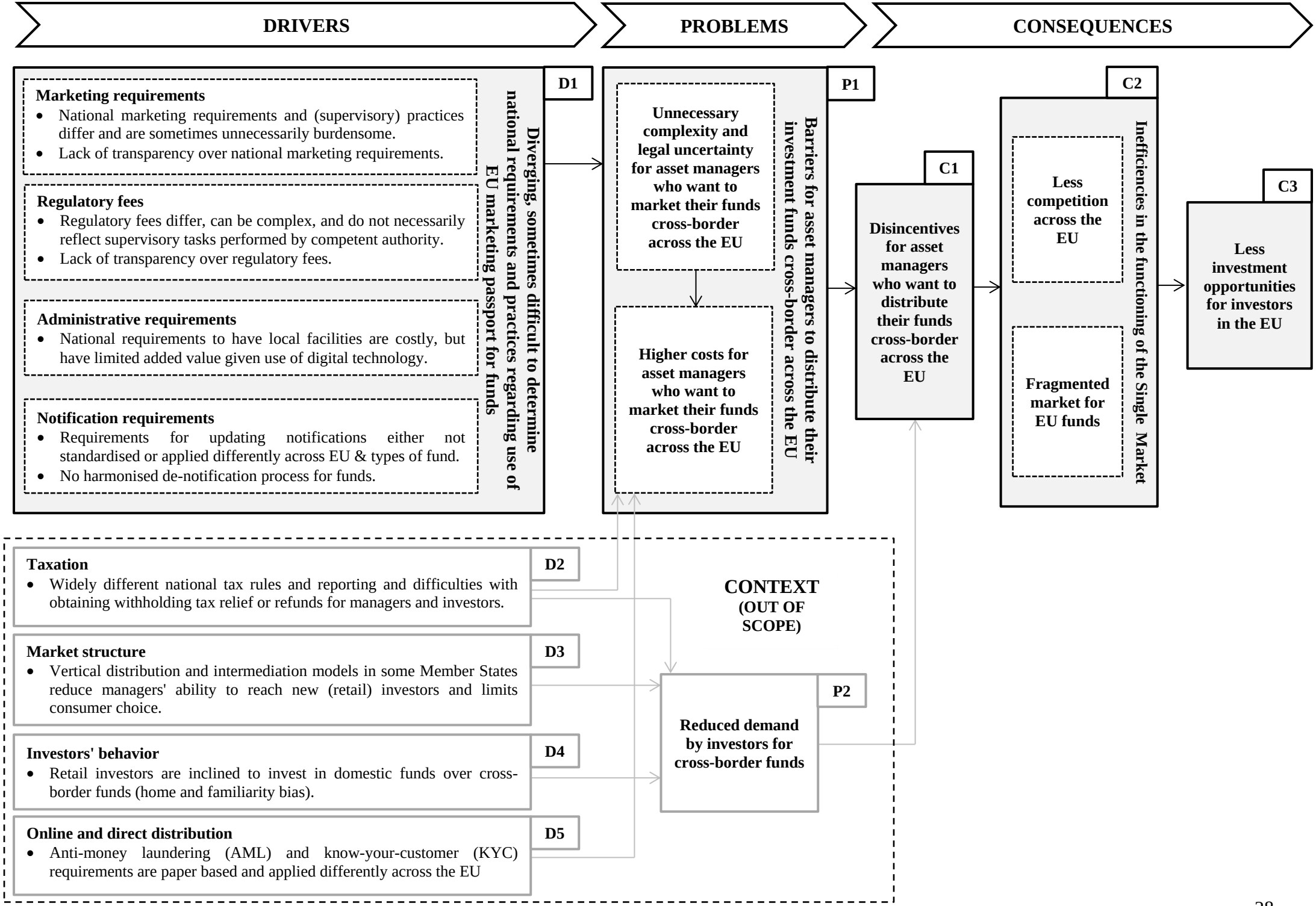
[60] Source: Deloitte Luxembourg

Figure 14 – Different scenarios of increased cross-border growth rates



Source: Morningstar data (Oct. 2017), EC calculations

A comparison between the baseline and the different scenarios demonstrates that even a 1% increase in the growth rate of cross-border funds will lead to a 0.5% increase in the total number of UCITS funds marketed across MS over the course of 5 years (this implies that 487 additional funds would be offered). This effect becomes increasingly more pronounced as the increase in the growth rate rises. A 10% increase, for example, would lead to 4,944 additional UCITS funds marketed over the same time period. This demonstrates that there is a significant lost potential in terms of competition associated with a lower growth of cross-border funds. The sooner the growth rate is boosted the sooner investors would benefit from the effects of increased competition.


DRIVERS
PROBLEMS
CONSEQUENCES
D1
Diverging, sometimes difficult to determine national requirements and practices regarding use of EU marketing passport for funds
Marketing requirements
National marketing requirements and (supervisory) practices differ and are sometimes unnecessarily burdensome.
Lack of transparency over national marketing requirements.
Regulatory fees
Regulatory fees differ, can be complex, and do not necessarily reflect supervisory tasks performed by competent authority.
Lack of transparency over regulatory fees.
Administrative requirements
National requirements to have local facilities are costly, but have limited added value given use of digital technology.
Notification requirements
Requirements for updating notifications either not standardised or applied differently across EU & types of fund.
No harmonised de-notification process for funds.
P1
Barriers for asset managers to distribute their investment funds cross-border across the EU
Unnecessary complexity and legal uncertainty for asset managers who want to market their funds cross-border across the EU
Higher costs for asset managers who want to market their funds cross-border across the EU
C1
Disincentives for asset managers who want to distribute their funds cross-border across the EU
C2
Inefficiencies in the functioning of the Single Market
Less competition across the EU
Fragmented market for EU funds
C3
Less investment opportunities for investors in the EU
CONTEXT (OUT OF SCOPE)
D2
Taxation
Widely different national tax rules and reporting and difficulties with obtaining withholding tax relief or refunds for managers and investors.
D3
Market structure
Vertical distribution and intermediation models in some Member States reduce managers' ability to reach new (retail) investors and limits consumer choice.
D4
Investors' behavior
Retail investors are inclined to invest in domestic funds over cross-border funds (home and familiarity bias).
D5
Online and direct distribution
Anti-money laundering (AML) and know-your-customer (KYC) requirements are paper based and applied differently across the EU
P2
Reduced demand by investors for cross-border funds

2.4. Groups affected by the problem

Both providers of and investors in investment funds are affected by the remaining difficulties managers face in distributing funds cross-border:

Investors across the EU might not be offered attractive investment opportunities that would be available to them in a fully functioning single market. While the data on cross-border distribution provides evidence that cross-border funds are available across the EU, the relatively low level of investment in these funds suggests that retail investors are not able or willing to fully exploit this opportunity. This could be due to a number of factors, including both in- and out-of-scope drivers such as a preference for domestic products (home/familiarity bias) or to the funds that are marketed cross-border being insufficiently competitive or attractive. Retail investors are particularly affected, as the choice available to them is more limited, and it is likely that they will respond by either investing in the funds easily available to them through distributor networks, or choose to invest in other types of assets, for example bank deposits. Professional investors are better able to access a wide range of investment opportunities: rules regarding marketing to them are less strict, and they generally have the resources to seek out suitable investments or even request the creation of tailor-made products. However, it is likely that they will also be disadvantaged by the barriers, which imply that the offer is lower than it would be in a fully functioning single market.

Asset managers facing a significant incremental cost in marketing to more Member States have reported that they instead choose to limit distribution of their funds where they can be confident there is sufficient demand. In doing so, they lose the opportunity to test new markets and further grow their funds. Responses to the consultation show relatively few managers marketing to 27 or 28 Member States (3 out of 19 managers), with many choosing to market to roughly half this number or even fewer.

National Competent Authorities and ESMA are also affected by the problem as the rules applicable in each Member State differ and this could create difficulties to ensure a level playing field across the EU.

2.5. Baseline scenario

The baseline scenario is that no policy action would be taken with regard to regulatory barriers to cross-border distribution.

Not addressing these regulatory requirements would mean that there will continue to be notable regulatory barriers to the cross-border distribution of funds, lagging behind the development of a fully competitive single market for investment funds. In the absence of any policy action in this area, national requirements would remain unaligned and at times difficult to determine, with associated costs borne by managers or (investors in) the funds. In detail this would mean that:

- marketing requirements would remain unaligned, and in some case difficult to find, requiring expensive legal advice to interpret. There are no indications that this legal advice would become cheaper;
- administrative requirements, including the mandatory use of local facilities, would remain in place in many Member States;
- regulatory fees would remain divergent and difficult to determine.
- notification procedures and requirements would remain unaligned and a procedure for de-registering funds is likely to be absent in some Member States.

In a static version of the baseline scenario, costs for cross-border distribution are unlikely to diminish. These would continue to act as a disincentive to distribution. Although in this scenario no policy action with respect to regulatory barriers would be taken, a slow increase in the development of cross-border distribution could still be expected. This is due to the fact that both the AuM and the number of cross-border investment funds has shown a steady increase over the years – as illustrated in figures 5 and 6 – despite the barriers to cross-border distribution. However, fund managers and investors would not to be able to benefit from a fully functioning single market. Fund managers would not compete as efficiently as they would in case of a fully integrated market for investment funds. Evidence in economic research[61] suggests that selling a fund in 7 countries instead of only one country increases the total expense ratio by almost 30 basis points. Other research[62] suggests that funds that do not engage in the optimal level of cross-border distribution are losing out on the possibility of attracting net flows and related fees from other national markets. This in turn would affect a fund's growth and its ability to reach its optimal scale in order to maximise benefits stemming from economies of scale. From an investor perspective, this research also shows that incumbent funds faced with competition from new funds that hold similar portfolios, decrease their management fees, suggesting that pre-entrance fees were possibly too high. In addition, incumbent funds lose inflow from investors, indicating that these new funds are attractive to investors.

When taking a dynamic perspective regarding the baseline scenario, other factors need to be taken into account. These other factors, which correspond to the out-of-scope drivers described in section 2.1.5., are independent from regulatory barriers and limit the cross-border distribution of investment funds. Although these factors are not expected to change substantially in the short-term, there are several initiatives and developments, which can have an impact on these factors. In turn, this is expected to have an indirect, but moderately positive impact on cross-border distribution of funds. However, a definite assessment of the impact of these initiatives is not possible, as they are linked to ongoing developments or legislation which has not yet entered into force or has not yet been implemented. These initiatives are described below.

The growth of FinTech may lead to some greater opportunities for cross-border distribution, including through direct distribution. Development of online platforms, together with other reforms such as eIDAS[63], will allow funds to be marketed more easily online or directly to retail investors, including on a cross-border basis. Growing cultural acceptance of online purchases – currently patchy – could well support this. Since increasing amounts of retail services and products are offered and marketed online, the physical location of providers and distributors should become somewhat less prominent. Furthermore, online and direct distribution are less affected by home bias and consequently put national and EU funds on a more equal footing than the traditional market structure and long established distribution channels do.

However, the European financial services market still remains clearly fragmented by national borders, especially in retail services. The sale of financial services differs from other products given that trust in the financial service provider is an important determinant: providers with low trust have difficulties selling products with certain levels of risk.[64] The success of online

[61] Lang, G. (2016). Macro Attractiveness and Micro Decisions in the Mutual Fund Industry: Springer.
[62] Wahal & Wang, (2011).
[63] Electronic identification and trust services for electronic transactions in the internal market.
[64] Cox, P. (2007). Should a financial service provider care about trust? An empirical study of retail saving and investment allocations. Journal of Financial Services Marketing, 12(1), 75-87.

financial services will thus depend partly on how trust can be established in online relationships relative to face-to-face sales. Customer surveys have shown, for example, that factors such as branch proximity still play a key role in customers' decision of bank providers[65]. While there is certainly a trend towards an increasing use of online distribution channels, especially for transaction activities[66], branches and other forms of face-to-face and voice-to-voice channels are likely to maintain an important role for sales-and-advice interactions[67]. These sales and advice interactions are crucial for the effective marketing of funds. How quickly and to what extent this will change will crucially depend on the quality and costs of internet based services and especially consumer trust.

Other measures addressing the incentives to market cross-border may have a positive impact in supporting wider distribution, for example:

- The limited ban on inducements being introduced through MiFID II could contribute to opening up vertical distribution structures, allowing for a wider distribution of investment funds and supporting investors' in exercising greater choice.
- Along the same lines, national legislative changes, for example the UK's and Netherlands' ban on inducements, could also support this aim.
- Key Information Documents (KID) for packaged retail and insurance based investment products (PRIIPs) will improve transparency and comparability in particular regarding costs linked with different investment products, including transaction costs. This should have a positive impact on investor's confidence in packaged investment products, including investment funds and help them to take better informed investment decisions. The KID should also help cost-efficient products to better compete in the markets.

ESAs review: The Commission proposal for the ESAs review foresees a more integrated EU supervisory framework to foster the Capital Markets Union and financial integration. If financial activities are regulated and supervised more consistently across all Member States, it can be expected that cross-border activities can be conducted more easily. Providers of financial products will benefit from a level playing field across the single market and service providers may expand their product offerings and benefit from economies of scale. Users of financial products and services – consumers as well as business – may benefit from a wider choice without concerns about consumer protection or market integrity. Additionally, direct supervision powers for ESMA with respect to EuVECA, EuSEF and ELTIF funds are foreseen. A more integrated EU supervisory framework has the potential to reduce regulatory differences between Member and increase cross-border activities, including the cross-border distribution of investment funds,.

WHT relief principles: The European Commission, helped by national tax experts, has recently developed a code of conduct on more efficient WHT relief and refund principles as part of the CMU Action Plan. Once implemented, the code of conduct will address the longstanding problems of long delays and high costs faced by investors seeking to claim withholding tax refunds. This would help avoiding double taxation, making it easier and more attractive for investors to make cross-border investments, including in investment funds.

[65] BCG customer centricity study 2011shows that proximity still drives about 30% of new customers acquisition in retail banking (FR- 28%, DE – 39%, UK – 26%)

[66] Some studies estimates that up to 66% of retail transaction activity of banks will be carried out via online channels in 2020 - https://www.bcgperspectives.com/content/articles/financial_institutions_sales_channels_distribution_2020/?chapter=2

[67] Idem. – The study estimates that around 60% of sales-and-advice interactions will still be handled via frontline face-to-face and voice-to-voice channels in 2020.

The UK's withdrawal from the EU will have an impact on the EU investment fund market; many managers are located in the UK and it also has a large investor base. If the UK leaves the single market, then the single market for investment funds will become smaller, even allowing for some restructuring and relocation of fund managers to remain within the EU. These changes accentuate the need to ensure that the single market for funds operates as effectively and efficiently as possible.

To sum up, given experience to-date and work to address the broader market for investment products, it is likely that in the baseline scenario cross-border distribution of funds will continue to increase, but only moderately within a European Union of 27 Member States.

2.6. Evaluation

A back-to-back evaluation of the provisions affected by the initiative was conducted for the purpose of this impact assessment and can be found in Annex 5. The evaluation focuses on the rules on cross-border distribution of investment funds and provides an assessment of the UCITS and AIFMD Directives, focusing on the potential factors that may have prevented the wider distribution of the funds as compared to the level one could expect in a fully functioning single market. The evaluation does not constitute a full review of the two Directives, as both the UCITS and AIFM Directive will be subject to an overall review in the near future[68].

3. THE EU'S RIGHT TO ACT AND JUSTIFICATION

Article 114 of the Treaty on the Functioning of the European Union (TFEU) confers to the European institutions the competence to lay down appropriate provisions that have as their objective the establishment and functioning of the single market. The problem that the initiative under consideration aims to address is directly related to the use of the marketing passport for investment funds as provided for in existing EU rules, and as such, concerns the functioning of the single market. Without solving the problem, the objectives of the UCITS and AIFM Directives cannot be achieved efficiently.

Action at EU level is appropriate to address the identified problem, as feedback from the consultations clearly indicates that national implementation of UCITS and AIFM Directives resulted in differing interpretations of the rules applicable to the use of the marketing passports under these two Directives. In addition, the randomized survey revealed that on average 96% of the respondent were in favor of increased transparancy or increased harmonizaiton at the EU-level.[69]

As the problem relates directly to the application of European and national legislation and (supervisory) practices by Member States, other approaches that focus on (voluntarily) changing behaviour or practices of market participants would not solve the problem. Although Member States have the ability to address the problem by (voluntarily) amending national legislation or practices[70], uniformity and legal certainty regarding the use of the passport can

[68] This has also been described in section 1.1 of this impact assessment.

[69] Respondents were asked to indicate whether they would favour increased transparency at the national level, at the EU-level or increased harmonization at the EU level to address the identified issued with marketing rules, regulatory fees, the notification process and local agents. Range of the answers in support of increased transparency or harmonization was between 92%-100%.

[70] Member States have exchanged views on barriers to cross-border distribution of investment funds in the context of the Expert Group on barriers to free movement of capital. In March 2017 the Commission adopted a report looking at how to tackle national barriers with a view to fostering the flow of cross-border investments in

be better ensured by taking action on EU level. Furthermore, previous efforts to converge national (supervisory) practices in this area through ESMA have not succeeded to address the identified problem.

Therefore, addressing the remaining barriers to cross-border distribution of investment funds across the EU can be most efficiently achieved at EU level in accordance with the principle of subsidiarity as set out in Article 5 of the TFEU. Finally, to address (parts of) the problem it might be necessary to amend existing EU legislation, which requires action at EU level.

This is being pursued now on a stand-alone basis, prior to the overall reviewos of the AIFM and UCITS Directives, because for both reviews there is not enough evidence to be able to decide at this point whether any further legislative changes would be merited. The Commission has just started the overall review of the AIFMD. The review started with a tender for an external study on the functioning of the Directive, which was awarded to a contractor in September 2017. An overall review of the UCITS Directive may take place once enough experience is gained with the practical application of elements introduced with the most recent amendments to the Directive.

4. OBJECTIVES

The **general policy objective** of the initiative under consideration is to increase investment opportunities for investors in the EU by removing inefficiencies in the functioning of the single market for investment funds.

This general objective translates into the following **specific policy objectives:**

- removing unnecessary complexity and burdensome requirements regarding cross-border distribution of investment funds across the EU (S1);
- improving transparency of national requirements and practices regarding cross-border distribution of investment funds across the EU (S2); and
- safeguarding investor protection[71] (S3).

Problem	**Problem drivers**	**S1**	**S2**	**S3**
Barriers for asset managers to distribute their funds cross-border across the EU	Marketing requirements	Yes	Yes	Yes
	Regulatory fees	Yes	Yes	No
	Administrative requirements	Yes	No	Yes
	Notification requirements	Yes	Yes	Yes

The objectives of the initiative are consistent with other EU policies and initiatives – most notably CMU – that aim to strengthen Europe's economy and encourage investment in all 28 Member States. The objective also reflects the EU's commitment to complete the single market (Articles 4(2)(a), 26, 27, 114 and 115 of the Treaty on the Functioning of the European Union (TFEU).

the EU. The exchange of views of the Expert Group has, where relevant, been taken into account in this impact assessment.

[71] Safeguarding investor protection is added to the objectives which derive from the problem tree, as the goal is to maintain the original objectives of UCITS and AIFM Directives.

The EU is committed to high standards of protection of fundamental rights as laid down in the Charter of Fundamental Rights of the EU. The objectives of this initiative are not likely to have an impact on fundamental rights of EU and non-EU citizens, and as such are consistent with EU policy.

5. POLICY OPTIONS AND ANALYSIS OF IMPACT

5.1. Methodology

This chapter describes and assesses the policy options identified to address the following areas:

- Differing national marketing requirements
- Lack of transparency regarding national requirements (concerning national marketing requirements and regulatory fees)
- Complexity of regulatory fees
- Administrative requirements (local facilities)
- Notification requirements

These areas correspond to the problem drivers identified in section 2, with the exception of the area on the lack transparency. This area has been created to provide more clarity and ease the comparison of options and groups together the lack of transparency regarding national marketing requirements and the lack of transparency regarding regulatory fees.

The problem drivers that have been identified are separately related to different requirements imposed by the UCITS and AIFM Directives and can therefore be addressed independently from each other. There is also no interdependence between the various options presented below, as each can have an effect on its own. For this reason, policy options are presented in each area in a detailed manner in order to provide a clear picture of which solutions have been considered and why certain solutions have been discarded. Nonetheless, the presented policy options correspond with three possible approaches to address the problems identified in this Impact Assessment: (1) transparency on national level, (2) transparency on EU level, and (3) harmonisation of national rules.

In each area, options are described, their impact on stakeholders analysed, and compared for their effectiveness and efficiency with the 'do nothing' option[72] in meeting the specific objectives. The coherence with existing measures is analysed, and an explanation on whether the options conforms to the principles of subsidiarity and proportionality is provided. Finally, preferred options are identified. The preferred options specifically respond to the problem drivers. It is important to note that there is no one size fits all approach: for some problem drivers the solution might be to increase transparency at national level, for others to increase transparency at European level, and finally for others more harmonisation might be identified as the best way forward.

The set of preferred policy options is presented in chapter 6.

[72] The following schema is used: 0 (baseline scenario, no policy change), ++ (strongly positive contribution), + (positive contribution), -- (strongly negative contribution), - (negative contribution), ≈ (marginal/neutral contribution), ? (uncertain contribution), n.a. (not applicable) and 0 (neutral contribution).

5.2. Options addressing differences regarding national marketing requirements

5.2.1. Description and assessment of the options

The following options were considered:

Policy option	Description
1. No policy action	Baseline scenario applies. In specific, leave MS flexibility to interpret the definition of marketing and maintain detailed differing requirements regarding the marketing materials and their approval process.
2. Define pre-marketing	Introduce the concept of pre-marketing for AIFs.
3. Define reverse solicitation	Introduce a definition of reverse solicitation for AIFs.
4. Harmonise requirements and supervision process for marketing materials	Complement high-level principles and ask ESMA to develop common detailed marketing requirements. Frame the supervision process of marketing material.

Options 2, 3 and 4 can exist on their own, but can also be combined.

Option 1: No policy action

Under this option, the baseline scenario, the definition of marketing in the AIFMD would remain and not be complemented by a negative definition (i.e. of what does not constitute marketing).

Option 1 means that uncertainty would remain for asset managers and practices among Member States would still diverge. In addition, no improvement would be achieved in terms of harmonisation of the requirements for marketing materials and their checking/examination by competent authorities.

Option 2: Define pre-marketing under the AIFMD

Option 2 would define the concept of pre-marketing for AIFs, relating to professional investors. Such a negative definition of what does not constitute marketing would complement the positive definition of marketing already provided in the AIFMD.

This option would provide for legal certainty under which circumstances contacts with potential investors are not treated as marketing. It would harmonise the practises across the EU on pre-marketing of AIFs, including EuVECA and EuSEF, which would reduce complexity. Pre-marketing is already used by asset managers in some Member States in order to test the appetite of the market (i.e. potential investors) regarding a specific strategy. A harmonised definition would allow asset managers to develop products where a demand exists, and save costs for complying with regulatory requirements as long as the decision whether to market a product has not yet been taken.

The concept should be limited to professional investors in order not to endanger retail investor protection. It should be made clear that pre-marketing can only be followed by marketing (or no offering of the product), i.e. any future subscription on the basis of final documents by the potential investor contacted in the framework of a pre-marketing activity will be considered as marketing.

As compared to Option 1, Option 2 would remove burdensome requirements as long as the decision whether to market a product has not yet been taken. Option 2 would benefit asset managers as it increases transparency as to situations covered by pre-marketing and lowers burden for asset managers in the pre-marketing phase. This option would not undermine investor protection, especially for retail investors, as the pre-marketing is limited to AIFs and to professional investors. In addition, pre-marketing could be beneficial for the investors as

they would benefit from better targeted products that might be more appropriate to their needs.

Option 3: Define reverse solicitation under the AIFMD

Option 3 would introduce the concept of reverse solicitation in the AIFMD. Reverse solicitation covers situations where passive marketing takes place, in other words where a professional investor contacts the manager regarding a specific product on his own initiative. Recital 70 of AIFMD recognizes that professional investors may invest in AIFs on their own initiative, but given no further guidance. Accordingly, the current frameworks do not prohibit investors to buy or to invest in a product on their own initiative[73].

In the absence of a harmonised definition, the practice differs from one Member State to another[74].A harmonised definition of reverse solicitation would clarify this concept and specify that reverse solicitation falls outside the scope of marketing.

Contrary to Option 1, Option 3 would potentially allow professional investors access to funds which are currently not being marketed to them, if they are in a Member State which does not currently recognise the practice. However, there is also risk of a loss of investor protection as funds sold in this way would be considered outside of AIFMD, with the non-application of EU marketing rules. This could constitute a way to circumvent the AIFM Directives and this might put at risk the efficiency of EU legislation.

Option 4: Further harmonise requirements and supervisory practices for marketing materials

Under this option the process of checking UCITS marketing material and the requirements on marketing materials would be further harmonised. As to the requirements on marketing material, the principle of a clear, fair and non-misleading presentation would be further strengthened.

According to Recital 64 to the UCITS Directive, control of compliance of marketing arrangements with applicable rules of host Member State can be performed after the UCITS has accessed the market of that Member State. The Recital explains the host Member State can verify whether the marketing communications are fair, clear and not misleading before the UCITS use them, provided such control is non-discriminatory and not preventing that UCITS from accessing the market: the verification of marketing communications may not constitute a precondition for the offer of UCITS. Competent authorities which verify marketing communications, prior to them being used, undertake this activity as part of their investor protection, and in particular retail investor protection, mission. Investors' associations are also in favour of such checks.[75] Against this background, option 4 foresee that any Member State can require automatic notifications of marketing communications by domestic UCITS as well as UCITS from other Member States intending to be marketed in their territory to the competent authority. Competent authorities that choose to use such option would need to ensure, in their policies or internal rules and procedures, a transparent and non-discriminatory treatment of all UCITS regardless of their origin, i.e. in particular not preventing non-domestic UCITS from accessing the market. This option would also introduce a reasonable timeframe for assessing notified marketing communications. This option would

[73] Safeguards have been introduced in the MiFID regarding the reception and transmission of orders of UCITS and AIF. Cf. article 25 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014.
[74] Whereas many Member States provide no formal guidance, some do (e.g. UK, FR, FI).
[75] As a point of clarification, such verifications do not concern AIFs addressed to professional investors

apply to UCITS, but also to AIFs marketed to retail investors (if a Member State allows this) in order to ensure equal protection of all retail investors.

the principle, laid down in Article 77 of the UCITS Directive, would be complemented by an additional requirement: a balanced presentation of the rewards and risks of the fund. Further details regarding the requirements on the marketing communications should be developed through ESMA guidelines, which should also take into account the specificities of digital marketing communications in the context of online distribution. Although these principles are primarily addressed to UCITS, they shall also apply to AIFs[76].

As compared to Option 1, Option 4 would improve transparency and reduce complexity, as requirements regarding the process of checking marketing material and requirements on these materials would be more harmonised. This option would ensure investor protection, as the general principles regarding the content of marketing material will be strengthened in order to ensure the quality of the marketing materials.

Feedback from stakeholders

Many stakeholders (in particular asset managers) asked for recognition of pre-marketing and a harmonised approach to pre-marketing, while in comparison only some stakeholders asked for the introduction of the concept of reverse solicitation. The Member State expert group on free movement of capital has explored possible definitions for pre-marketing and reverse solicitation.

The requests regarding pre-marketing were mainly made in the context of AIFMD but some respondents also requested it for UCITS. Arguments presented by asset managers were that they need to be able to determine investor appetite prior to refining and marketing their products – and cannot justify registering in all jurisdictions with the associated regulatory and administrative costs without knowing if there is demand from investors. Pre-marketing is common practice in certain asset management segments that target professional investors or high net worth individuals, such as private equity or venture capital. Unlike UCITS, which are offered on a continuous basis to retail investors, many AIFs which are closed-ended or which only offer periodic opportunities to invest may need significant prelaunch commitments from professional investors. It was argued by many stakeholders that Member States which do not permit pre-marketing are denying their investors the opportunity to participate (and benefit from) initial capital rounds on advantageous terms, meaning they could only participate in later rounds or the secondary market.

Respondents (industry representatives) to the consultation reported that several Member States have an ex-ante pre-approval or checking process of marketing materials and the uncertainty about how long this process takes is often a problem. Investors associations highlight the importance of marketing material in investment decision and firmly request ex-ante checking of marketing materials by Competent Authorities. NCAs who perform an ex-ante checking argue that the practice is beneficial for both investors and asset managers. They consider that ex-ante checks are in line with their mission to ensure investor protection and highlight the benefit for asset managers to receive specific information on the rules and practices in the target market, which allows them to be more confident on the use of their marketing materials.

5.2.2. Comparison of options

Options 2, 3 and 4 are complementary options. Options 2 to 4 are envisaging new elements, which would be added to existing legislation without replacing any existing provisions and they are against this background coherent with existing legal frameworks for investment

[76] These principles would be added in AIFMD.

funds: the UCITS and AIFM Directives as well as the ELTIF, EuVECA and EuSEF Regulations[77].

Option 2 would provide less flexibility for Member States to interpret the definition of marketing. The introduction of a definition of pre-marketing would benefit both professional investors and asset managers, allowing the latter to explore investors' appetite prior to establishing and marketing a fund, whereas **Option 3** could have a negative impact on investor protection and lead to circumvention of EU rules, as it concerns existing funds. **Option 4** would introduce more convergence among the Member States regarding requirements and supervisory practices for marketing materials. Investors' associations underline that marketing material needs to be supervised in order to guarantee that it is complete, correct, objective and balanced. The strengthening of the principles applicable for marketing material and the development of a level 2 measure/ guidelines by ESMA is in this context – in addition to option 2 – the most reasonable option as it will improve the protection of investors all over the EU.

Preferred options are **Options 2 and 4**. They constitute necessary elements to achieve the policy objectives satisfactorily and, as such, are proportionate measures. Options 2 and 4 together will have a beneficial impact on compliance costs, as less legal advice will be required thanks to some harmonisation and transparency. As outlined in detail in annex 10, legal counsel costs range on average from € 1,146 to 6,983 (ongoing costs per annum) per fund and host jurisdiction. They could decrease by 25 to 50% if all preferred policy options are pursued, while it seems unrealistic that they decrease more, as legal advice will still be required for other aspects, e.g. national taxation rules, national distribution structures[78]. Enforcement costs for competent authorities will be low.

Option	**Effectiveness**			**Efficiency**
	S 1	**S 2**	**S3**	**Cost-effectiveness**
Option 1	+	0	0	0
Option 2	+	++	0	+
Option 3	+	++	-	-
Option 4	≈	++	+	+

5.3. Options addressing lack of transparency over national requirements

5.3.1. Description and assessment of the options

The following options were considered:

[77] General principles have been introduced in the EuVECA/EuSEF Regulations on the regulatory fees and a central notification database has also been introduced. In ELTIF, it is already foreseen that administrative requirements can be performed on-line or by phone.

[78] The initiative does not cover out of scope drivers, most importantly taxation. The public consultation showed that stakeholders consider that about 40% of the barriers are linked to out of scope drivers. With respect to each addressed barrier, the improvement will be significant, but not materialize in a 100% reduction, e.g. the barrier national marketing requirements sometimes lack transparency is addressed by creating transparency, while asset managers will still need to need legal advice to analyse the provided information. Moreover, the implications will differ from Member State to Member State, e.g. addressing the barrier national marketing requirements lack transparency will have little effect in France where information is already available while the impact in other Member States will be high, because these Member States do not (sufficiently) provide relevant information. As a consequence, an estimate with a positive impact of 25-50% cost reduction has been calculated.

Policy option	Description
1. No policy action	Baseline scenario applies.
2. Publish and translate requirements on national websites	Require Member States and national competent authorities to publish their legislation/guidelines in one place on national websites and to translate it in the language used in the financial sector. Require national competent authorities to publish regulatory fees on their national websites.
3. ESMA website as single information portal on marketing requirements	Introduce a single point on ESMA website containing full up to date marketing requirements applicable in each Member State.
4. ESMA interactive database on regulatory fees	Require ESMA to maintain a central database with the regulatory framework of each NCA

Options 2, 3 and 4 can exist on their own, but can also be combined.

Option 1: No policy action

In the absence of any policy action, the baseline scenario applies. Managers wishing to distribute cross-border would be required to seek out relevant national legislation and guidelines concerning marketing requirements on individual websites where possible, and in some cases also translate them into their working language.

Under option 1 asset managers would still have some difficulties to know in advance how much it will cost them to market a fund in another MS. They would need the services of local law firms and/or consultancy firms in order to obtain all the information, which can be expensive (based on anecdotal evidence provided in response to the consultations).

Option 2: Publish and translate requirements on national websites

This option requires Member States and National Competent Authorities to place all their laws, rules and guidance relating to marketing requirements for funds making using of the marketing passport in one place on a website. This includes, where applicable, the (national) definition of marketing as well as the methodology and an indication of the level of regulatory fees charged. If specific requirements apply for online distribution, these shall also be disclosed. It would also involve requiring them to translate their requirements into a language commonly used in financial services.

This option recognises that managers find it difficult to determine the range of requirements for marketing into a Member State and the level of regulatory fees to be paid, and it can be costly and take time for them to do so. When this information is published and translated on national websites, asset managers can easily obtain the information for each country in which they market or intend to do so, which would reduce the search costs and complexity of national requirements and improve legal certainty.

As compared to option 1, option 2 would improve transparency which is likely to reduce the time and costs for managers in determining how to market into a Member State, reducing the disincentive to do so. This is particularly relevant for small asset managers, given that they cannot spread costs across many funds, or where a manager is considering marketing into an additional Member State.

This option would have no impacts on investors. It would cause minor costs for competent authorities to consolidate their information and ensure all appropriate rules are captured and, if needed, updated. If competent authorities are also required to translate requirements into a language commonly used in financial services, this would add further costs, which will ultimately be borne by whoever funds the competent authorities, in many cases the financial services firms themselves.

Option 3: ESMA website as single information portal on marketing requirements

This option requires ESMA to introduce a single point on its website on which all of Member States' marketing requirements for cross-border marketing[79] are put in one place, and translated into a language commonly used in financial services and are made available in the form of a summary table providing a concise, accurate and up-to date overview.

This overview could be used by asset managers to quickly understand the various national requirements, although the asset manager would not be able to exclusively rely on the information included in the overview table (for legal reasons).

In comparison to option 1, option 3 would have the advantage of ensuring a high level of transparency, i.e. managers have only one place to look to determine marketing requirements, reducing costs further – and also allowing Member States' requirements to be more directly comparable.

This option would introduce additional costs for NCAs and for ESMA since they need to compile the information and make it accessible. However, when option 3 is combined with option 2, additional costs for NCAs should be minimal as it would be a matter of copying the information provided on their own websites. Moreover, it would be necessary to ensure that information on the ESMA site remains reliable and up-to-date, which will require efforts from ESMA and competent authorities.

Option 4: ESMA interactive database on regulatory fees

Option 4 would require ESMA to create a database with information on the regulatory fees charged by competent authorities in the EU, which would be accessible through the ESMA website. This database would contain an interactive tool that would allow stakeholders to calculate the amount of regulatory fees for each Member State. Competent Authorities should be required to update the information every time the regulatory fees framework is changed.

Option 4 would improve significantly the situation as compared to option 1, as the information would be transparent and accessible in a common format on ESMA website. The costs would be borne by ESMA and NCAs. The latter would have to submit the information to ESMA. In turn, ESMA would have to create a database in order to facilitate the comparison across Member States. Option 4 has no direct impact on the Commission's proposal on the ESA's review, since specific technical issues, like this one, are not addressed in the review. However, this option is in line with the enhanced role ESMA is given in the proposal concerning the ESA's review.

Option 4 would further allow stakeholders to use an interactive function of the database in order to compare easily the amount of fees charged in the various Member States. It would facilitate managers' decisions on where to market their funds. Nevertheless, the amount of fees indicated could not be considered legally binding information and a disclaimer would explain the impact of the fund structure on the amount due. Asset managers would still have to take into account the specificities of their funds (single funds, umbrella funds, number of compartments/share classes, open to retail investors, etc.) in order to know exactly the fees charged by the competent authorities.

In comparison to option 1, option 4 would improve transparency and decrease the search cost for asset managers in relation to regulatory fees, which is linked to the complexity and the divergence of national rules. The interactive database would reduce asset managers' need to use external services to understand the framework for regulatory fees. However, setting up an interactive database would incur some development and maintenance costs for ESMA.

[79] This should include the definition of marketing.

Feedback from stakeholders

A number of asset managers reported that Member State marketing requirements are often not clear and not translated into English or into another language. Requirements are often difficult to be found and have to be translated by the asset managers or their advisors. In consequence, asset managers and distributors face a risk of having an inaccurate translation and incur extra costs for hiring external counsel. Recurring changes to marketing requirements introduce additional costs.

Moreover, feedback to the public consultation pointed to the lack of transparency regarding regulatory fees charged by competent authorities as an issue. Asset managers indicated having difficulties with finding and understanding the regulatory fees; necessitating them to use the services of a law or consultancy firm. Respondents indicated that if disclosure of the regulatory fees framework is improved, this could significantly reduce the costs for industry. In order to compare regulatory fees, consultation respondents were asked to set out costs for two examples: (1) A UCITS fund with 5 sub-funds marketed on cross-border basis to retail investors; and (2) an AIF with 5 sub funds marketed to professional investors on cross border basis. Responses received to this question varied considerably for the same scenario; highlighting that it is challenging for asset managers - and especially small managers - to determine correctly the level of regulatory fees charged by (host) competent authorities.

5.3.2. Comparison of options

Options 2, 3 and 4 are envisaging new elements, which would be added to existing legislation without replacing any existing provisions and they are against this background coherent with existing legal frameworks for investment funds: the UCITS and AIFM Directives as well as the ELTIF, EuVECA and EuSEF regulations[80].

Option 2 would reduce costs and complexity for managers by making requirements for each Member State easier to find, encouraging greater distribution of funds and thereby benefit investors. Managers would also not have to incur the expense of translating into a language commonly used in financial services. Depending on the requirements, it is still possible that external legal advice will be used but to a lesser extent, but in any case legal certainty will be improved. Investor protection would be maintained as rules would not be changed – if anything greater transparency over marketing requirements may lead to greater compliance.

Option 3 can be seen as complementary to option 2, as information on national websites can be used for creating the single information point on the ESMA website. This option would further reduce costs and complexity for asset managers by ensuring that all relevant requirements can be found on the same website. There would be minor costs[81] involved in developing a single website to hold all the marketing requirements, and putting in place processes to ensure these remain up-to-date. Option 3 has no direct impact on the Commission's proposal on the ESA's review, since specific technical issues, like this one, are not addressed in the review. However, this option is in line with the enhanced role ESMA is given in the proposal concerning the ESA's review.

In line with Option 2, **Option 4** would require competent authorities to provide ESMA with the information on their calculation methodology and the level of the regulatory fees. **Option 4** would reduce costs for asset managers, as the information would be accessible in a single point. Asset managers would no longer have to navigate 28 different websites of the competent authorities in order to have a full picture of the regulatory fees that are charged. This option would also address some of the complexity regarding regulatory fees, without the

[80] General principles have been introduced in the EuVECA/EuSEF Regulations on the regulatory fees and a central notification database has also been introduced. In ELTIF, it is already foreseen that administrative requirements can be performed on-line or by phone.

[81] ESMA has indicates in its estimation of enforcement costs that there will be no to minor cost implications.

need to change the methodology and framework for regulatory fees in each Member State. Asset Managers would be able to receive tailored information on the amount of fees that are charged for marketing their funds, by using in the interactive database.

Preferred Options are **Options 2, 3 and Option 4 combined together, as they would provide the highest level of transparency and the best access to information**. These options would allow for a decrease in costs linked to legal advice of potentially 25 to 50%[82] if all preferred policy options are pursued. Enforcement costs for ESMA and competent authorities will be low with respect to option 3 and medium to high with respect to option 4, in particular due to the setting-up of the fee calculator which ESMA estimates with € 500,000 for one-off costs, € 100.000 p.a. and 2 FTE staff to maintain the interactive database. However, as ESMA has increasingly gained experience with data management over the last years, synergies can be expected and this should lower the costs by approximately 50%, both for staff expenditure and external infrastructure expenditure. Moreover, it is considered that enforcement costs are commensurate with the objectives to be achieved. Potential cost reductions for industry as well as enforcement costs for ESMA are presented in more detail in annex 10. Options 2, 3 and 4 together constitute necessary elements to achieve the policy objectives satisfactorily and, as such, are proportionate measures.

Option	**Effectiveness**			**Efficiency**
	S 1	**S2**	**S3**	**Cost-effectiveness**
Option 1	0	0	0	0
Option 2	≈	+	0	+
Option 3	≈	++	0	+
Option 4	≈	++	0	-

5.4. Options regarding differences and complexity of how regulatory fees are set and their collection

5.4.1. Description and assessment of options

The following policy options were considered:

Policy option	**Description**
1. No policy action	Baseline scenario applies.
2. Define common principles for regulatory fees	Establish high-level principles for the payment of regulatory fees. Clarify that fees are linked to performance of supervisory tasks.
3. Cap regulatory fees	Harmonise the amount of regulatory fee due, as well as the calculation methodology. Alternatively, limit regulatory fees.

Options 2 and 3 are mutually exclusive.

Option 1: No policy action

Under option 1 the situation would remain unchanged; managers wishing to distribute cross-border would still need to seek out relevant national rules on how regulatory fees are set and, consequently, how much they need to pay.

Asset managers would still face difficulties in understanding the complexity of some domestic rules and processes regarding regulatory fees. In some Member States it would remain

[82] Legal advice will still be required for other aspects, e.g. national taxation rules, national distribution structures.

challenging for them to find out the exact amount of regulatory fees to be paid as well as the timing and the means of the payment.

Option 2: Define common principle for regulatory fees

Option 2 would introduce common principles for regulatory fees for all investment funds. These principles would require that fees should not be charged when no supervisory task is performed by competent authorities. Moreover the principles would stipulate that competent authorities should send an invoice to asset managers, which should clearly indicate how and when the payment should be made. Asset managers should be able to pay the regulatory fees directly to competent authorities (see section on administrative arrangements).

In comparison to option 1, option 2 would achieve more convergence amongst practices of competent authorities and thereby remove unnecessary complexity. It would avoid the situation where the regulatory fees are disproportionate to the supervisory tasks performed by the competent authorities. As a result, some competent authorities might lower their regulatory fees. In addition, asset managers would be able to pay the regulatory fees directly to competent authorities, eliminating the cost of appointing a third party (see section on administrative arrangements requirements). Furthermore, this option would ease the payment of regulatory fees by asset managers, as they would be able rely on the transparency provided through the invoice sent by the competent authority[83].

Option 3: Cap regulatory fees

Option 3 would set a cap, i.e. fix a maximum amount that regulatory fees should not to exceed.

A more ambitious approach that was also considered in this context was to specify the exact amount of regulatory fees that should be charged, the basis for their calculation (stand-alone fund, umbrella fund or sub-fund) as well as the point in time when the payment is due. However, as this was not considered politically feasible, this approach was discarded.

In comparison to option 1, option 3 would remove or at least improve complexity regarding how regulatory fees are set. However, this option could have a negative impact on competent authorities, as regulatory fees are the main, or at least an important source of funding for some competent authorities. Limiting their funding possibilities could hamper the supervisory tasks performed by authorities. Consequently, while this option would seemingly benefit asset managers, it could ultimately have a negative impact on investor protection.

Feedback from stakeholders

Responses from industry to the public consultation differ on whether the level of the regulatory fees has an impact on their business decision to access a market or not. Managers, including those providing quantitative data, generally point to the costs of determining the level of fees as being more problematic than the level of the fees itself. However, it is suggested that for some smaller managers, or those in particular niches such as private equity and venture capital, the level of fees charged can have more of an impact. For example, one association representing the private equity sector noted that more than half of its members avoid some countries because of the fees charged.

Responses from Competent Authorities generally highlighted that the level of the fees is quite low in comparison with other charges, and focus more on the need for transparency.

[83] This option increases transparency and is coherent with the next set of policy options.

5.4.2. Comparison of options

Options 2 and 3 are envisaging new elements, which would be added to existing legislation without replacing any existing provisions and, against this background, they are coherent with existing legal frameworks for investment funds: the UCITS and AIFM Directives as well as the ELTIF, EuVECA and EuSEF regulations[84].

Option 2 would improve the effectiveness and efficiency of the EU framework without requiring a single framework for regulatory fees across the EU. Contrary to Option 3, this option would provide flexibility to Competent Authorities to charge the amount of regulatory fees needed in order to perform their supervisory tasks properly. In addition, under option 2, asset managers would benefit from improvements of the administrative process. This would reduce their time to market and their costs, as they would know how much they will have to pay and when the payment is due.

Option 3 would not sufficiently address the regulatory barrier and not solve the significant issue regarding the need to appoint a law firm or a consultant by asset managers. Moreover, Option 3 might be difficult to introduce as the regulatory fees in several Member States are a tax decided by national parliament and, this option might therefore interfere with subsidiarity and proportionality.

Option	**Effectiveness**			**Efficiency**
	S 1	**S2**	**S3**	**Cost-effectiveness**
Option 1	0	0	0	0
Option 2	+	++	0	+
Option 3	≈	≈	-	-

The preferred Option is **Option 2**, as it would ensure more convergence across EU legislation, while not endangering supervision of funds. It constitutes a necessary element to achieve the policy objectives satisfactorily and, as such, is a proportionate measure. Option 2 would contribute to the lowering of the need for legal advice. The decrease in legal counsel costs is estimated at 25 to 50% if all preferred policy options are pursued, while it seems unrealistic that they decrease more, as legal advice will still be required for other aspects, e.g. national taxation rules, national distribution structures (for further details please see annex 10).

5.5. Options regarding administrative requirements (local facilities) under the UCITS Directive

5.5.1. Description of the policy options

The following policy options were considered:

Policy option	**Description**
1. No policy action	Keep flexibility for Member States to decide on the detailed requirements and thus maintain national requirements regarding local facilities.
2. Allow fund managers under certain conditions to provide the facilities physically, by telephone or electronically in an investor's local language	Provide flexibility to asset managers by revising art. 92 of the UCITS Directive to allow managers to either appoint a local facility or to make use of IT services, under the condition that these services are provided in the investor's language. In parallel, ensure efficient supervision of the asset manager by

[84] General principles have been introduced in the EuVECA/EuSEF Regulations on the regulatory fees and a central notification database has also been introduced. In ELTIF, it is already foreseen that administrative requirements can be performed on-line or by phone.

	improving cooperation between host and home Member State Competent Authorities through reinforced cooperation between host and home Member State Competent Authorities.

Options 2 and 3 can exist on their own, but can also be combined.

Option 1: No policy action

Under option 1 Member States could still require the appointment of local facilities. This would potentially mean that seventeen Member States continue to apply this requirement. The exact roles of these local facilities would also continue to differ between Member States.

Costs for complying with the administrative requirements would remain significant, depending on the markets asset managers wish to distribute their funds to.

Option 2: Choice of how facilities are provided

Option 2 would provide the choice to the asset manager to either appoint a local facility or to make use of distance communication. This choice implies that Member States can no longer require asset managers to appoint a local facility. This would cover different existing functions of the local facilities: paying/facilities agent, information agent/ complaint handler, legal representative and local distributor.

If asset managers choose to make use of distance communication and terminate their contract with a local facility, investors and (host) competent authorities lose a local point of contact. Therefore the choice to make use of distance communication is bundled with two safeguards. The first safeguard is addressed to investors and replaces the information agent function of the local facility: information should be accessible on the asset manager's website, and includes a description of ways how to get in touch with the asset manager and how to submit a complaint. Furthermore, the information would have to be provided in the investor's language. The second safeguard ensures the capacity of competent authorities to efficiently supervise the asset manager and, if applicable, also replaces the legal representative function previously fulfilled by the local facility. Should the host competent authority, in absence of a local facility of the fund, encounter any difficulties to obtain information from the asset manager or to receive the payment of regulatory fees, the home competent authority should assist the host authority in obtaining the information or payment of regulatory fees.

In comparison to option 1, option 2 would greatly reduce unnecessary complexity and burdensome requirements (and associated costs) for asset managers as they would be no longer required to appoint an external service provider to provide local facilities in the host Member State. Furthermore, asset managers would have less need to obtain legal advice to understand national requirements in this area. Removing the requirement to appoint a local facility would allow asset managers to centralise the provision of information to investors and handle investor request and complaints on their own. Moreover this option would guarantee investor protection by requiring the asset manager to provide information in the investor's language and allow investors to file a complaint in their language. This option would also ensure that host competent authorities can continue to efficiently fulfil their mission to protect local investors, because they would receive the requested information directly from asset managers and would be able to collect fees allowing them to perform their supervisory tasks.

Feedback from stakeholders

Responses to the consultations provided by asset managers suggest that the costs to comply with the requirement to have local facilities present in each Member State are significant, while in practice

facilities nowadays mostly play a passive role and are rarely used by the investors. These respondents request that the requirement to appoint a local facility is abolished.

Several competent authorities highlighted that local facilities serve as a local contact point and ease the exchange with asset managers and the collection of fees.

National and European retail investor associations indicated in their responses to the open consultation that local facilities have no added value for investors. However, they also emphasised that the availability of information in the investor's national language is a key requirement.

Targeted (follow-up) consultation of a European investor association confirmed that allowing asset managers to provide the facilities through other means than a local facility – while retaining the obligation to provide information in the investor's local language – would not lower investor protection.

5.5.2. Comparison of options

Option 2 envisages new elements, which would replace existing provisions. It is coherent with the recently adopted delegated act for the ELTIF Regulation, as this provides ELTIF managers with the possibility to provide facilities through distance communication.

Apart from option 2, no other viable option was identified. Therefore **option 2 is retained as the preferred option.** More farreaching options were initially considered, but discarded as they were not considerd realistic or proportionate. One of these options was setting a cap on the fees that entities fulfilling the role of local facilities can charge asset managers. However, this option – which would constitute price regulation – would intervene in private contract law and was therefore not considered proportionate and feasible.

As to the direct costs linked to the appointment of a local facility, costs savings thanks to option 2 should be around 90% of on average €4,437 annually per fund per host jurisdiction (see also annex 10). Around 10%[85] of these costs are expected to be reallocated to improve to the asset manager's website and customer services, which will become solely responsible for contacts with investors. Enforcement costs for competent authorities (i.e. costs linked to reinforcing debt collection activities) are considered as medium; based on input received by Competent Authorities the estimated impact is € 400 per fund and host jurisdiction[86].

Option 2 is the preferred option as it provides more benefits compared to option 1.

Option	**Effectiveness**			**Efficiency**
	S 1	**S2**	**S3**	**Cost-effectiveness**
Option 1	0	0	0	0
Option 2	+++	≈	+	+

5.6. Options regarding notification requirements

5.6.1. Description and assessment of the policy options

The following policy options were considered:

Policy option	**Description**
1. No policy action	Baseline scenario applies.
2. Publish de-notification rules on national	Require competent authorities to publish the rules relating to

[85] Commission estimation

[86] Input from some Competent Authorities concerns salaries of persons involved in the debt collection activities and number of hours required to reinforce debt collection per fund.

websites	de-notification of UCITS and AIFs on their websites and transmit them to ESMA.
3. Harmonised framework for (de-) notifications under UCITS and AIFMD	Change the host-home responsibilities for notifying changes under UCITS.. Harmonise the rules relating to de-notification of UCITS and AIFs across the EU
4. Centralised platform for notifications operated by ESMA	Introduce a single platform operated by ESMA, where asset managers can directly submit notifications for use of the marketing passports, changes to the notification and de-notification.

Options 2 and 3 are mutually exclusive, while both can be combined with options 4 and 5. Likewise, options 4 and 5 are mutually exclusive, while they can be combined with options 2 and 3.

Option 1: No policy action

In the absence of any policy action, the baseline scenario applies. Asset managers would continue to be subject to diverging requirements regarding updates of notifications, both on national level and on EU-level, depending whether the concerned fund is an AIF or an UCITS. In addition, diverging national practises regarding de-notification would continue to exist.

Asset managers would continue to face burdensome procedures, unnecessary complexity and legal uncertainty under the notification frameworks for the marketing passports contained in the UCITS Directive and AIFMD. Asset managers would also be subject to unclear rules regarding de-notification or even be deprived from the possibility to exit a specific market, when they wish to terminate their marketing activity in a certain Member State.

Option 2: Publish de-notification rules on national websites and on ESMA's website

Under option 2 competent authorities would need to disclose the national rules regarding de-notification on their websites and transmit them to ESMA for publication on ESMA's website. The national rules can be comprised of conditions for de-notification (e.g. a minimum number of local investors), the process to be applied and the fees to be paid. If no specific procedure on de-notification exists, the authority would need to disclose this and outline how a fund de-notification is handled (e.g. as a material change).

In comparison to option 1, option 2 would improve transparency. It would improve in particlar the situation in those Member States where there is currently little information on the de-notification process, but it would not ensure that de-notification procedures exist in every Member State or that these procedures are aligned, and consequently it might remain difficult in some Member States to de-notify funds. This option would have no impact on investor protection on EU level, as national rules would continue to apply.

Option 3: Harmonised framework for (de-)notifications under UCITS and AIFMD

This option would consist of three main elements:

First, a shift of the home-host responsibilities for competent authorities with regard to changes to the initial notification under Article 93(8) of the UCITS Directive. Like under the AIFMD notification framework, asset managers would give written notice of changes to the information contained in the initial notification letter to the competent authority of the home Member State, instead of the host Member State. In addition, a timeframe that would apply to national competent authorities to approve or object to the changes notified by the asset manager would be introduced in both Directives.

Second, competent authorities of the home Member State would be required to transmit notifications of new funds and updates of existing funds regarding the use of the EU marketing passports for UCITS and AIFs as well as de-notifications not only to competent authorities of the host Member State, but also to ESMA. Using this data, ESMA would create a publicly available database for cross-border marketing activity under the UCITS and AIFM Directives[87].

Third, this option would foresee full harmonisation of the rules for de-notification for all investment funds, in other words rules for the discontinuation of marketing of units or shares of EU AIFs in a or several host Member States. This harmonisation would cover the detailed conditions for de-notification, and the process to be applied, in particular the information and documents to be submitted to the home competent authority, to the public and the investors. Harmonised rules for de-notification would complement existing rules for the initial notification and consequent updates.

In comparison to option 1, option 3 would remove unnecessary complexity and thus reduce costs and time for asset managers, as they would benefit from harmonised rules and procedures for notifying changes to the initial notification relating to the use of the marketing passports. In particular managers of UCITS funds would benefit from a reduced administrative burden as they would no longer have to transmit the information to all the competent authorities of the host Member States where the UCITS is marketed. This option would increase the workload for home authorities as they will have to transmit the notified changes to all relevant host authorities. Furthermore, although host authorities might prefer to be directly in contact with the asset manager, they would receive information via the home authority.

Moreover, in comparison to option 1, this option would greatly enhance transparency about the use of the marketing passports in the EU and could assist competent authorities (in particular host authorities) in their supervision of these activities.

Finally, this option would also eliminate complexity of diverging national rules and create legal certainty how to de-notify a fund in a host Member State. In comparison to option 1, option 3 would improve the situation for investors and asset managers. De-notification would be possible under certain conditions and according to a specific procedure, both defined at EU level, which would remove unnecessary complexity . Under this option, asset managers would have more incentives to market in a Member State as there would be more clarity on the possibility to exit a market. This would potentially also benefit investors through a larger offer. Moreover, investor protection would be maintained or even improved since the same safeguards would apply across the EU. One of these safeguards is that investors are not obliged to redeem their units as some of them might benefit from tax advantages for holding certain funds. In case of early redemption they might lose their tax advantage. In case of de-notification, asset managers should not bear any costs other than the cost to provide information to the remaining investors.

Option 4: Centralised platform for notifications operated by ESMA

This option would introduce a single platform operated by ESMA for all notifications relating to the use of the marketing passports under the UCITS and AIFM Directives. The platform would create a single EU notification for cross-border distribution, as the asset manager would submit its notification directly to ESMA, which would in turn either transmit this information to the relevant competent authorities or make this information available on

[87] This database would complement existing public registers/lists compiled by ESMA.

demand. Besides the initial notifications, the platform would also process changes to the information contained in the initial notification and even de-notification of funds, if the policy option to harmonise these rules is retained (see section 5.6.2).

In comparison to option 1, option 4 would remove complexity, as asset managers would have a single portal to submit their notifications, subsequent updates and de-notifications relating to the use of the marketing passports under the UCITS and AIFM Directives. However, this option would also require significant resources from ESMA. Furthermore, the ability of competent authorities to effectiently supervise asset managers operating under the marketing passports is affected, as they will have to rely on ESMA to transmit or make available the revelant information, which might lead to delays in the notifications. Option 4 has no direct impact on the Commission's proposal on the ESA's review since specific technical issues, like this one, are not addressed in the review. However, this option is in line with the enhanced role ESMA is given in the proposal concerning the ESA's review.

Feedback from stakeholders

National competent authorities have expressed diverging opinions on whether it would be beneficial to notify changes to the initial notification to the home authority instead of the host authority under the UCITS Directive, as proposed under option 2. Several competent authorities considered this approach – which is already in place under the AIFMD – to be the most efficient arrangement and some noted that this better ensures the quality of the information received. Other competent authorities preferred receiving changes to the notifications directly from the asset managers in their role as host authority, as they are able to provide the latest up-to-date information and documentation available. One competent authority also considered that making the home authority the single point of contact would not provide any advantage, as in most cases when the host competent authority has further questions, those questions are triggered by requirements pursuant to the national law of the host Member State and not by the home Member State.

Several asset managers and trade bodies that responded to the open consultation on cross-border distribution of investment funds, expressed support for a centralised platform for notifications, as included under option 4.

Respondents to the public consultation noted that in many Member States no clear procedure exists for de-notifying a fund. Additionally, several respondents note that some Member States only permit de-notification of a fund once the number of investors drops below a minimum specified amount or after certain publication requirements are fulfilled. According to these respondents, difficulties with de-notification considerably influence the decision of a fund manager to access a market in the first place. To be precise, a lack of an exit strategy has a negative impact in this decision process.

5.6.2. Comparison of options

Option 2 would envisage new elements, which would be added to existing legislation without replacing or amending existing provisions and, against this background, is coherent with existing legal frameworks for investment funds. Option 3 would amend the current rules for UCITS, but is coherent with the approach under AIFMD since the home authority is already the first point of contact for AIFMs with regards to changes to the notification. Option 3 would further introduce new elements on de-notification, which would be added to existing legislation. Option 4 envisages a new approach to the current notification procedures and would replace existing rules. This option – which would significantly simplify the notification process and hence make it easier to use the marketing passport – is coherent with the objectives of the existing legal frameworks for investment funds.

Option 2 would provide for clear and transparent rules on de-notification. This would beneficial for asset managers, as they would obtain legal certainty and would be able to

establish an exit strategy for each market. It can be assumed that this would motivate them to access more EU markets. However, as compared to option 3, this option is less effective, as it would neither allow asset managers to develop a single de-notification approach nor remove unnecessary burden caused by diverging national rules.

Option 3 would signficantly reduce compliance costs, remove unnecessary complexity and legal uncertainty with regard to the notification process and ensure investor protection, in particular in case of de-notification[88]. **Option 4** would be even more effective in reaching the objective, as there would be only one procedure and a single point of contact for the asset manager for all notifications, changes and de-notifications in the EU. However, although **Option 4** would be the most effective option to reduce complexity by harmonising and simplifying the notification framework, it is likely not the most efficient option as long as national competent authorities retain supervisory responsibility for the notifications regarding use of the marketing passport. As competent authorities would have to rely on ESMA to transmit or make available the relevant information provided by the asset manager and subsequently submit its response to ESMA - which in turn would transmit this to the asset manager, the timeframe for the procedure would be much longer than under **Option 3.** Against this background **Option 4** does not seem efficient. Furthermore, **Option 3** is also more cost-efficient as compared to **Option 4** as ESMA is currently not equipped to operate such a platform.

Option	**Effectiveness**			**Efficiency**
	S 1	**S2**	**S3**	**Cost-effectiveness**
Option 1	0	0	0	0
Option 2	0	+	≈	+
Option 3	+	+	+	+
Option 4	++	+	≈	-

Considering the above, the preferred option is **Option 3.** It constitutes a necessary element to achieve the policy objectives satisfactorily and, as such, is a proportionate measure.

Minor costs linked to the safeguards introduced in case of de-notification[89], mainly linked to the obligation to publish a blanket offer, would have to be borne by asset managers. Stakeholders would benefit from the database foreseen under this option, as it would allow them to evaluate the evolution of the single market for investment funds. There would be a financial impact on ESMA and competent authorities to put in place the information exchange and database. As outlined in annex 10, ESMA estimates costs at min. €250,000 one-off costs, €50,000 ongoing costs and 3 FTE. However, as ESMA has increasingly gained experience with data management over the last years, synergies can be expected and this should lower the costs by approximately 50%, both for staff expenditure and external infrastructure expenditure . Moreover, it is considered that enforcement costs are commensurate with the objectives to be achieved.

6. OVERALL IMPACT OF THE PROPOSED OPTIONS

The *intervention logic* is as follows.

[88] Investors would receive an offer of repurchase. The continuation of the flow of information for investors choosing to remain in the fund would be guaranteed.

[89] These costs are linked to providing the blanket offer to investors, either individually or by a publication. Costs for publications are minor, e.g. in the range €25.

- The overall aim is to increase the cross border distribution of funds by reducing regulatory barriers that introduce unnecessary complexity and legal uncertainty for asset managers.
- Evidence that these problems are present and binding was provided by the stakeholder consultations and performed analysis.[90] In addition, stakeholders also provided corroborating evidence for the underlying problem drivers (D1) as summarized in the problem tree.
- All relevant options were assessed based on their effectiveness to meet the three objectives related to the reduction of complexity and burdensome requirements (S1); improving transparency (S2); and safeguarding investor protection (S3); and their efficiency. Coherence and proportionality are considered as well.
- For each of the (in-scope) problem drivers, the preferred option(s) was identified based on its ability to meet the criteria above *and* because of a positive effect on cross border distribution of funds can be expected based on the discussion of impacts.[91]
- The preferred options are as follows:

Problem tackled	**Description of preferred option(s)**
National marketing requirements and practices differ and are sometimes unnecessarily burdensome	Introduce the concept of pre-marketing in the AIFMD.
	Introduce more convergence on the requirements on marketing materials and on the process for checking or approving marketing materials by competent authorities.
Lack of transparency over national requirements	Require Member States and national competent authorities to publish their legislation/guidelines regarding marketing requirements and regulatory fees in one place on national websites and to translate it in the language commonly used in the financial sector.
	Introduce a single point on the ESMA website containing full up to date marketing requirements and information on regulatory fees applicable in each Member State.
	Require ESMA to develop an interactive database on regulatory fees.
Regulatory fees differ, can be complex and do not necessarily reflect supervisory tasks performed	Define common principles for regulatory fees.
National requirement to have local facilities are costly, but have limited added value given use of digital technology	Choice of how facilities are provided.
Requirements for updating notifications either not standardised or applied differently across EU and types of funds, no harmonised de-notification process for cross-border funds	Harmonise rules and procedures for notifying changes under UCITS and AIFMD.
	ESMA database for notifications
	Full harmonisation of the de-notification process.

[90] For instance, This is confirmed by the results of the randomized survey in which 77% of the respondents agree that a positive change with regard to regulatory barriers would increase their level of cross-border activity, even without any change in the other barriers.

[91] Robust quantification is not possible given that the decision to go cross-border is a strategic decision taken based on the marginal cost of going cross-border, structural feature of national markets and expected demand. A qualitative analysis of the impact can however be inferred from the elements put forward in the discussion of each option.

The preferred options remove unnecessary complexity. They provide together for a higher level of harmonisation and an improved level of transparency regarding marketing requirements and regulatory fees. Moreover, they reduce the (compliance) burden for asset managers, while ensuring investor protection.

The preferred options together significantly reduce regulatory barriers. Indeed, combined together they are expected to deliver the strongest positive effect. The preferred options raise the potential to have more funds marketed cross-border, improve competition, lower market fragmentation and increase investor's choice in the EU. Corroborating evidence is provided in the randomized survey. Respondents indicated that increased action at the EU level (either increased transparency or harmonization) would increase competition and consumer choice. Strongest results on increased competition were reported with respect to regulatory fees and notification (92%), with a minimum score of 85% over all barriers. Strongest results for increased consumer choice were reported for measures related to the notification process (92%) and local agents (91%). The currently lost potential, described in the evaluation annex (annex 5), could be better exploited.

However, it should be acknowledged that there are inherent limitations to the impact of this initiative. Factors related to vertical distribution channels, cultural preferences for domestic products and national tax rules are out of the scope of this initiative, while they provide significant disincentives to cross-border distribution of investment funds.

A detailed overview of impact on stakeholders is provided below:

Description	**Types of impacted stakeholders**	**Estimated impact**
Introduce the concept of pre-marketing in the AIFMD.	AIF Managers and professional investors	It can be expected that AIF managers will be able to pre-market with more certainty their funds domestically but also cross-border, as the definition and the practice will no longer diverge among the EU Member States.
Introduce more convergence on the requirements on marketing materials and on the process for checking or approving marketing materials by Competent Authorities.	Investors, UCITS/AIF Managers, Competent Authorities	A higher level of investor protection and an improvement of the quality of marketing materials can be expected. A time limit for ex-ante checks could be established in order to improve the efficiency of the process. In consequence, this can reduce the time to market for most of asset management companies.
Require Member States and national competent authorities to publish their legislation/guidelines on marketing requirements and regulatory fees in one place on national websites and to translate it in the language used in the financial sector.	Investors, UCITS / AIF Managers, Competent authorities	This option would reduce costs for asset managers. The costs for competent authorities should be limited.
Introduce a single point on the ESMA website containing full up to date information on marketing requirements applicable in each Member State.	Investors, UCITS/AIF Managers, Competent authorities and ESMA	This option would reduce costs for asset managers. The costs for ESMA should be negligible, as they can use information provided on national websites.
Require ESMA to develop an interactive database for regulatory	UCITS/ AIF Managers, Competent Authorities and ESMA	This option would reduce costs for asset managers. ESMA would need the resources in order to develop the database.

fees.		
Define common principle for regulatory fees	UCITS/ AIF Managers and NCAs	Regulatory convergence would increase across the EU without impacting the supervisory tasks performed by NCAs. This option would reduce the burden of requiring a third party to pay the regulatory fees on behalf of the asset managers
Allow fund managers to provide the facilities physically, by telephone or electronically in an investor's local language. Require home and host competent authorities to cooperate.	UCITS Managers, investors and competent authorities	Asset managers would be able to reduce costs. All EU investors would be able to obtain information in their language and file a complaint in their language. Competent authorities would be able to fulfil their mission of investor protection and obtain information from asset managers and collect regulatory fees.
Harmonise rules and procedures for notifying changes under UCITS and AIFMD	UCITS/AIF Managers and Competent Authorities	Harmonised rules would significantly reduce compliance costs for asset managers. They would remove unnecessary complexity.
ESMA database for notifications	Competent authorities and ESMA	The database would show cross-border marketing activity under the UCITS and AIFM Directives, which would enhance transparency about the use of the EU marketing passport and facilitate supervision.
Full harmonisation of the de-notification process	UCITS/AIF Managers, Investors, Competent authorities	Asset managers would be better able to define exit strategies and could apply the same processes in all Member States. All EU investors would benefit from a guaranteed choice between repurchasing or maintaining the investment. In the latter case they would continue to be informed by the asset manager.

The preferred options are coherent with existing legal frameworks for investment funds including ELTIF, EuVECA and EuSEF regulations[92]. All EU fund frameworks are covered by the initiative. Improvements of the single market will thus benefit all investment funds. The proposals based on the preferred options respect the distinction between these frameworks, as they target different kinds of investors (i.e. UCITS are primarily addressed to retail investors, whereas most of AIFs to professional investors).

The preferred options are expected to provide together costs savings of at least € 306 million per year for all funds currently marketed on a cross-border basis in the EU (recurrent costs). A detailed explanation of the estimated cost reduction and the methodology is provided below and in Annex 12.

Methodology for cost and cost reduction estimations

As a first step, costs linked to cross-border distribution have been calculated based on data provided through public sources and input by stakeholders. On the basis of input from (industry) stakeholders average costs and ranges of costs were calculated. Costs are calculated on a per fund basis and on a total industry basis. The total industry figure is calculated using the total number of cross-border funds

[92] The EuVECA/EuSEF Regulations contain general principles on regulatory fees and a central notification database. Under the ELTIF Regulation, administrative facilities to investors can already be provided online or by telephone.

domiciled in the EU per end 2016 (11.380 funds) and the average number of EU host jurisdictions these funds are marketed to (5.4 Member States)[93].

As a second step, cost reductions have been estimated. For each of the different cost categories the impact of the retained policy options has been evaluated and calculated. The reductions and reasoning are indicated in the tables below and in the annex. The figures show only expected cost reductions for existing funds, while the initiative aims at raising the number of cross-border funds. In this context, it is highlighted that the number of cross-border funds has increased over the last 5 years with an average of 6.8% per year and growth is expected to accelerate thanks to this initiative. Therefore the figures below show conservative estimates of cost reductions.

In parallel ESMA and Competent Authorities have provided input on enforcement costs linked to the retained policy options.

It is noted that compliance costs are the most important cost category. They appear in relation to all regulatory barriers, and they can be quantified based on anecdotal evidence. Regulatory fees (or charges) are considered less important. Beyond these categories, certain costs are of qualitative nature and cannot be quantified, e.g. costs linked to legal uncertainty regarding what does qualify as marketing (no pre-marketing) and lost opportunities due to the lack of an exit strategy (de-notification).

Different scenarios have been developed to identify potential cost reductions to be achieved through this initiative. Scenario A shows the estimated total cost reduction for an asset management company which uses in-house legal advice and undertakes fund administration itself. Scenario B describes estimated total cost reduction for an asset management company which fully outsources legal advice and fund administration. Total cost reductions have been calculated for both scenarios, based each time on the assumption that 100% of the market applied the same model (in reality the actual cost reduction would be a weighted average of the two scenarios). They are as follows:

	Change compared to current situation per fund and host jurisdiction	**Estimated average change compared to current situation for all funds marketed cross-border [94]**
Cost reductions in scenario A	On average down by €6,148 annually per fund and jurisdiction in the first year when entering into the jurisdiction.	Down by € 378 million one-off
	On average down by € 4,976 annually per fund and host jurisdiction.	Down by € 306 million Ongoing
Cost reductions in scenario B	On average down by at € 7,584 annually per fund and jurisdiction in the first year when entering into the jurisdiction.	Down by € 467 million one- off
	On average down by € 7,165 annually per fund and host jurisdiction	Down by €440 million ongoing

[93] Source: PwC, Benchmark your Global Fund Distribution, March 2017.

A further breakdown of the cost reductions can be provided, as the total costs are composed of different categories. When looking at ongoing costs, the cost reductions at a per fund and host jurisdiction level are as follows:

Type of cost	Description of action	Change compared to current situation for one fund (in %)	Change compared to current situation for one fund (in monetary terms)
Substantive compliance costs: direct labour costs ***Scenario A***	in-house compliance/ counsel, linked to analysis of marketing requirements, administrative requirements, notification, regulatory fees and out of scope drivers	- 25-50%[95]: advice linked to taxation and market structure remains, evaluation of other elements and administration is simplified but not eliminated	- €286.5 to €573
Substantive compliance costs: costs of external services ***Scenario B***	Legal counsel costs, linked to analysis of marketing requirements, administrative requirements, notification, regulatory fees and out of scope drivers and to undertaking administration	- 25-50%: advice linked to taxation and market structure remains, evaluation of other elements and administration is simplified but not eliminated	- €1,745.75 - €3,491.5
Substantive compliance costs: costs of external services ***Scenario A and B***	Administrative requirements/ local facilities	- 90 %[96]	- €4,437 annually
Regulatory charges ***Scenario A and B***	Regulatory fees on national level in host Member States	- 5%[97]	- €109.70 ongoing

7. OTHER SPECIFIC IMPACTS OF THE RETAINED POLICY OPTIONS

As demonstrated in the section above, the package of preferred options should lead to significant cost reductions for asset managers that distribute their investment funds cross-border or intend to do so in the near future. These cost reductions will in particular have a positive effect for small fund managers. The costs associated with regulatory barriers have a bigger impact on these managers, as they manage a smaller number of funds or have fewer assets under management and consequently have a smaller base over which to spread the

[95] The estimated change is based on the following elements: The initiative does not cover out of scope drivers, most importantly taxation. The public consultation showed that stakeholders consider that about 40% of the barriers are linked to out of scope drivers. With respect to each addressed barrier, the improvement will be significant, but not materialize in a 100% reduction, e.g. the barrier national marketing requirements sometimes lack transparency is addressed by creating transparency, while asset managers will still need to need legal advice to analyse the provided information. Moreover, the implications will differ from Member State to Member State. As a consequence, an estimate with a positive impact of 25-50% cost reduction has been calculated.

[96] Costs for local facilities will fall, but some costs will be linked to providing information in the investor's language.

[97] The level of regulatory fees is not directly affected by the retained policy options, but increased transparency can have a slight indirect positive impact.

costs. The costs associated with regulatory barriers can even prevent them from marketing their funds cross-border altogether.

Although the proposed policy options do not have a direct impact on small and medium enterprises (SMEs) more broadly, they will indirectly benefit from the initiative as increased cross-border distribution of investment funds would accelerate the growth of EU investment funds and allow them to benefit from economies of scale. This in turn, would increase the availability of financing for SMEs offered through these investment funds – in particular from venture capital funds.

As to the social and environmental impact of the proposed policy options, again the benefits are indirect as investment opportunities in investment funds pursuing social or environmental goals should increase due to increased cross-border distribution, which in return could accelerate growth in these areas.

8. MONITORING AND EVALUATION

Providing for a robust monitoring and evaluation mechanism is crucial to ensure that the rights and obligations envisaged in the above mentioned Directives and Regulations are complied with.

When establishing the detailed programme for monitoring the following elements should be taken into account:

The timely and correct transposition of the new requirements into national law will be a key indicator for their success. The obligation of the Member States to "*bring into force the laws, regulations and administrative provisions necessary to comply with this Directive*" should be included in the Directives. The final transposition by the Member States of the new requirements needs to be accomplished by the prescribed transposition deadline. The time limit for transposition of the changes to the UCITS and AIFM Directive will be twenty-four months after publication in the Official Journal of the European Union. Twenty-four months appear to be an adequate period for transposition of the changes into national law. Member States should report on the effective implementation, i.e., they should notify the text of the main provisions of national law which they adopted in the fields governed by the Directive.

Wherever necessary, the Commission will follow the procedure set out in Article 258 of the Treaty in case any Member State fails to respect its duties concerning the implementation and application of EU law.

For further monitoring and preparing an evaluation of the impact of the legislative initiative, the following non-exhaustive list of sources could provide for a basis for information gathering:

a) Websites of competent authorities regarding national marketing requirements and regulatory fees and charges,
b) ESMA database regarding national marketing requirements,
c) ESMA database regarding regulatory fees and charges,
d) ESMA interactive tool for regulatory fees and charges,
e) ESMA database for notifications (notifications, updates, de-notification regarding cross-border distribution of funds).

Whereas source e) would help the Commission to verify whether the general policy objective has been met, sources a) to d) could help to analyse in how far the specific policy objectives have been met.

The indicators for monitoring and evaluation linked to these sources would include the following output:

- creation/update of websites/databases by competent authorities and ESMA (use of sources a to c), checks whether information is available on these websites;
- creation of an interactive tool for regulatory fees and charges by ESMA (use of source d), check whether the tool is up and running.

The timing of the monitoring needs to take into account the transposition deadline of 18 months of the Directives forming part of this initiative.

As to the evaluation of the results and impacts, the analysis should take into account source e). This source permits to identify the number of notifications in total and per Member States, as well as the growth rate in total and per Member State. The analysis should take into account the benchmark of the current increase of cross-border fund distribution: the average growth of the number of cross-border funds over the last five years was 6.8% per year[98]. All other things equal, growth should further accelerate thanks to this initiative[99].

No sooner than five years after the date of transposition of the Directives forming part this legislative initiative (UCITS and AIFM Directives)[100] the Commission shall carry out an evaluation of this initiative, unless underlying legislation provides for an earlier evaluation deadline. The Commission will take the sources and indicators mentioned above into account and rely on a public consultation and discussions with ESMA and competent authorities. The evaluation shall be conducted according to the Commission's better regulation Guidelines.

[98] PwC, Benchmark your Global Fund Distribution, March 2017.

[99] Annex 10 contains calculations how the situation should further improve per each additional percent of growth.

[100] The Regulations forming part of this initiative are directly applicable. However, as the evaluation should cover the initiative globally, the timing is defined in function of the concerned Directives.

ANNEX 1: Procedural information

Lead Directorate General

Directorate-General for Financial Stability, Financial Services and Capital Markets Union.

Reference Agenda Planning / Work Programme

The initiative is included in the Commission Work Programme 2018.

Inter Service Steering Group

Work on the Impact Assessment started in June 2017 with the first meeting of the Steering group held on 26 July 2017, followed by two further meetings on 21 September and 18 October 2017.

The Inter Service Steering Group was formed by representatives of the Directorates General Competition (COMP), Economic and Financial Affairs (ECFIN), Internal market Industry Entrepreneurship and SMEs (GROW), Justice (JUST), Communications Networks Content and Technology (CONNECT), Taxation and Customs Union (TAXUD), the Legal Service (LS) and the Secretariat General (SG).

The draft report was sent to the Regulatory Scrutiny Board on 27 October 2017. The Regulatory Scrutiny Board delivered a positive opinion with recommendations to further improve the draft Impact Assessment report on 1 December 2017. The draft report has subsequently been modified to take into account comments from the Board.[101] The main changes related to factors that affect cross-border not covered by the initiative, description in the baseline of recent initiatives that have an (indirect) impact on cross-border distribution of funds, the structure, presentation, assessment and comparison of the options and the presentation, documentation and qualification of the quantitative methods and their results.

Evidence used in the impact assessment

This impact assessment is based primarily on stakeholder consultations and additional desk research of the Commission services. More specifically, sources include:

- replies by stakeholder to the following three open consultations:
  i. a public consultation on the Green Paper on the Capital Markets Union, 18 February to 13 May 2015[102];
  ii. a public consultation in the framework of the Call for Evidence on the EU regulatory framework for financial services inviting feedback and empirical evidence on the benefits, unintended effects, consistency and coherence of the financial legislation, 30 September 2015 to 31 January 2016[103];
  iii. a public consultation on cross-border distribution of investment fund, 2 June to 9 October 2016[104]);
- feedback from stakeholders through 28 targeted interviews of stakeholders who responded to the consultations (out of 64);

[101] The opinion of the Regulatory Scrutiny Board is available at: […]
[102] http://ec.europa.eu/finance/consultations/2015/capital-markets-union/index_en.htm
[103] http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm
[104] http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds/index_en.htm

- feedback from stakeholders through 15 bilateral meetings between the Commission services and stakeholders who did not respond to the consultations;
- a targeted survey based on a randomized stratified sampling procedure[105];
- a regression analysis[106];
- statistics and data from various sources, including Morningstar, ESMA, European Fund and Asset Management Association (EFAMA)[107] and the Investment Company Institute (ICI)[108].
- market reports and dedicated studies by consultancy firms (Price Waterhouse Coopers, Deloitte, etc.); and
- academic (economic) literature.

In addition to these sources, the Commission services also took into account the exchange of views between Member States on barriers to cross-border distribution of investment funds that took place in the context of the Expert Group on barriers to free movement of capital.[109]

For a detailed description of the methodological approach, analytical methods, and limitations of the evidence underpinning this impact assessment, see annex 4.

[105] See annex 4 for details regarding the methodology.
[106] The regression analysis is presented in detail in annex 6.
[107] http://www.efama.org/statistics/SitePages/Statistics.aspx
[108] http://www.icifactbook.org/
[109] http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3388

ANNEX 2: Stakeholder consultation

On 18 February 2015 the Commission launched a Green Paper consulting on its overall approach to building a CMU. This included asking how to improve investment fund distribution across the EU.

On 30 September 2015, the Commission services launched a Call for evidence[110] inviting feedback and empirical evidence on the benefits, unintended effects, consistency and coherence of the financial legislation adopted in response to the financial crisis.

Responses to both the CMU consultation and the Call for evidence suggested that regulatory barriers to the cross-border distribution of funds prevented the full benefits of the single market being realised.

Meetings/conference calls were organised with ESMA, asset managers and investor/consumer associations in order to address the most relevant issue in the public consultation.

Additional information on national practices was sought from national competent authorities. In 2016, ESMA conducted, in consultation with Commission Services, a survey among supervisors, requesting details on current national practices in several areas, including regulatory fees and marketing requirements.

Based on the input received from the CMU Green Paper and the Call for evidence and the mapping exercise realised by ESMA, the Commission services launched, on 2 June 2016[111], a public consultation[112] on the cross border distribution of investment funds. Given the feedback already received, the public consultation was particularly detailed, seeking specific examples of the problems faced and evidence of their impact.

In order to foster stakeholder engagement with the consultation and to seek early feedback, the Commission also organised a number of roadshows with asset management associations in the Member States acting as the main hubs for fund management and domiciliation.[113] The roadshows were held with (national) industry associations and their members.

In order provide sufficient differentiation of stakeholder opinions, several meetings and conferences calls were held with European and national investors associations in order to incentive them to response to the consultation and to take on board their concerns about investor's protection. In addition, the consultation was presented to the Financial Services User Group (FSUG)[114] on 15 September 2016. Despite these efforts investor associations provided only limited feedback mainly due to their limited resources whereas at the same time the number of consultation increases. In consequence, consumers and investors associations have to allocate their 'limited' resources to their main priorities. Another explanation is the fact that European and national investor/consumer associations are outnumbered compared to the number of European and national industry associations. This explains also why so few investor associations have responded.

64 responses were received to the public consultation: 52 from private organisations or companies; 8 from public authorities or international organisations and 4 from private

[110] http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm
[111] The consultation closed officially in October 2016
[112] https://ec.europa.eu/info/publications/consultation-cross-border-distribution-investment-funds_en
[113] Luxembourg, Paris, Dublin, London, Frankfurt and Brussels
[114] The FSUG was set up by the European Commission in order to involve users of financial services in policy-making.

individuals (the summary of responses received is included in annex 3). Most of the asset managers have contributed to the consultation through their national associations who have contributed then to the response of their European associations. In consequence the responses received from national and European associations represent a significant part of the asset manager sector. For example, EFAMA represents through its 28 member associations and 62 corporate members close to € 23 trillion in assets under management of which €14.1 trillion managed by 58.400 investment funds at end 2016.

At the request of the Commission and based on the evidence received, ESMA conducted a follow-up survey in 2017, seeking further information on specific marketing practices and notification requirements in each Member States.

Commission Services also sought further information through meetings with the fund industry and European investor associations. In addition, a questionnaire was sent to eight trade bodies on the various areas covered by this initiative. A particular focus was placed on attempting to quantify the costs of the regulatory barriers to cross-border distribution and potential benefits of removing these barriers for asset managers and investors. Moreover, a targeted survey based on a randomized stratified sampling procedure was conducted[115]. The responses to this targeted survey are included in figure 1 below.

In addition, an Inception Impact Assessment was published for consultation. Five responses have been received mainly from investment funds managers, their associations and also distributors/financial advisors' associations. They were all supportive of the action initiated by the Commission on reducing the barrier to the cross-border distribution of funds.

Commission Services has used publically and privately available information to supplement responses received to the consultations mentioned above. This includes data from EFAMA, Morningstar and from private companies. Additionally, we have reviewed academic literature for evidence of the economic impact of cross-border distribution on competition and expected consumer behaviour.

Table 1 – Responses to targeted survey based on a randomized stratified sampling procedure

SECTION 1			
1. For each of the items below, indicate to what extent you feel that -in your experience- they are a barrier to the cross-border distribution of your fund(s) in the EU.:	Av. S*	Av. L *	% Agree/ Strongly agree
Regulatory barriers	3.67	3.67	75%
Local demand	2.83	3.86	54%
Taxation	4.00	4.14	85%
Local distribution network / market structure	3.17	3.43	54%

[115] A questionnaire was sent to a sample of 60 funds with various sizes (equally divided over small, medium and big).

2. For each of the regulatory barriers, indicate to what extent you feel that -in your experience- they are a barrier to the cross-border distribution of your fund(s) in the EU.:			
National marketing rules	3.33	4.00	62%
Regulatory fees	3.33	3.00	46%
Notification process	3.33	3.00	38%
Local agent	3.33	3.71	62%
3. Would a positive change in the items below result in an increase of your cross-border activity, provided that there is no change with respect to the other barriers listed below.:			
Regulatory barriers	3.83	3.71	77%
Local demand	3.50	4.14	69%
Taxation	4.33	3.71	77%
Local distribution network / market structure	4.17	3.14	69%

SECTION 2			
4. Regarding regulatory barriers, please indicate which approach you feel is most appropriate to increase your cross-border distribution of funds.:	% EU harmonisation**	% EU transparency **	% National transparency **
National marketing rules	77%	15%	8%
Regulatory fees	83%	17%	0%
Notification process	100%	0%	0%
Local agent	85%	8%	8%
5. For each of the specific regulatory barriers, indicate to what extent you feel that a reduction would increase competition:			
National marketing rules	69%	15%	15%
Regulatory fees	75%	17%	8%
Notification process	92%	0%	8%
Local agent	77%	8%	15%
6. For each of the specific regulatory barriers, indicate to what extent you feel that a reduction would investor's choice more investment opportunities, lower fees, etc.):			
National marketing rules	55%	27%	18%
Regulatory fees	67%	8%	25%
Notification process	67%	25%	8%
Local agent	64%	27%	9%

* Respondents were ask to rank each item on a scale of 1-5 [strongly disagree - strongly agree]
** Whereby 'EU harmonisation' refers to harmonising requirements at European level, 'EU transparency' to increasing transparency at the European level and 'National transparency' at to increasing transparency national level

ANNEX 3: Who is affected by the initiative and how?

Fund managers should face reduced costs in distributing funds across borders – through harmonisation of, and easier access to, national requirements, which should act as an incentive to test new markets and test their funds more broadly. This is particularly the case for the smaller managers and smaller funds where the funds are disproportionately larger.

Investors across the EU should be offered a greater range of attractive investment opportunities as a result of the initiative. As a result, they will be more likely to choose to invest in funds in comparison with other types of investment, and more likely to invest in cross-border funds.

Given that investment options for retail investors are more restricted, they should particularly benefit. However, professional investors should also benefit from a greater range of investment funds. The initiative will lower barriers and encourage greater choice. This is particularly the case for some niche sectors. For example in the Member States where there is currently lack of clarity over pre-marketing, the initiative should mean that professional investors gain access to early Venture Capital / Private Equity funding rounds.

ESMA will face with additional and ongoing work linked to the setup of the central database covering in particular the domestic rules on marketing and regulatory fees in each NCAs but also covering the notification.

National Competent Authorities will face some initial additional and ongoing work in implementing the changes envisioned, such as translating requirements into a language commonly used in financial services, and introducing rules for 'de-notification'.

SMEs Although the proposed policy options do not have a direct impact on small and medium enterprises (SMEs) more broadly, they will indirectly benefit from the initiative as increased cross-border distribution of investment funds would accelerate the growth of EU investment funds and allow them to benefit from economies of scale. This in turn, would increase the availability of financing for SMEs offered through these investment funds – in particular from venture capital funds.

ANNEX 4: Methodological approach, analytical methods, and limitations

Overview

The analysis underlying the impact assessment is based on 3 methodological approaches:

1. desk research;
2. qualitative analysis and;
3. quantitative analysis.

The data used stems from several different data sources. Input from the stakeholder consultation, the follow-up survey and targeted interviews are used for the qualitative analysis. In addition data from existing databases such as Morningstar, EFAMA and ICI Global were used. Morningstar data was used for the quantitative analysis. This was supplemented with market reports and dedicated studies (Price Waterhouse Coopers, Deloitte, etc.)

1. Desk research

A literature review was performed regarding the determinants of cross border fund distribution and resulting impact on competition and consumer choice. The relevant (academic) literature was also consulted to gain an insight into fund market developments.

2. Qualitative analysis

Qualitative analysis is based on the information collected via the stakeholder consultation. We followed the following 3-fold methodological approach to the consultation of stakeholders:

(i) public stakeholder consultation;
(ii) stratified randomized sampling-based consultation;
(iii) anecdotal evidence gathering based on targeted interviews.

(i) The public stakeholder consultation was conducted prior to the impact assessment. The consultation was open so the design would ensure sufficient representation of different stakeholders, maximize the number of respondents, and allow for sufficient spread in opinion (in case opinions would differ). The public consultation thus provided insight on the average opinion for each stakeholder group concerned and the level of consensus within each stakeholder group.

Details on the public consultation can be retrieved in Annex 2.

(ii) A stratified randomized sampling-based consultation was issued in order to supplement the public consultation.

This second survey allowed for differentiated opinions along these two dimensions (large versus small funds and active versus non-active funds). The randomized stratified sampling approach ensured maximum representativeness for a given level of confidence. In addition, specific questions were introduced to obtain more information on topics for which the public consultation yielded no sufficient input

The result allowed to further insight into the differences between large and small UCITS funds: the effect of costs and other factors on the decision to go cross border may differ between large and small funds. These factors as well as any improvement in these factors as a result of proposed measures might also differ along funds depending on which are currently already distributing funds cross border and other funds.

The randomized stratified sampling proceeded as follows.

- *Population considered*:

- As a starting point, 25,313 UCITS funds, being all the UCITS funds domiciled in EEA based on the consultation of the Morningstar database on 6 October 2017.
- Only the funds with size larger than 1 million EUR have been withheld, resulting in 24,193 funds. Funds smaller than that threshold would not be significant in the contest of this analysis, they are not likely to be distributed cross border anyway.

- *Total sample size*:

- The size was determined in order for the responses to be representative for the population with a 90%-confidence level. Based on conventional statistics, a sample size of 268 observations is recommended.
- The final sample takes into consideration a non-response rate of 10%.

- *Stratification of sample*:

- Fund size and whether fund manager are currently distributing the fund cross-border[116] are used as the 2 dimensions for stratification.
- *With respect to size*, we construct size deciles and only consider the two most extreme deciles (decile 1 and decile 10) given that we are interested in possible differentiation of opinion along the dimensions.
- To further assure maximum representativeness within the smallest and largest size decile, both the largest and smallest size decile are subsequent split into 3 equal parts.
- *With respect to cross-border activity*, we use a binary dummy variable to assign funds being distributed cross-border or not.[117] We ensured that the sample mirrors the number of cross-border funds in our population to assure representativeness. The observed percentage of cross-border funds to total population is 34%, i.e. overall we observed 34% of UCITS are marketed cross border (i.e. they are notified for sale in at least two countries).
- As a result, we end up with a 6×2 classification matrix along size and cross-border activity where each time 3 size classes are taken from the largest and smallest size decile.

- *Randomization:*

- To select random funds for each of the 6×2 groups, funds were classified in these groups based on the rules explained above.
- Funds were assigned a unique number and random funds per group were selected based on a random number generator.
- *We proceeded in 2 rounds*:
  - In round 1 random funds were selected and the survey was submitted to the manager of the fund
  - In case of insufficient replies per group to achieve the pre-set level of confidence, the survey was resent to another random fund of that group. This fund was again selected based on the random number generator.

[116] Binary dummy variable (yes: funds currently distributed cross-border; otherwise value set to no.
[117] Hence, the original 10×2 classification matrix is shrunk to a 2×2 matrix.

- The number of funds are as follows:
  - We divided the sample size to have the number of observations for the two deciles, reaching a total of 54 observations (i.e. 2 x (268 x 10%) = 54).
  - Considering response rate of 90% we round the sample size at **60** observations, i.e. **10** observations for each of the **6 sub-groups according to size**.
  - Of these 10 funds, we select each team 3 cross-border funds and 7 funds that are marketed only domestically to match the cross-border distribution rate in our sample as explained above. Final number of funds in the stratified sample is summarized in the table below.

Table: Number of UCITS funds selected for survey

	Funds with cross-border distribution(*)	Others
Decile 1: 10% largest funds		
LARGE – Top (1/3)	3	7
LARGE – Medium (1/3)	3	7
LARGE – Bottom (1/3)	3	7
Deciles 2-9	[Not considered]	
Decile 1: 10% smallest funds		
SMALL – Top (1/3)	3	7
SMALL – Medium (1/3)	3	7
SMALL – Bottom (1/3)	3	7

(*) 34% of funds are distributed cross-border in our population based on Morningstar. Figures are rounded to determine the number of funds.

3. Quantitative analysis

A quantitative analysis was performed in order to examine if factors beyond structural factors (local distribution channel etc.) and (expected) demand are related to the cross-border distribution of funds. More particularly, we aimed at testing the impact of costs. The results provide an indication regarding the extent to which regulatory measures that would reduce these costs could impact the level of cross-border distribution. Regulatory fees related to cross-border activity are used as a measure for costs.[118]

Details of the analysis are presented in Annex 6.

In essence, we estimate a robust regression relating the cross-border distribution of funds to different measures of regulatory fees. Fees are considered separately for professional and retail investors and are split up between one-off fees and ongoing fees.

In addition, a market entry variable is used as an instrument to proxy for the attractiveness of the local market.[119]

The full model from which different specifications are drawn can be summarized as follows:

[118] Importantly, the costs of going cross-border will not only consists of regulatory fees but will also consist of additional compliance cost and other costs as indicated in Annex 10.

[119] The attractiveness of the local fund market will be influenced by a number of factors such as local distribution channels, (expected) demand, and taxation. These factors will not only affect the cross-border distribution of funds but will also affect the entry decision of other funds in a similar fashion which provides the basis to use the market entry variable as an instrument. In the sensitivity analysis we included fund flows as a more direct proxy for local demand

$$\text{Cross-border fund distribution} = f(\sum \text{Regulatory fee proxy}; \text{local market attractiveness proxy})$$

With the *regulatory fee proxy* equal to one-off fees and ongoing fees for profession investors or retail investors.

Limitations

a. Existing limitations

All reasonable efforts have been undertaken to collect and analyse available evidence. There are nevertheless still some remaining limitations to the current approach which should be taken into consideration when interpreting the evidence.

***Public stakeholder consultation*:** although the consultation was open the number of responses is with 64 responses limited. More responses could have yielded more information regarding the extent that there was consensus among individual stakeholders on certain subject.

Stratified randomized sampling-based consultation: sample selection was set up to be representative with a 90%-level of confidence. 12 responses were received after the first round.

Regression analysis: Ideally, we would have liked to analyse the total effect of costs (regulatory fees, compliance costs, search costs) on the decision to go cross-border but data is only available for regulatory fees.

Fund databases (Morningstar) and other data sources*:* funds are not obliged to report data. As a result none of these databases or data sources has complete coverage. As a case in point, the reporting on Morningstar database is based on a voluntary reporting from asset managers.

The number of UCITS funds included in the Morningstar database is estimated to be about 80% of the number of UCITS reported by EFAMA. Morningstar data for AIFs is far less representative. Hence, AIF data from Morningstar is only indicative and should be interpreted with caution. As data provision is not compulsory, there are also some discrepancies between the data reported by various data sources.

Granular cost data and itemization: As indicated above, detailed information on all costs influencing the cross-border distribution funds (regulatory fees, compliance costs, search costs) is not available at a granular level per Member State. Regulatory fees are available at this level of detail, but they only constitute a small part of total costs. Compliance costs for cross-border activity (e.g. legal advice) are often considered together with compliance cost of other out-of-scope drivers or other business activities, making it difficult to have a very clearly defined itemization.

Quantitative forecast on dynamic baseline scenario and effect of policy action.

Historical data on cross-border distribution and its driver is limited.
As a result, the expected growth rate based on a multivariate forecast cannot be estimated.

As argued in Annex 11, a fund manager's decision to distribute a fund cross-border will be influenced by discretionary strategic considerations on the one hand and the attractiveness of the local market on the other hand. The latter include the (i) marginal costs of going cross-border to a specific national market; (ii) structural factors of the local market; and (iii) expected demand. In addition, we identified a number of important out-of-scope drivers (e.g. taxation) as summarized by the problem tree.

As a result, it is not feasibility to have point estimates on cost reduction induced by option policies in view of the lack of historical data on these drivers that shape the cross-border decision process.

b. Interpretation of results and strategy to mitigate effect of limitations

***Public stakeholder consultation*:**

- It is important to note that in spite of the small number of responses, the coverage for the fund management industry is good nonetheless: most of the asset managers have contributed to the consultation via their national associations, which in turn have contributed to the viewpoint of their European associations. Given that the majority of funds are members of a fund association, the responses from national and European associations represent a significant part of the asset manager sector. For example, EFAMA represents though its 28 member associations and 62 corporate members close to € 23 trillion in assets under management of which € 14.1 trillion managed by 58,400 investment funds at end 2016.

- To overcome concerns about limited differentiation of opinion within stakeholder groups, we set-up the stratified randomized sampling-based survey where groups were selected to allow for maximum differentiation between large and small funds and active and non-active funds (cross-border distribution), while remaining representative for the population. In addition, new questions were introduced to address limited responses to specific issues.

- Further differentiation of stakeholder opinions was established by:

  - consulting ESMA in order to get their feedback on the policy options considered and their costs;
  - by checking the policy options with an investor association (Better Finance) to ensure that the retail investor's protection is not reduced;
  - by organising several ad-hoc conference calls and meeting with asset managers associations and asset management companies in order to evaluate the impact of the options considered.

- *As a result*, the variation in responses in the industry stakeholder group is increased, while the extra questions completed the picture on cross-border related issues.

Stratified randomized sampling-based consultation:

- Although the sample selection was set up to be representative with a 90%-level of confidence, only 12 responses were received after the first round.

- Hence, we initiated a second round were additional funds were randomly selected, which yielded 1 additional answer.

- Importantly, we obtained an equal split between small funds (46%) and large funds (54%), indicating that the results will provide insight into different opinions of small and large funds.

- *In effect,* the results are still very informative in terms of possible different opinions of small and large funds (as both type of funds answered to the survey) and help to address open issues for which the consultation did not provide sufficient feedback. The representativeness of the answers is however lower than anticipated.

Regression analysis:

- Ideally, we would have liked to analyse the total effect of costs (regulatory fees, compliance costs, search costs) on the decision to go cross-border but data is only available for regulatory fees.

- We accommodated this by collecting estimates on the total costs, as presented in Annex 12, but data is not available on a per Member State basis.

- *As a result*, the regression results – that rely only on regulatory fees- provide no direct evidence on the relation between total costs and cross-border activity, but provide an indication on the importance of non-structural factors on the decision to distribute cross-border. They also give an indication regarding the effect of total costs under the realistic assumption that total costs are positively related to regulatory costs.

Fund databases (Morningstar) and other data sources*:* funds are not obliged to report data. As a result none of these databases or data sources has complete coverage. As a case in point, the reporting on Morningstar database is based on a voluntary reporting from asset managers.

The number of UCITS funds included in the Morningstar database is estimated to be about 80% of the number of UCITS reported by EFAMA. Morningstar data for AIFs is far less representative. Hence, AIF data from Morningstar is only indicative and should be interpreted with caution. As data provision is not compulsory, there are also some discrepancies between the data reported by various data sources.

Granular cost data and itemization:

- Estimates on the total costs were collected from feedback from stakeholders (cf. Annex 12). A general cost mapping based on a broad sample of responses was not possible.

- We accommodate this by trying to achieve as much granular information through targeted consultations. In addition, we also indicate the source of information on which we relied.

- *As a result*, costs for individual fund might deviate from the estimates due to the small sample that responded. Costs are likely to be higher in case they deviate because smaller funds are less inclined to answer and face higher costs on a relative basis. Hence, our figures could be considered to be conservative estimates.

Quantitative forecast on dynamic baseline scenario and effect of policy action:

Historical data on cross-border distribution and its driver is limited. As a result, the expected growth rate based on a multivariate forecast cannot be estimated.

As argued in Annex 11, a fund manager's decision to distribute a fund cross-border will be influenced by discretionary strategic considerations on the one hand and the attractiveness of the local market on the other hand. The latter include the (i) marginal costs of going cross-border to a specific national market; (ii) structural factors of the local market; and (iii) expected demand. In addition, we identified a number of important out-of-scope drivers (e.g. taxation) as summarized by the problem tree.

As a result, it is not feasible to have point estimates on cost reduction induced by policy options in view of the lack of historical data on these drivers that shape the cross-border decision process. Results will however still reveal the direction of the impact. We accommodated this by introducing dedicated survey questions to assess the extent to which barriers are binding to evaluate the expected effect of policy actions.

Overall, significant efforts have been undertaking to support the analysis of cross-border distribution of funds in the EU and the evaluation of policy options based on 3 methodological approaches. Each of them has its merits but also its limitations and we discussed our approach to mitigate the effect and its effect on the analysis.

As the combined evidence stemming from the various methodological approaches provide corroborating evidence, it can be considered to be a sound basis for the impact assessment despite the inherent limitations of each of the individual approaches.

ANNEX 5: Evaluation of relevant provisions in AIFM and UCITS Directives

Section 1 Introduction

Purpose of the evaluation

Collective investment funds in the EU are regulated under the Undertakings for Collective Investment in Transferable Securities (UCITS)[120] and Alternative Investment Fund Managers (AIFM)[121] Directives. One of the main objectives of these Directives was to establish a single market for investment funds, in particular through the creation of a marketing passport, which allows funds to be marketed across the EU without additional authorisation in each Member State.

While the marketing passports in the Directives have had some success in supporting the distribution of investment funds across the EU, available data suggests that to date much of the market remains structured along national lines. This indicates that the single market for investment funds has not exploited its full potential. Responses to various Commission consultations and additional desk research of the Commission services identified several factors that limit the cross-border distribution of funds. One important factor is regulatory barriers, which follow from diverging and difficult to determine national requirements and (supervisory) practices regarding the use of the EU marketing passport under the two Directives.

In this context, the purpose of the evaluation is to assess to what extent the existing EU rules on cross-border distribution of investment funds have met their principle objectives and in particular whether they have been efficient, effective, coherent, and relevant and have provided EU added-value. This retrospective evaluation has been conducted in parallel with the work on the impact assessment (IA) and is presented as a standalone annex to the impact assessment. The results of the evaluation have been incorporated in the problem definition of the impact assessment.

Scope of the evaluation

This evaluation does not constitute a full review of the two Directives; it only focuses on the rules on the use of the marketing passport for investment funds contained therein. As such, the evaluation provides an assessment of the Directives focusing on the potential factors that may have prevented the wider distribution of investment funds as compared to initial expectations. To the extent possible, the evaluation assesses the rules in the context of the five evaluation criteria, as required by the Better Regulation guidelines.

Both the UCITS and AIFM Directive will be subject to broader reviews in the near future. An overall review of the AIFM Directive started recently with a tender for an external study on the functioning of the Directive. The tender was awarded in September 2017 and the contractor will have a year to carry out its tasks. An overall review of the UCITS, including a review of the application of criminal and administrative sanctions, was initially expected by no later than September 2017. However, this review has been delayed as not enough experience has been gained with the practical application of elements introduced with the most recent amendments to the Directive through UCITS V.

[120] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0091
[121] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0061

For both (overall) reviews it will take at least until the end of 2018 to gather enough evidence to be able to decide whether any legislative changes should be initiated. This is the reason why the initiative on cross-border distribution of funds is being pursued now on a stand-alone basis. The potential to make significant progress in reducing barriers and bolstering the single market for investment funds – thus providing a tangible contribution to CMU on the short term – justifies taking action now instead of waiting for the broader reviews.

The evaluation takes a holistic approach to the rules on cross-border distribution, meaning that it covers UCITS and AIFs and consequently also EuVECA, EuSEF and ELTIF funds (as these are AIFs). However, this evaluation does not cover the rules included in the EuVECA, EuSEF and ELTIF Regulations, nor any of the elements which were amended in the recent EuVECA and EuSEF review but which are not yet implemented. The reason for this is that the rules on the cross-border distribution for these funds either follow directly or are copied from the AIFMD.

Section 2 Background to the initiative

Description of the initiative and its objectives

The EU legislative framework for investment funds and its managers has at its heart the aim of achieving a single market through a set of rules under which managers (and funds) have the opportunity to compete across the EU to the benefit of investors and investee firms. An important element to achieve this aim is the marketing passport as foreseen in the UCITS and AIFM Directives, which is designed to allow investment funds to be marketed across the EU without requiring separate authorisation for each Member State. In other words, the general objective of the UCITS and AIFM Directives was to provide for a single market for UCITS and AIFs which allows investment funds to be distributed across borders, within a harmonised regulatory framework for the activities of their managers and funds[122].

In line with the internal market strategy, another important objective of the two Directives is to ensure that investor protection is not undermined by the greater freedoms of the internal market. Other objectives of the EU rules for investment funds and their managers include improving monitoring of macro-prudential risks, and proper management and limitation of micro-prudential risks. However, these objectives are not in the scope . Instead, this evaluation focuses only on the objective that is central to cross-border distribution of investment funds, namely achieving a single market for investment funds.

A more detailed description of the UCITS and AIFM Directives and their specific objectives is provided below.

a. UCITS

The UCITS Directive provides a harmonised regulatory framework for retail investment funds at the EU level, and has laid the basis for a single market for investment funds. The UCITS framework has been considered largely successful in delivering an effectively functioning single market for investment funds in the EU, including ensuring that investment funds are suuitable for retail investors.

[122] While the UCITS Directive provides a harmonised regulatory framework for managers and their funds, the AIFMD provides only a harmonised framework for the activities of managers.

The UCITS Directive lays down common requirements for the organisation, management and oversight of UCITS funds. The Directive defines a list of eligible assets in which a UCITS fund can invest. It also imposes rules relating to the diversification and liquidity of the fund's portfolio. The first UCITS Directive adopted in 1985 has provided the regulatory underpinning for the development of a strong and quickly expanding European investment fund market. This legislation was introduced when the European mutual fund industry was in its infancy. By providing a common harmonised template, before Member States' legislation was fully developed, UCITS permitted market participants and authorities across the EU to align on a common standard.

Overview of milestone amendments to the UCITS Directive

	Adoption date	**Reference**
UCITS Directive	20 December 1985	Directive 85/611/EC
UCITS III	21 January 2002	Directive 2001/107/EC and Directive 2001/108/EC
UCITS IV	13 July 2009	Directive 2009/65/EC (recast)
UCITS V	28 August 2014	Directive 2014/91/EU

Objectives

The UCITS Directive introduced the first financial services passport in the EU. Once a UCITS fund had been authorised by the competent authorities of its country of domicile, it could be marketed all over the EU. It simply needed to notify this intention to the competent authorities of the host Member State.

The objective was to ensure that all players, asset managers, intermediaries and investors, can exercise their respective single market rights. Market players should be in the position to fully benefit from the single market freedoms and investor protection safeguards established by the UCITS Directive, as well as from the efficiency gains that an up-to-date legislative framework should facilitate. These single market opportunities not only concern the freedom of the industry to do business but also the freedom and right of investors to participate in the market in a fair and transparent way.

Background

As recalled in the UCITS IV impact assessment[123], in the 1980s, the European industry for investment funds had just started to develop. However, the existence of a patchwork of national legislation had created an increasingly fragmented market. The first UCITS Directive, which dates back to 1985, was adopted in order to overcome this situation. It aimed to offer greater business and investment opportunities for both industry and investors in an enlarged market. The UCITS Directive regulated the product. It set a series of requirements with which investment funds needed to comply.

The UCITS IV impact assessment identified some barriers to marketing funds in other Member States' (MS) markets. In particular, the notification procedure (vis-à-vis the competent authority of the host MS) introduced by the 1985 Directive was long and cumbersome. The host regulator's role often exceeded the role defined in the Directive (i.e. verification of the UCITS marketing arrangements in the host market) and the two-month limit was not always respected. The procedure has been compared to a second authorisation of

[123] http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2008/sec_2008_2263_en.pdf

the fund by the host regulator instead of a simple communication of the UCITS intention to market its units in the host market (as provided for in the Directive).

As further detailed in the 2006 "White Paper on enhancing the single market framework for investment funds"[124], before marketing a fund in another Member State, the UCITS Directive required the fund manager to file extensive documentation with the relevant local authority and wait for two months while the latter verified compliance with local advertising rules. The deadline of two months was not always respected. Extensive efforts to remove the most important sources of administrative friction were undertaken, culminating in CESR[125] guidelines in June 2006. However, these improvements were not able to overcome the administrative and procedural obstacles that have their origin on outmoded provisions of the Directive.

Therefore, in 2009 UCITS IV introduced a full (management) passport for UCITS management companies and a new notification procedure. This improved the time to market by facilitating immediate access of UCITS to host markets. The backbone of this new procedure was swift communication between home and host authorities (regulator-to-regulator notification), in particular with the use of electronic means to speed up processes and increase their reliability. From an investor protection angle UCITS IV introduced the Key Investor Information Document (KIID). Finally, from an industry efficiency point of view, UCITS IV facilitated cross-border mergers and master-feeder structures, allowing funds to grow more easily.

In July 2012, the European Commission presented a proposal to amend the UCITS Directive (UCITS V). This proposal was a direct consequence of the financial crisis and in particular the Madoff events that had put in the spotlight the duties and the liability of the investment funds depositaries. The UCITS V Directive mirrors, to a large extent, the provisions on depositaries that were introduced in the AIFMD, which were further implemented through Delegated Regulation 231/2013. Although most of the provisions were similar to those foreseen in the AIFMD, the UCITS V has stricter depositaries' duties, delegation arrangements, and a liability regime for custodial in order to ensure the protection of retail investors.

The UCITS V Directive addresses also other issues, such as the lack of harmonised sanctions and administrative requirements across the EU and the lack of strict rules on asset managers' remuneration. Following the adoption in co-decision, UCITS V Directive was published in the Official Journal of the European Union on 28 August 2014 and came into force on 17 September 2014.

b. AIFMD

In 2013, the AIFMD introduced for the first time a harmonised framework for the authorisation, supervision and oversight of managers of non-UCITS funds (so called 'Alternative Investment Funds - AIFs[126]).The AIFMD regulates the management of AIFs and the marketing of these funds to professional investors in the EU. Member States may impose additional requirements for the marketing of AIFs to retail investors.

[124] http://ec.europa.eu/internal_market/securities/docs/ucits/whitepaper/whitepaper_en.pdf
[125] The Committee of European Securities Regulators
[126] Alternative Investment Funds (AIF) covered all the investment funds that are not UCITS such as private equity funds, hedge funds, venture capital funds but also more traditional funds.

AIFMs have to be authorised, and to obtain this authorisation they have to comply with the requirements laid down in the Directive. These requirements cover, amongst other areas, capital, risk and liquidity management, the appointment of a depositary, rules regarding disclosures to investors, and reporting to competent authorities.

AIFMD does not regulate the fund itself (i.e. AIFs) but instead only targets the managers. The AIFM Directive covers managers of all funds that are not captured by the existing UCITS regulatory framework. Like UCITS, the AIFM Directive aims to create a single market for alternative investment funds, but for the benefit of professional and sophisticated investors, rather than for retail investors like in UCITS.

Objectives

The AIFMD aims to provide for a single market for AIFMs and AIFs through a harmonised and stringent regulatory and supervisory framework for the activities of all AIFMs within the EU. AIFMD also lays down the conditions subject to which EU AIFMs may market the units or shares of EU AIFs to professional investors in the Union. Such marketing by EU AIFMs should be allowed only in so far as the AIFM complies with the Directive and the marketing occurs with the marketing passport.

Background

The AIFMD impact assessment[127] recalled that following the financial crisis that started in 2008, many Member States had introduced legislation for AIFMs; however, the scope and content of national measures varied significantly, for example with regard to the requirements for the registration and authorisation of AIFMs, their prudential regulation, regulatory reporting requirements, etc.

It is important to recall that the risks posed by AIFMs domiciled in one Member State are not only of concern to the financial markets and market participants in that Member State. They also have an important cross-border dimension. Indeed, the investor base of many AIFMs business models is highly international, as investors seek to optimise and diversify their portfolios by seeking investment opportunities in other countries. AIFMs are frequently major players in financial markets outside their domicile and can have a substantial influence on price formation and liquidity in these markets; and AIFMs investing in companies frequently acquire portfolio companies located in other Member States.

The evidence in the AIFMD impact assessment highlighted the discrepancies under which AIFMs could distribute AIFs on a cross-border basis, resulting in legal and regulatory obstacles to the cross-border distribution of AIFs and manifesting themselves in the following areas:

- Requirements to produce local disclosure documents to accompany the offer;
- Restrictions on marketing, promotion, etc.;
- Restrictions on placing entities approaching prospective investors;
- Different approaches to defining the population of eligible investors;
- Requirements regarding prior approval or registration of instruments;
- Limits on the eligible offerors or intermediaries who are permitted to approach prospective investors.

The AIFMD aimed at overcoming nationally fragmented regimes which might act as a barrier to market integration by raising regulatory compliance costs for foreign competitors. The

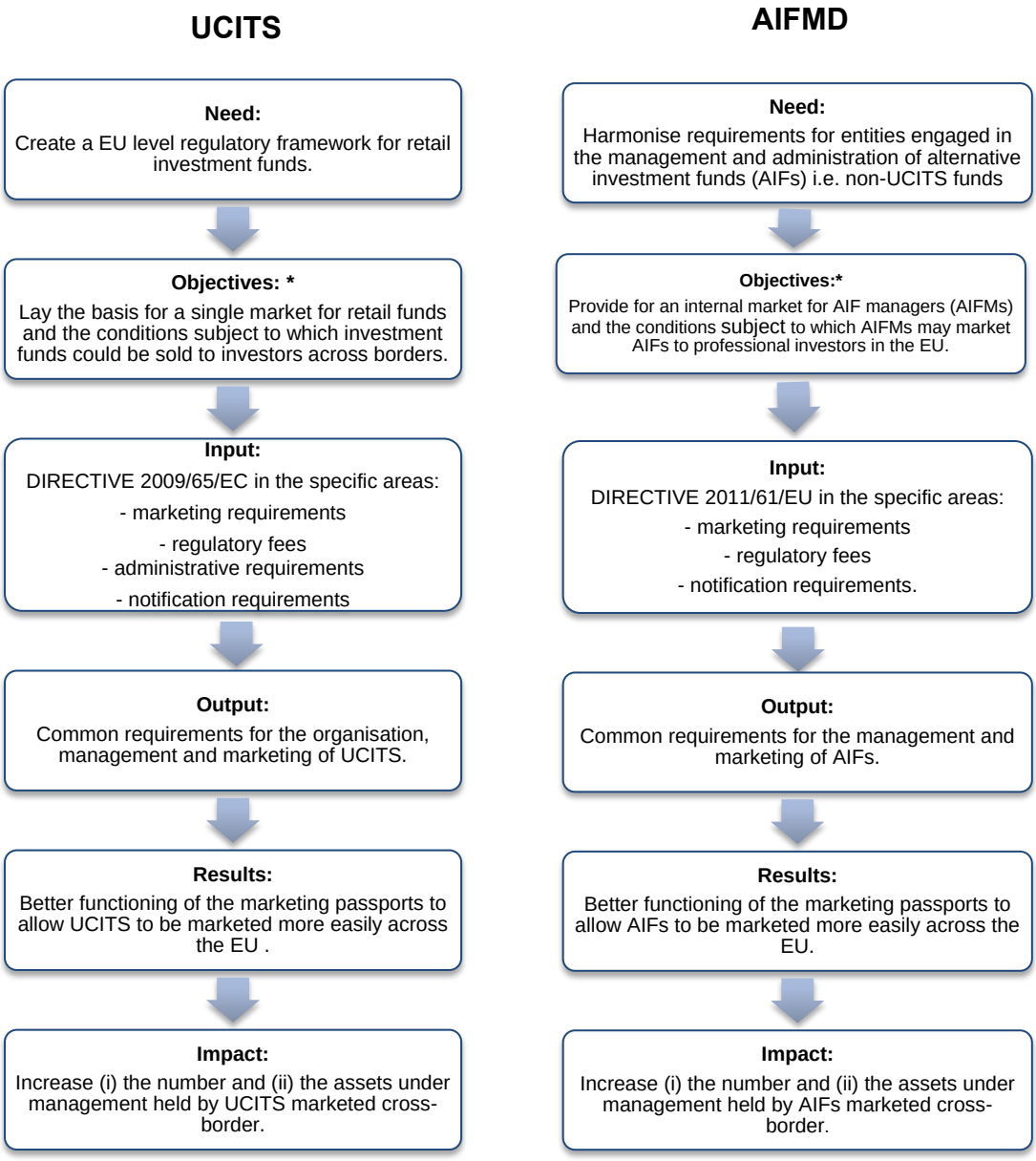
[127] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009SC0576&from=EN

burdens associated with compliance with multiple regulatory regimes constrain cross-border business, with a consequent impact on the efficiency of AIF markets. AIFMs are therefore unable to take full advantage of the available economies of scale (e.g. through increased fund size and cost reduction). Investors do not have access to the complete universe of AIF in the EU and therefore might not be able to diversify their portfolio optimally and to choose the funds with the best risk-return features for their investor profile. These problems are compounded by differences in national provisions on investor protection and disclosures.

The removal of barriers to the efficient cross-border distribution of AIF should have allowed for an internal market in AIFs in the EU to develop which is grounded in a robust and consistent regulatory supervisory framework.

Intervention logic

The intervention logic below provides a description - in a summarised diagram format - of how the UCITS and AIFM Directives were expected to work. It is also used in this assessment to identify particular evaluation questions.



* Other objectives are not part of this evaluation

State of play

The relevant rules in both UCITS and AIFMD have been implemented in all Member States. However, national implementation of the Directives has resulted in differing interpretations of the rules applicable to the use of the marketing passports under these two Directives[128]. For example at least 17 Member States require that local facilities are present in their territory in case of cross-border distribution of UCITS funds, whereas the remaining Member States do not require a physical presence. Moreover there is a lack of transparency regarding national rules, e.g. regarding national marketing requirements or regulatory fees to be paid. For a more detailed description of diverging and difficult to determine national requirements and practices, see the answer on evaluation question 1 in section 5.

Section 3 Methodology

This evaluation is based primarily on stakeholder consultations and additional desk research of the Commission services[129]. More specifically, sources include:

- 28 bilateral meetings between the Commission services and stakeholders who responded to the consultations (out of 64);
- 15 bilateral meetings between the Commission services and stakeholders who did not respond to the consultations;
- three public (online) consultations: (i) the consultation on the Green Paper on the Capital Markets Union (18 February 2015[130]); (ii) the Call for evidence (30 September 2015[131]), and (iii) the public consultation on cross-border distribution of investment funds (2 June 2016 [132]);
- a targeted survey based on a randomized stratified sampling approach[133];
- a regression analysis[134];
- statistics and data from various sources, including Morningstar, ESMA and the European Fund and Asset Management Association (EFAMA).

In addition to these sources, the Commission services also took into account the exchange of views between Member States on barriers to cross-border distribution of investment funds that took place in the context of the Expert Group on barriers to free movement of capital.[135]

Where possible the conclusions of the evaluation are based on triangulation of information from different sources.

[128] Further examples are provided in section 5.
[129] The Directorate General for *Financial Stability, Financial Services and Capital Markets Union* was in charge of this review. It was supported by the Directorates General and services which participated in the steering group for the impact assessment, in particular the Secretariat General and Directorate General for *Internal Market, Industry, Entrepreneurship and SMEs*, Directorate General for *Competition*, Directorate General for *Economic and Financial Affairs*, Directorate General for *Justice*, and the Legal Service.
[130] http://ec.europa.eu/finance/consultations/2015/capital-markets-union/index_en.htm
[131] http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm
[132] http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds/index_en.htm
[133] The methodology and its limitations is further described in annex 4.
[134] The regression analysis is presented in detail in annex 6.
[135] http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3388

Limitations

While both the UCITS and AIFM Directive contain requirements for asset managers to report information on the funds they manage to the national competent authorities, the reported information does not provide insights into the extent funds are distributed on a cross-border basis. Moreover, ESMA reported that the AIFMD reporting system is not yet fully operational and that the data is not immediately comparable. In this context, the Commission services had to rely on public sources and professional databases for quantitative data.

However, data coverage from the Morningstar database and EFAMA is not complete. Funds are not obliged to report data to Morningstar and not all managers are members of (national) trade bodies that provide data to EFAMA. The number of UCITS funds included in the Morningstar database is estimated to be about 80% of the number of UCITS reported by EFAMA. Morningstar data for AIFs is far less representative. Hence, AIF data from Morningstar is only indicative and should be interpreted with caution. As data provision is not compulsory, there are also some discrepancies between the data reported by various data sources.

For all the above reasons granular data was very difficult to obtain. In particular, data on the detailed costs and administrative requirements for marketing cross-border, as well as differences between UCITS and AIFs, were not directly available. Consequently, it was necessary to rely on bilateral meetings with asset managers and industry associations for collecting selected information. It should be noted that anecdotal evidence was mainly – although not exclusively – provided by large asset managers, as they have the most experience with cross-border distribution. As such, the overall analysis could be seen as relatively biased towards the point of view of large asset managers.

Therefore, for the purpose of quantifying impacts this evaluation makes cautious use of available data, which should be understood as 'anecdotal evidence' rather than conclusive.

Section 4 Evaluation questions

Question 1: How effective has the EU intervention been?

To what extent have the objectives of the UCITS and AIFM Directives to establish a single market for investment funds been achieved and what factors influenced the achievements observed?

Question 2: How efficient has the EU intervention been?

To what extent have the rules regarding cross-border distribution in the UCITS and AIFM Directives been cost-effective? Are there significant differences in costs (or benefits) between Member States and what is causing them?

Question 3: How relevant is the EU intervention?

To what extent are the rules still relevant and how well do the original objectives of the Directives correspond to the current needs within the EU?

Question 4: How coherent is the EU intervention?

To what extent are rules on cross-border distribution in the UCITS and AIFM Directives coherent with other pieces of EU legislation?

Question 5: What is the EU-added value of the EU intervention?

To what extent have the relevant rules increased cross-border distribution and to what extent does this matter continue to require action at EU level?

Section 5 Answers to the evaluation questions

Question 1: How effective has the EU intervention been?

To what extent have the objectives of the UCITS and AIFM Directives to establish a single market for investment funds been achieved and what factors influenced the achievements observed?

Baseline

Before the introduction of the UCITS Directive in 1985, there was no possibility for cross-border marketing of funds in the EU. No impact assessment accompanied the UCITS I Directive (Directive 1985/611/CEE) and no projection or benchmark was identified for growth regarding UCITS funds. Likewise, no projection or benchmark was identified in the impact assessment for the AIFMD, which came into force in 2013.

Analysis of the achievement of objectives

For the purpose of this evaluation, only investment funds that are marketed in two or more Member States other than the fund domicile are considered cross-border funds. This is to exclude so-called 'round-trip funds', where a manager domiciles a fund in another Member State and then distributes it only back into the market where it is based. Although round-trip funds are legitimate arrangements from which managers and investors can both benefit, they do not represent a true deepening of the single market.

In a fully functioning single market, it could be expected that a large majority of managers would distribute their funds across the EU. In July 2008, the Commission noted in its impact assessment on UCITS IV that only 20% of European funds were notified for sale in at least two countries other than their fund domicile.[136] By June 2017, this number reached 34% (see figure 1). The proportion of AIFs that are registered for sale in two or more Member States other than the fund domicile was only 3% by June 2017.

Figure 1 – Number of UCITS and AIFs registered for sale across the EU

Country registered for sale	Number of UCITS registered for sale	% of total	Number of AIF registered for sale	% of total
Domestic only	11,650	**46**	9,455	**91**
2 countries only	4,326	**17**	586	**6**
3 to 5 countries	3,440	**14**	246	**2**
more than 5 countries	5,897	**23**	112	**1**
TOTAL	**25,313**	**100**	**10,399**	**100**

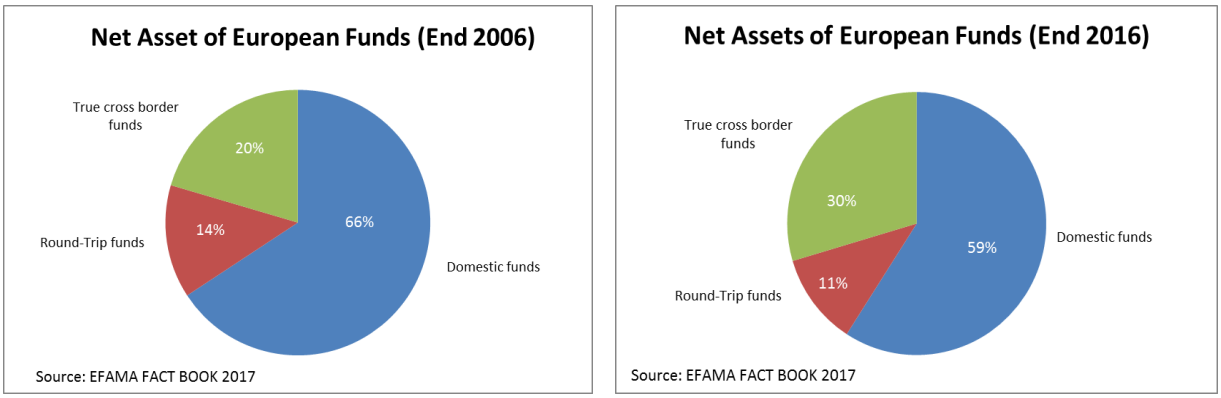
Source: Morningstar database (June 2017)

In addition to the number of cross-border funds, the Assets under Management (AuM) held by cross-border funds also provides an indication of the extent to which the objective to establish a single market for funds has been achieved. Data shows that, although cross border distribution of EU investment funds has grown gradually over the last 10 years, the EU

[136] http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2008/sec_2008_2263_en.pdf

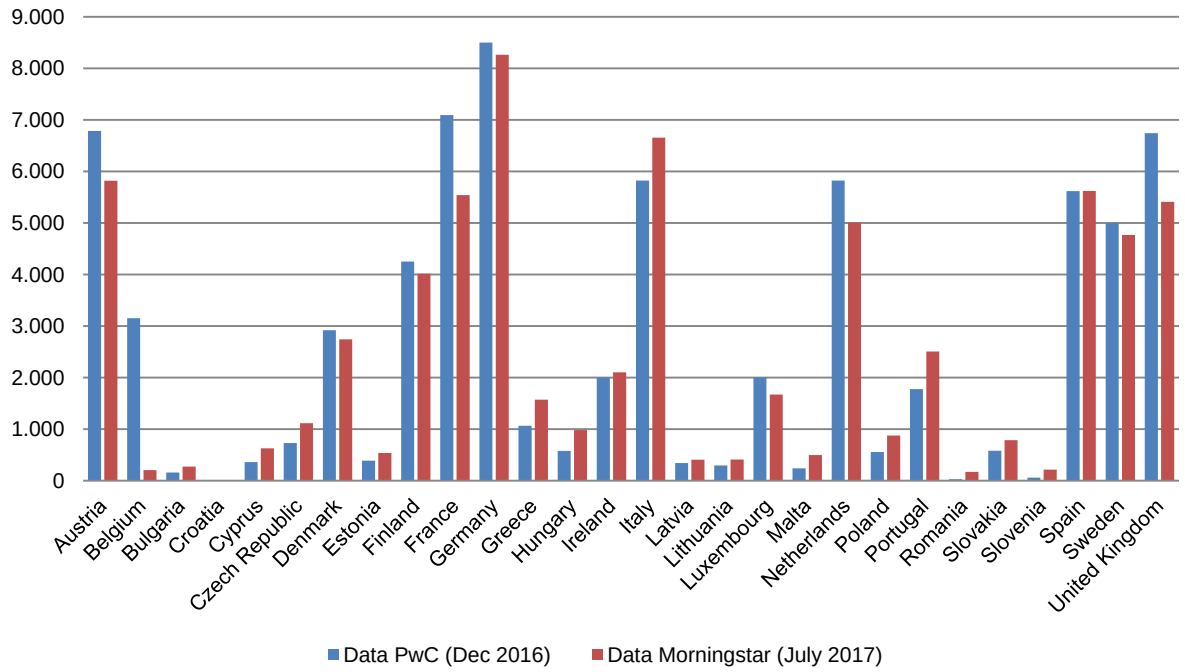
investment fund market is still predominantly organised along national lines. Figure 2 (below) shows that 70% of the total AuM held by investment funds resides in funds registered for sale only in its domestic market – this includes so-called 'round-trip' funds.

Figure 2 – Assets under management of cross-border investment funds



The distribution of cross-border funds across individual Member States can also be considered as an indication that the single market is not functioning optimally, with some Member States receiving relatively few cross-border funds. Figure 3, which collates data from two different sources, illustrates that while in several Member States a high number of cross-border fund are registered for sale, in most Member States that number is (relatively) low.

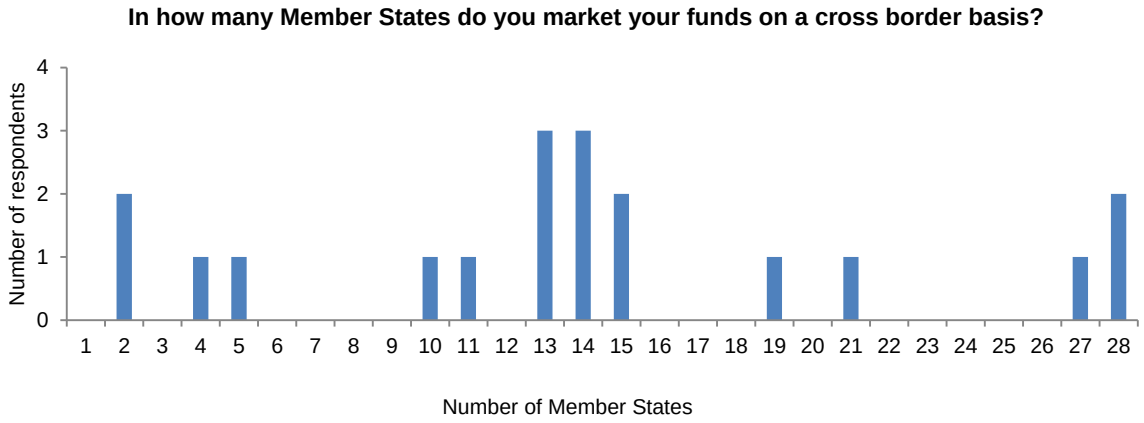
Figure 3– Number of cross-border registrations (per Member State, incoming)



Source: PwC, Benchmark your Global Fund Distribution – March 2017, Morningstar database – July 2017

The open consultation also provides an indication of the extent of cross-border distribution – albeit anecdotal given the sample size – showing that managers choose not to market their funds in all Member States, with only 3 managers (15% of those responding) choosing to market in 27 or 28 Member States, and with the majority of managers marketing in half or fewer Member States (see figure 12).

Figure 4– Feedback from stakeholders

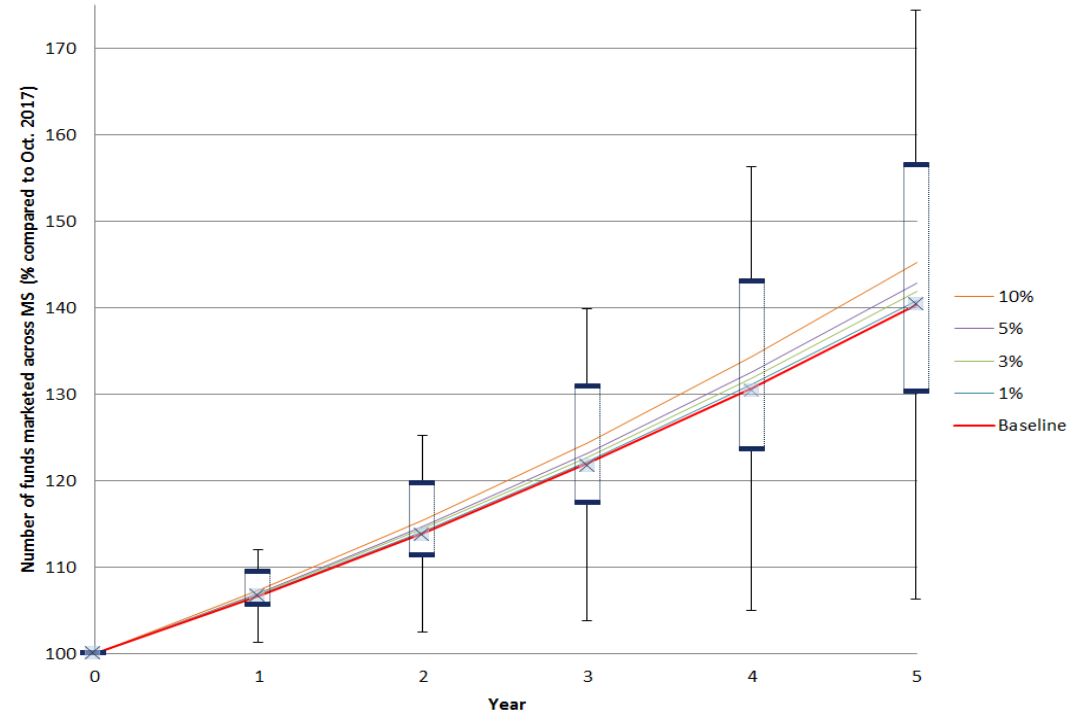


Source: Open consultation, European Commission, 2016

The data provided above on cross-border distribution of funds across the EU indicates that the single market for investment funds is not functioning as effectively as it could.

In order to estimate the lost potential for the single market, a scenario analysis was conducted. This analysis (see figure 5) shows that even small increases in the growth rate of cross-border funds would have a significant effect on the total number of funds marketed over the course of several years. This will increase the choice for investors and will have positive effects on the level of competition, which will in turn put pressure on the fees charged by investment funds.

Figure 5 – Different scenarios of increased cross-border growth rates



Source: Morningstar data (October 2017), Commission services calculations

The different scenarios depicted in figure 5, are based on the current average growth rate of cross-border funds for each individual Member State respectively, based on Morningstar data. This forms the baseline. The distribution of the different growth rates across Member States is

indicated by the superimposed box-plots. These box plots only account for the distribution under the baseline but would take a similar form for each respective scenario. The divergence would grow in line for each scenario depending on the assumed increase in the growth rate. The trendline for scenario demonstrates the percentage growth potential lost in terms of the total number of cross-border marketed funds.

Factors influencing the achievements

The various stakeholder consultations that informed this evaluation identified a range of factors influencing the cross-border distribution of investment funds. One other important factor is regulatory barriers that follow from diverging implementation and interpretation of the rules regarding the marketing passport contained in the UCITS and AIFM Directives, as well as additional requirements imposed by (host) Member States. Analysis of the responses to the consultations and desk research by the Commission services identified four areas where disincentives to cross-border distribution are apparent:

- Marketing requirements;
- Regulatory fees;
- Administrative requirements;
- Notification requirements.

A detailed analysis of these areas is provided below.

Besides regulatory barriers, other factors also provide disincentives to cross-border distribution of investment funds. These include the impact of vertical distribution channels, cultural preferences for domestic products (home and familiarity bias), and national tax rules. However, these factors are out of scope of this evaluation as these are outside the remit of the AIFMD and UCITS Directives. For a more detailed description of these factors, see section 2.1.5 of the impact assessment.

1) Marketing requirements

The burden of host Member State's marketing requirements were cited as a barrier by 30% of respondents to the public consultation on cross-border distribution. Regarding the actual costs, anecdotal evidence from one manager showed that he spends €10.000 per year for the maintenance of existing market registrations. A similar amount is spent on new market registrations. These costs consist of legal counsel and in-house costs for all of the 365 funds managed and are calculated in a year in which he decided to market his funds to 5 new jurisdictions within the EU (in addition to the 10 EU Member States where the fund was already marketed).

Diverging interpretations of activities considered to be marketing

Activities which may or may not be considered to be marketing depending on the Member State practices include, for example, pre-marketing and reverse solicitation[137]. A considerable majority of the industry responses to the public consultation considered this to have a material impact upon the cross-border distribution of investment funds. Moreover two competent authorities agreed that there is a need for more harmonisation of the negative definition of marketing and expressed their commitment to further engage in convergence work in this matter.

[137] Reverse solicitation is where an investor contacts a management company on their own initiative, seeking to purchase units of shares of a fund without having been first marketed to by that company.

Different interpretations of pre-marketing can cause particular challenges for managers. Pre-marketing reflects normal market practice in certain asset management segments targeting professional investors or high net worth individuals, such as private equity or venture capital. that Member States which did not permit pre-marketing are depriving asset managers from "testing" investors' appetite for upcoming investment opportunities or strategies and are denying investors the opportunity to be aware early of future initial capital rounds on advantageous terms, meaning they could only participate in later rounds or the secondary market.

Ex-ante checks of marketing material

Asset managers can start marketing funds without any marketing material and just rely on the documents which meet their legal obligations concerning information to be provided to investors[138]. However, in practice asset managers generally also use marketing material, such as flyers, website, e-mails, radio/TV spots. In six Member States national competent authorities check marketing material to retail investors for some or all funds on an ex-ante basis, i.e. when receiving the notification. Most competent authorities pursue a risk-based approach and do thus not check all marketing material. However, in one Member State the marketing material is not only checked, but even approved on an ex-ante basis. The ex-ante checks/ approval can, according to some industry players, be significantly more time-consuming in some Member States than others and can take up to four months, rendering the material outdated when informing clients on evolving market conditions.

Competent authorities which check marketing material on an ex-ante basis[139] consider this process to be important in ensuring investor protection, and in some markets made the link to a substantial lowering of complaints regarding the investments. Competent authorities which do not check marketing material on an ex-ante basis, check marketing material exclusively on an ex-post basis in the framework of ongoing supervision and, if necessary, take enforcement actions when the funds are already marketed[140]. According to a survey by European Investors, held among its retail members[141], 89% of the respondents consider that marketing material needs to be supervised in order to guarantee that it is complete, correct, objective and balanced.

However, the possibility that a competent authority can request changes to the marketing material means a lack of certainty over documentation and, in case of formal pre-approval, also a lack of certainty about the exact timing when marketing with marketing material can begin on safe grounds. More broadly, small differences in approach to marketing documents can cumulatively add to cost and complexity, for example different methods for complying with marketing requirements such as operational filing processes and how updates to KIIDs have to be submitted. When filing, aspects such as feedback, deadlines and language requirements are sometime not clear according to industry stakeholders. .

Lack of transparency over national marketing requirements

According to industry feedback, it is often not clear at first glance which (local) marketing requirements apply exactly unless a manager or distributor has very detailed knowledge of the

[138] E.g. for UCITS this covers the prospectus, periodic reports and key information.

[139] According to feedback from competent authorities, pre-checks or pre-approval of marketing material can exceptionally take up to 15 days, but usually only requires a few days.

[140] National competent authorities who check/approve marketing material on an ex-ante basis, in addition also make take measures in the framework of ongoing supervision.

[141] The survey was conducted amongst a sample of 4,000 retail investors based in the Benelux from 4 to 23 September 2016.

applicable local law. Local regulators often give additional guidance on how to interpret local law which is not always in a single rule book. There are also Member States that refer to non-financial legislation (such as regulation on advertising and marketing practices). In practice, this means that external counsel needs to be engaged to determine how to comply with local rules. Regular changes to marketing requirements introduce additional costs, meaning such costs are incurred on a regular basis. According to examples provided by fund managers, costs linked to legal counsel can amount up to €15,000 per fund and per jurisdiction for one-off legal advice upon market entry and €10,000 per annum for ongoing legal advice in order to keep up with national requirements. Fund managers also indicated that sometimes these costs can be shared between several funds. Furthermore, economies of scale can be achieved by larger managers, as costs do not rise proportionally with the number of funds managed[142].

2) Regulatory fees

When managers make use of the marketing passport, a large majority of Member States require paying regulatory fees to competent authorities of the host Member State when funds are marketing to retail investors in their jurisdiction (see Annex 11 of the IA). Respondents to the Call for Evidence and the CMU Green Paper have referred to the range of regulatory fees charged by host Member States as hindering the development of the cross-border marketing of funds across the EU. A preliminary assessment by the Commission services showed that the level of fees levied by host Member State on asset managers varies considerably, both in absolute amount and how they are calculated. For example, ongoing regulatory fees for a UCITS fund with five sub-funds marketed to retail investors vary from €0 to 10,275 and for a AIF with the same structure marketed to professional investors vary from €0 to 15,000.

Lack of transparency on regulatory fees

When consultation respondents were asked to report fees for two set examples marketed to professional investors on a cross border basis, responses varied considerably. This lack of consistency in responses to a simple scenario supports managers' contention that it is challenging for asset managers - and especially small ones - to determine the level of regulatory fees charged by host competent authorities.

Level of regulatory fees charged, lack of harmonisation in the calculation and differences in terms of payment of fees

Currently, 21 Member States levy fees for the marketing of AIFs and UCITS in their host jurisdiction to retail investors. According to a majority of the host competent authorities those regulatory fees constitute a large part of the annual budget of competent authorities. Depending on the jurisdiction, the regulatory fees take the form of a tax levy set by national parliament or fees determined by the market authority of the host country or ministry of finance. These fees may in turn be broken down into several different categories, including the cost of applying to enter the country, the cost of the passport itself, publication and public offering fees, plus potential annual or monthly supervision fees. Several host Member States also draw a distinction based on the number of single funds, umbrella funds and sub-funds while others do not. These fees may further increase depending on the number of sub-funds or the type of funds (AIFs versus UCITS) or whether the fund is marketed to retail investors. This implies that the process to determine the level of fees that have to be paid can be complex. It is noted that the regulatory fees here presented are linked to cross-border

[142] The differences in costs indicated might be also linked to varying levels of national requirements (i.e. in some Member States less man hours for legal advice are necessary than in others).

distribution (for incoming funds), and are distinct from regulatory fees paid to the home competent authority when launching the fund in the home Member State.

Absence of invoice received

Some asset managers indicated in response to the public consultation that they did not receive invoices for regulatory fees. This can create accounting difficulties – and they may be obliged to wait for reminder notices in order to pay the regulatory fees. Sometimes, this can delay the passporting process as proof of payment is required by some host competent authorities to be sent to them before marketing commences according to these asset managers. Moreover, delays can accordingly also be caused by a requirement for a country specific annex to be appended to the fund Prospectus. Overall, this variation in practices is costly, as it is time consuming to keep track of the fees that are due and can limit the benefits of the marketing passport.

3) .Administrative requirements

UCITS provides for minimum harmonisation of the requirements to manage and market investment funds to retail investors. As a result, where UCITS are marketed across borders to retail investors, at least 17 Member States require – as part of the transposition of Article 92 of the UCITS Directive – that facilities are present in their territory for making payments to unit-holders, repurchasing or redeeming units and making available the information which funds are required to provide.[143] A few Member States also require these local facilities to perform additional tasks, like handling complaints or serving as local distributor or being the legal representative (including vis-à-vis the national competent authority).

Responses to the consultations suggest that the costs to comply with the requirement to have local facilities present in each Member State are significant. Industry associations indicated that the fees of these facilities can be in the region of at least €5,500 per fund and per jurisdiction (in at least 7 Member States the fees are €5,500 or more) and can go up to €20,000 per annum where funds are marketed to retail investors (the latter is the case in Italy). Feedback from industry also suggests that the appointment of local facilities is time-consuming and can lead to significant delays in marketing funds, as negotiating the agreement involves the management company's legal and business teams as well as the fund's depository and operational oversight teams.

While the costs of local facilities are significant, asset managers indicate that in practice facilities nowadays mostly play a passive role and are rarely used by the investor, as the preferred method of contact has shifted to direct contacts with the manager and payments and redemptions are done through other channels, either online or by telephone. In the past, there was a stronger need for a local presence due to the lack of modern technologies for handling the different functions (i.e. payments to unit-holders, repurchasing or redeeming units, making information available for investors). Besides questioning the need to have local facilities nowadays, many industry respondents also considered the diverging requirements between Member States regarding the appointment and role of local facilities as a barrier.

[143] Article 92 of the UCITS Directive requires UCITS to, in accordance with the laws, regulations and administrative provisions in force in the Member State where their units are marketed, take the measures necessary to ensure that facilities are available in that Member State for making payments to unit-holders, repurchasing or redeeming units and making available the information which UCITS are required to provide.

4) Notification requirements

Before a fund manager can use the marketing passport under the UCITS and AIFM Directives, it is required to notify the competent authority of the home Member State of its intention to market the fund(s) cross-border into another Member State. However, the Directives leave it to the Member States to define the process of such notifications, which leads to inconsistencies and/or lack of clarity across Member States.

Whereas feedback from industry on the initial notification process is rather positive, respondents found the process for updating/ modifying documentation burdensome. According to industry associations, costs in the context of notifications are concretely linked to the administration associated with all new fund launches, changes and registrations per jurisdiction as well as the dissemination of regulatory documents to all host competent authorities. One asset manager, which manages 56 funds and markets his funds to 10 Member States, reported that costs associated with notification amounted to €383,000 per year.

The lack of a harmonised de-notification process in the host Member State, i.e. enabling an asset manager to stop marketing a fund, was also found to be a barrier. The lack of such a harmonised process means that there is no exit strategy, which in return creates uncertainty and a disincentive to enter a market.

Updating notifications

A majority of the responses received from industry associations and asset managers indicated they have difficulties with the UCITS process for updating notifications (e.g. regarding fund rules, the prospectus, periodic reports and key investor information).[144] This process is managed by the host Member State and is not harmonised or standardised. Under the UCITS Directive, the initial notification is sent to the competent authority of the home Member State, who subsequently transmits the notification and all accompanying documentation to the competent authority of the host Member State. However, as opposed to the procedure under AIFMD, under the UCITS Directive changes to the information contained in the initial notification have to be sent directly to the competent authority of the host Member State. In this context, respondents also reported that one or two host Member States impose burdensome requirements like ongoing information on approved distributors, sales and risk classification of the funds marketed in their jurisdiction. As for AIFs, some respondents note that the requirement under AIMFD to update notifications (e.g. regarding to the programme of operations, fund rules, target market, etc.) when there are material changes[145] can create difficulties as it is unclear: a) which timeframe is applicable to the notification of material changes; b) what constitutes a material change; and c) whether marketing activities continue to be allowed during that period.

De-notification

Another issue highlighted by industry stakeholders (mainly associations representing the asset management industry on national and European level) is the absence of a de-notification process in some Member States as well as differences between the national de-notification procedures. More precisely, when a fund wishes to stop its marketing activity in one or several Member States[146], different procedures can apply across Member States depending on whether there are still local investors in the fund and on whether the number of investors

[144] Article 93(8) UCITS Directive
[145] Article 32(7) and Annex IV AIFMD
[146] The fund continues to exist and pursues its marketing activities in one or several other Member States.

drops below a specific threshold. For example, one Member State has a threshold of 3 investors, while another Member State has set this limit on 150 investors. In addition, five Member States allow de-notification only after certain publication requirements are fulfilled. According to responses from industry, difficulties with de-notification result in a lack of an exit strategy, which considerably influences the decision of a fund manager to access a market in the first place. According to feedback from competent authorities, two Member States also charge fees for de-notification; although it should be noted that these are negligible (e.g. €430). If de-notification is delayed or even rendered impossible, the asset manager or fund will have to continue paying regulatory fees and providing administrative arrangements, even if the fund is no longer marketed in that Member State.

Conclusion

The UCITS and AIFM Directives have laid the foundation for a single market for investment funds and have helped in increasing cross-border distribution of investment funds within the EU. However, as data on cross-border distribution shows, the single market has not yet realised its full potential and as such, the objectives of the Directives have not been completely achieved. The analysis in this evaluation suggests that – among other factors - regulatory barriers, i.e. diverging, sometimes difficult to determine national requirements and practices, are a binding factor that limits the distribution of investment funds cross-border.

These regulatory barriers are largely due to different implementation and interpretations by Member States of the EU rules on the use of the marketing passport for funds. These barriers include diverging marketing requirements and practices, the requirement to have a local presence, cumbersome procedures for updating notifications, and more broadly difficulties with finding out what the national requirements are – including regulatory fees.

Question 2: How efficient has the EU intervention been?

To what extent have the rules regarding cross-border distribution in the UCITS and AIFM Directives been cost-effective? Are there significant differences in costs (or benefits) between Member States and what is causing them?

If an asset manager limits the distribution of its funds to its home Member State, it operates in an environment which is well known. Hence, costs for setting up and starting distribution of a fund in this market are typically low. However, responses to the consultations suggest that in case a manager distributes its funds across borders, significant (additional) costs are incurred. Feedback by industry indicates that asset managers need to seek legal advice to understand and comply with different national regulatory frameworks, including regulatory fees. Costs for legal advice are incurred on a one-off basis when first accessing the market, but also on an ongoing basis to keep up to speed with changing requirements. Furthermore, requirements like the mandatory appointment of local facilities can be burdensome according to industry respondents, given the direct fees that have to be paid to these facilities and the time needed to negotiate appropriate arrangements.

This indicates that the current arrangements foreseen in the UCITS and AIFM Directives for cross-border distribution are not sufficiently cost-effective. In a fully functioning single market, costs for cross-distribution are expected to be low, if not as low as for distributing in the domestic market. Against this background, the consultations sought evidence from competent authorities and industry on costs associated with regulatory barriers. Given the limitations on available evidence on costs provided through the open consultations, a particular focus was later placed on attempting to quantify the costs by obtaining anecdotal evidence from asset managers and industry associations.

Input from industry suggests that direct costs from regulation are the most important category of costs and that within this cost category substantive compliance costs are most burdensome. They appear in relation to all regulatory barriers, and they can be quantified based on anecdotal evidence. Regulatory fees (or charges) are considered less important. Beyond these categories, certain costs are of qualitative nature and cannot be quantified, e.g. costs linked to legal uncertainty regarding what does qualify as marketing (no pre-marketing) and lost opportunities due to the lack of an exit strategy (de-notification).

On the basis of industry input average costs and ranges of costs were calculated. Figure 6 (below) shows the average costs for two types of asset managers: Scenario A describes an asset mangement company relying on in-house legal advice and in-house fund adminsitration, whereas Scenario B shows an asset management company outsourcing legal advice and fund administration to third parties. Costs are calculated on a per fund basis and on a total industry basis. The total industry figure is calculated using the total number of cross-border funds domiciled in the EU per end 2016 and the average number of EU host jurisdictions these funds are marketed to[147].

More details on the costs and sources used for calculating them can be found in Annex 12.

Figure 6

Type of cost	**One-off (per fund and host jurisdiction)**	**Ongoing (per fund and host jurisdiction)**
Compliance costs: external (legal) services for determining: • **marketing requirements** • **administrative requirements** • **notification requirements** • **regulatory fees**	Scenario A : €4,297 Scenario B: €8,150	Scenario A: €1,146 Scenario B: €6,983
Compliance costs: external services for local facilities	€4,930	€4,930
Charges: regulatory fees	€1819	€2194
TOTAL per fund	Scenario A: €11,046 Scenario B: €14,899	Scenario A: €8,270 Scenario B: €14,107
TOTAL for all cross-border funds	Scenario A: €679 million Scenario B: €916 million	Scenario A: €508 million Scenario B: €867 million

According to estimates provided by a number of industry associations in response to the open consultation, the different regulatory barriers sum up to total costs between 1 and 4% of the overall fund expenses (this figure applies to funds using the expense model).[148] Anecdotal evidence provided in response to the open consultation, also indicated that for a single asset

[147] Source: PwC, Benchmark your Global Fund Distribution, March 2017. The total costs for all cross-border funds is calculated by using the total number of cross-border funds registered in at least two Member States besides its fund domicile (11,380) and the average number of EU host jurisdictions (5.4) a cross-border fund is registered for sale.

[148] In expense models there is a direct impact of costs on the Total Expense Ratio (TER) of the fund. However, it should be noted that barriers also negatively affect all-in fee models.

manager total costs linked to national requirements can correspond to 2 basis points (0.02%) of its reported AuM[149].

A recent study by Morningstar of the fees charged by investment funds found that the average asset-weighted expense ratio for the full European fund universe was 1% (of AuM) in 2016.[150] Applying these industry estimations to the €4.19 trillion AuM held by cross-border investment funds[151] implies fund expenses of circa €41.9 billion, with regulatory barriers costing somewhere between €419 million to €1.67 billion. This corresponds with the range estimated in the cost calculations in figure 6.

Based on the anecdotal evidence provided by industry, it is not possible to conclusively answer the question whether there are significant differences in costs between Member States. However, data on regulatory fees (see annex 11) – which is available for almost all Member States – indicates that there are indeed large differences in the regulatory fees that Member Sates charge. Furthermore, feedback collected from national competent authorities also indicated that the requirement to appoint a local facility is not present in every Member State. As this requirement is linked to significant costs (see figure 6) and requirements of individual Member States also diverge in other areas, it is plausible that significant differences exist between Member States regarding the costs to distribute in that market. Feedback provided by industry that some jurisdiction are (significantly) more expensive to market to than others, also points to this conclusion.

Conclusion

Feedback from industry indicates that those asset managers which market their funds cross-border in the EU, are faced with significant (additional) costs. This indicates that the current rules in the AIFMD and UCITS Directive are not sufficiently cost-effective. Furthermore, available evidence suggests that these costs can vary between Member States, as national requirements and practices diverge widely.

Question 3: How relevant is the EU intervention?

To what extent are the rules still relevant and how well do the original objectives of the Directives correspond to the current needs within the EU?

The objectives of the UCITS and AIFMD Directives to establish a single market for investment funds, for the benefit of funds and their managers, investors and investee firms are still relevant in light of the objectives of the CMU. The CMU has three main objectives:

- The CMU will broaden the sources of financing in Europe towards non-bank financing by giving a stronger role to capital markets. It will offer to borrowers and investors a broader set of financial instruments to meet their respective needs.
- The CMU will help deepen the single market for financial services. Capital markets will benefit from the size effects of the single market and become deeper, more liquid and more competitive, for the benefit of both borrowers and investors.
- The CMU will help promote growth and financial stability. By facilitating companies' access to finance, in particular SMEs, the CMU will support growth and jobs' creation. At the same time, by promoting more diversified funding channels to the economy, it will

[149] This figure was calculated by a big European asset manager with over €1,000 billion AuM.
[150] Morningstar Research Paper, "European Fund Expenses Are Decreasing in Percentage", August 2016.
[151] Source: EFAMA Fact Book 2017.

help address possible risks stemming from the over-reliance on bank lending and intermediation in the financial system. By diversifying the risks, it will make the whole system more stable and help financial intermediaries granting more funding to the economy.

Non-bank financing does not merely substitute investment that was previously funded by banks, but it also enables additional investment that banks would not be ready to fund. Investment funds are an important instrument to foster retail investment and increase the funding possibilities for firms. Investment funds are essentially investment products created with the sole purpose of pooling investors' capital in a portfolio of financial instruments such as stocks, bonds and other securities. Market financing is usually regarded as being better at dealing with uncertain environments and therefore better suited to fund riskier investment projects (with a higher required rate of return). The UCITS Directive and AIFMD both aim to create a single market for investment funds and consequently contribute to increasing the growth of investment funds, including across national borders and fostering non-bank financing.

Deep, liquid and efficient capital markets bring advantages to borrowers and investors. Investment funds are an important financial product category forming part of capital markets. Capital markets have three main advantages for companies seeking finance: (i) improve their access to funds; (ii) reduce their capital costs by creating competition among investors; and (iii) reduce the risk of disruption in financing by diversifying their funding sources. On the investors' side, by increasing the investment opportunities, efficient capital markets offer investors a broader set of financial products to (i) meet their investment objectives, (ii) diversify and manage their risks, and (iii) optimise their risk-return profile, while respecting their investment constraints – whether in terms of risk, duration, or other assets' characteristics. Overall, capital markets (especially equity markets) facilitate entrepreneurial and other risk-taking activities, which have a positive effect on economic growth.

Large and well-integrated capital markets can contribute to jobs and growth through a number of channels. They can contribute to allocative efficiency by opening up investment and diversification opportunities for investors across Europe, improving access to risk capital for borrowers, and allowing greater competition (unleashing corresponding benefits such as productivity gains, lower costs, greater choice, financial innovation, etc.). Unobstructed capital flows within the single market should allow financial resources to reach the most profitable investments.

Conclusion

By fostering cross-border distribution of investment funds through the establishment of a single market, the rules subject to this evaluation contribute to allocating capital efficiently across the EU and to realise deep and more integrated capital markets. As such, the rules in the UCITS and AIFM Directives remain relevant for the current needs of EU, in particular under the CMU.

Question 4: How coherent is the EU intervention?

To what extent are rules on cross-border distribution in the UCITS and AIFM Directives coherent with other pieces of EU legislation and EU initiatives?

The rules on cross-border distribution in the UCITS and AIFM Directives and more specifically, the creation of a passport to market and manage investment funds across the EU, are part of the well-established single market freedom to provide services across the EU. This

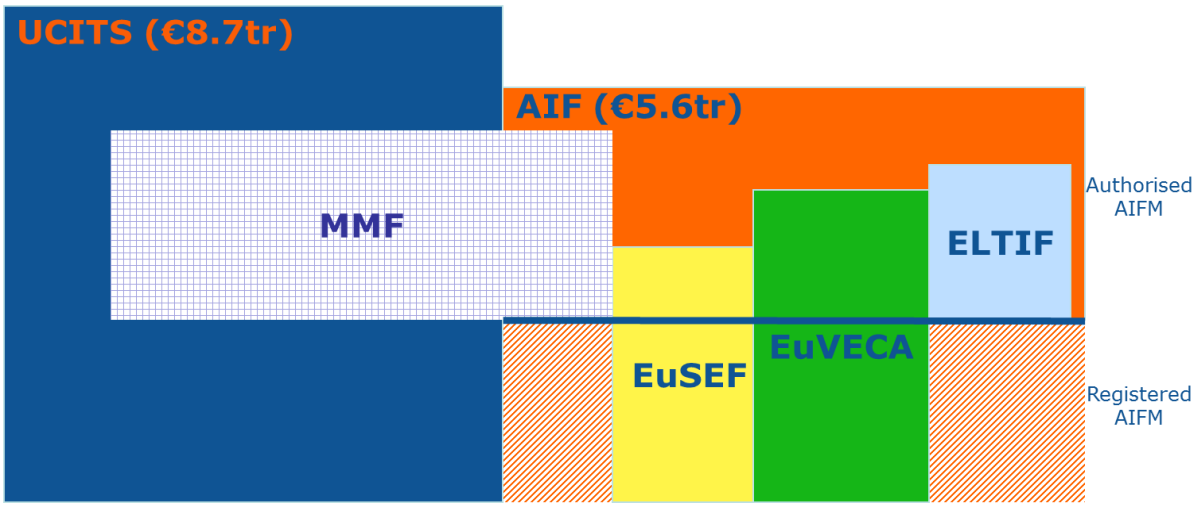
freedom is entrenched in both the Treaties and secondary legislation (Directives and Regulations). Indeed, in the area of financial services a single passport for the EU is commonplace and includes banking, investment services, insurance, payment and electronic money services and financial infrastructure (clearing and settlement of securities). Hence, the rules in the UCITS and AIFM Directives are coherent with other EU legislation in the area of financial services.

The UCITS and AIFM Directives are also coherent with the objectives of current EU initiatives like the CMU, which aim to deepen the single market for financial services. More details on the coherence with CMU can be found in the answer to question 3 (relevance) of this section.

An assessment of the coherence of the rules with the complete EU legislative framework for investment funds, shows that the UCITS and AIFMD Directives are coherent and complement each other as both Directives regulate different funds and target different investors. The UCITS Directive provides a marketing passport primarily for retail investors, while AIFMD only allows marketing to professional investors while using the passport.

While UCITS and AIFMD are the general frameworks for investment funds, they are completed by four additional pieces of legislation (see figure 7). These additional legislative frameworks for investment funds are designed to meet specific needs in the European economy. The European Venture Capital (EuVECA) and European Social Entrepreneurship Fund (EuSEF) Regulations support the development of the single market in venture capital and social entrepreneurship funds, while the European Long Term Investment Funds (ELTIF) Regulation[152] is designed to support investment in companies and projects which need long-term capital, such as infrastructure projects. The more recently adopted Money Market Funds (MMF) Regulation[153] supports the short term financing of corporates, financial institutions and governments and at the same time limits the systemic risk of those funds.

Figure 7 – EU Funds Frameworks in 2017[154]



These four frameworks complement, without contracticting, the UCITS and AIFMD Directives. The passports foreseen in the UCITS and AIFM Directives also apply to these four

[152] Regulation 2015/760 of the European Parliament and of the Council of 29 April 2015.
[153] Regulation 2017/1131 of the European Parliament and of the Council of 14 June 2017.
[154] This chart takes into account the recently adopted review of the EuVECA and EuSEF Regulations.

specific funds, but in order to use the fund 'labels' managers will have to comply with the rules laid down in these four frameworks.

Conclusion

To conclude, the rules on cross-border distribution in the UCITS and AIFM Directives are coherent with other EU legislation and initiatives in the area of financial services and within the overall framework for regulating investment funds.

Question 5: What is the EU-added value of the EU intervention?

To what extent have the relevant rules increased cross-border distribution and to what extent does this matter continue to require action at EU level?

In terms of EU-added value, the European legislator did not await significant proliferation of divergent retail investment schemes before embarking on the UCITS Directives. As early as 1985, a common approach to investor protection was taken in the UCITSD Directive. Action in harmonising the key features of retail investment funds was therefore already taken in the run-up to the creation of a single market by the end of 1992. Experts in the field of investment management services unite in agreeing that a common UCITS brand could not have been introduced, with any promise of success in take-up, at a later stage, say in 2000.

This early intervention has provided the basis on which the succes of the European investment fund market has been built. As presented in the answer to Question 1 in section 5, this has resulted in a strong and quicly expanding EU investment fund industry, inluding a steady growth of cross-border distribution of funds over the last ten years. However, even though the market is increasingly organised on a pan-European basis, it has not exploited its full potential in terms of cross-border distribution.

In reaction to the financial crisis a new framework for investment funds was added in 2013: the AIFM Directive. It introduced a framework for the authorisation, supervision and oversight of managers of non-UCITS funds (AIFs). Although only limited to date due to its recent inception, this has contributed to further growth of cross-border distribution of investment funds, which would not have been possible without a common EU framework in the absence of comparable authorisation and operation rules as well as of passporting rights.

Given that single market for EU investment funds is not functioning as efficiently as it could – as evidenced by the extent of cross-border distribution – action at EU level is still required. Removing market fragmentation and moving further towards a single market cannot be satisfactorily achieved by Member States alone, neither for UCITS nor for AIFs, because it requires uniformity in the rules regarding the use of the passport. The rules in question are inherently transnational in nature and hence consistency is required in the way in the requirements are placed on managers and funds. Furthermore, previous efforts to converge national (supervisory) practices in this area through ESMA have not succeeded to address the identified problem, strenghtening the (continued) need for EU intervention.

Section 6 Conclusions

With regard to the **effectiveness,** both the UCITS and AIFM Directive sought to establish a single market in which investment funds could be sold across borders. Despite some success, the evaluation indicates that the single market falls short of realising its full potential in terms of cross-border distribution and as such, the objectives of the Directives have not been

completely achieved. The analysis in this evaluation suggests that – among other factors - **regulatory barriers**, i.e. diverging, sometimes difficult to determine national requirements and practices, are a binding factor that limits the distribution of investment funds cross-border. These regulatory barriers are largely due to different implementation and interpretations by Member States of the EU rules on the use of the marketing passport for funds. These barriers include diverging marketing requirements and practices, the requirement to have a local presence, cumbersome procedures for updating notifications, and more broadly difficulties with finding out what the national requirements are – including regulatory fees.

In respect of the **efficiency**, the evaluation indicates that asset managers which market their funds cross-border in the EU are faced with significant (additional) costs. This indicates that the current rules in the UCITS and AIFM Directives on cross-border distribution are not sufficiently cost-effective. Furthermore, available evidence suggests that these costs can vary between Member States, as national requirements and practices diverge widely.

By fostering cross-border distribution of investment funds through the establishment of a single market, the rules subject to this evaluation contribute to allocating capital efficiently across the EU and to realise deep and more integrated capital markets. As such, the rules in the UCITS and AIFM Directives remain **relevant** for the current needs of EU, in particular under the CMU. Therefore, reducing barriers to cross-border distribution of investment funds has been recognised as integral to the work on the CMU.[155]

In terms of **coherence**, the rules on cross-border distribution in the UCITS and AIFM Directives are aligned with other EU legislation in the area of financial services, which also provide the freedom to provide financial services across the EU under a passport. The UCITS Directive and AIFMD are also coherent within the overall framework for regulating investment funds.

In terms of the **EU added value**, both the UCITS and AIFM Directives have provided the basis for a single market for all EU investment funds, which has resulted in a strong and quicly expanding EU investment fund industry. However, even though the market is increasingly organised on a pan-European basis, the analysis in this evaluation indicates that it has not exploited its full potential in terms of cross-border distribution. In order to achieve the objectives of the UCITS and AIFM Directives, action at EU level is still required as removing market fragmentation and moving further towards a single market cannot be satisfactorily achieved by Member States alone.

[155] http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1507119301191&uri=CELEX:52017DC0292

ANNEX 6: Statistical analysis of impact on cross-border distribution

A fund manager's decision to distribute a fund cross-border will be influenced by discretionary strategic considerations on the one hand and the attractiveness of the local market on the other hand. The latter include the (i) marginal costs of going cross-border to a specific national market; (ii) structural factors of the local market; and (iii) expected demand.

At the aggregate level, fund managers' decisions on cross border distribution will be reflected in the number of cross-border funds in a specific local market and the percentage of cross-border funds related to the number of total funds in a local market.

The goal of the analysis is to examine if factors beyond structural factors are related to the cross-border distribution of funds within the EEA[156]. More particularly, we aim at analysing the possible impact of costs by testing the effect of regulatory fees on the cross border distribution of funds. Results will provide an indication regarding the extent to which regulatory measures that would reduce these costs could impact cross-border fund distribution.

Importantly, the costs of going cross-border will not only consists of regulatory fees but will also consist of additional compliance cost and other costs as indicated in Annex 11. Total cost will thus exceed regulatory costs, but the amount with which it will exceed regulatory fees will vary over countries and cannot be determined in view of data restrictions.

As the total cost of cross-border distribution in the EU is not available, we can only rely on regulatory fees. Hence, estimated coefficients for the fee proxies do no capture the full effect of total fees, but can be considered to be lower bounds of the importance of total fees given that total fees will considerably exceed the regulatory fees. The same reason applies with regard to the economic significance of the estimated relationships.

Structural factors like local distribution channels, (expected) demand, and taxation will affect the attractiveness of the local fund market both for fund managers deciding on the cross border distribution of their fund in a given country as for other fund managers deciding on launching new funds. Hence, a market entry variable can be used as an instrument to proxy for the attractiveness of the local market. In the specifications reported below the *number of new UCITS funds* in a local market is used.

The full model can be summarized as follows:

$$Cross-border\ fund\ distribution = f(\sum Regulatory\ fee\ proxy; local\ market\ attractiveness\ proxy)$$

With the *regulatory fee proxy* equal to one-off fees and ongoing fees for profession investors or retail investors expressed in EUR as documented in Annex 11. Hence, we obtain the following specifications. Estimation results of these specification are reported in the table below.

for specification (1) and (4) which examine the effect of fees for retail investors:

$$\begin{aligned} UCITS\ funds\ marketed\ cross\ border\ into\ EEA\ country\ i \\ = \beta_1 One-off\ regulatory\ fees\ for\ retail\ investors_i \\ + \beta_2 Ongoing\ regulatory\ fees\ for\ retail\ investors_i \\ + \beta_3\ Number\ of\ new\ UCITS\ funds_i + constant + \varepsilon_i \end{aligned}$$

[156] We study funds domiciled in an EAA country and marketed for cross distribution in another EAA country.

and for specification (2) and (3) which examine the effect of fees for professional investors:

$$UCITS\ funds\ marketed\ cross\ border\ into\ EEA\ country\ i\ = \\ \beta_1\ One-off\ regulatory\ fees\ for\ professional\ investors_i + \\ \beta_2\ Ongoing\ regulatory\ fees\ for\ professional\ investors_i + \\ \beta_3\ Number\ of\ new\ UCITS\ funds_i + constant\ ++\varepsilon_i$$

The regression specifications are estimated by means of robust regression to arrive at robust estimates and limit the effect of outlying observations.[157] Results of the regression analysis are summarized in the table below.

Table: Effect of regulatory fees on the number of UCITS funds marketed cross border.

	(1)	(2)	(3)	(4)
One-off regulatory fees for professional investors		0.0457 (0.652)	0.0304 (0.763)	
Ongoing regulatory fees for professional investors		-0.131 (0.184)	-0.329** (0.000)	
One-off regulatory fees for retail investors	0.00427 (0.954)			-0.0880 (0.718)
Ongoing regulatory fees for retail investors	-0.122* (0.0369)			-0.139* (0.0880)
Number of new UCITS funds	8.067*** (0.000)	7.642*** (0.000)	6.069*** (0.000)	7.354*** (0.000)
Constant	815.0*** (0.002)	760.2*** (0.009)	2143.0*** (0.000)	1470.0* (0.056)

*p-values reported in parentheses, with *** denoting a p-value lower than 0.01, ** denoting a p-value lower than 0.05, and * denoting a p-value lower than 0.10. P-values indicate the exact level of significance.*

Source: UCITS funds included in the sample are UCITS funds domiciled in an EAA country and marketed for cross distribution in another EAA country. Fund data are retrieved from the Morningstar (October 2017). For regulatory fees we refer to Annex 11.

In conclusion, overall results support the conjuncture that a reduction in the regulatory costs related to going cross border positively affects the number of cross border funds. Not surprisingly, ongoing cost considerations are more important than one-off costs. The effect for regulatory fees is economically moderate compared to other factors related to the attractiveness of the market. The economic impact of total costs will exceed the one of regulatory fees (see supra), but the exact economic impact is not quantifiable due to data restrictions.

In the sensitivity analysis we included fund flows as more direct proxy for local demand or examined the cross border penetration rate. Conclusions on the overall impact of cost elements remain qualitatively the same.

[157] Given that we only consider cross-sectional data, the sample size is relatively small.

ANNEX 7: Synopsis report open consultation on cross-border distribution of funds

The Commission open consultation on cross-border barriers to the distribution of investment funds across the Union was conducted between June and October 2016.

With this consultation, that formed part of the Capital Market Union (CMU) action plan, the Commission has sought further details and evidence from stakeholders including fund managers, investors and consumer representatives in order to understand where and how the cross-border distribution of funds could be improved. In order to build upon earlier responses to the CMU consultation and to the Call for Evidence, respondents were asked to provide specific examples and - where possible - quantitative and financial evidence on the financial impact of the barriers. This included the impact of marketing rules, administrative arrangements imposed by host countries, regulatory fees and notification procedures and also the most pertinent features of the tax environment.

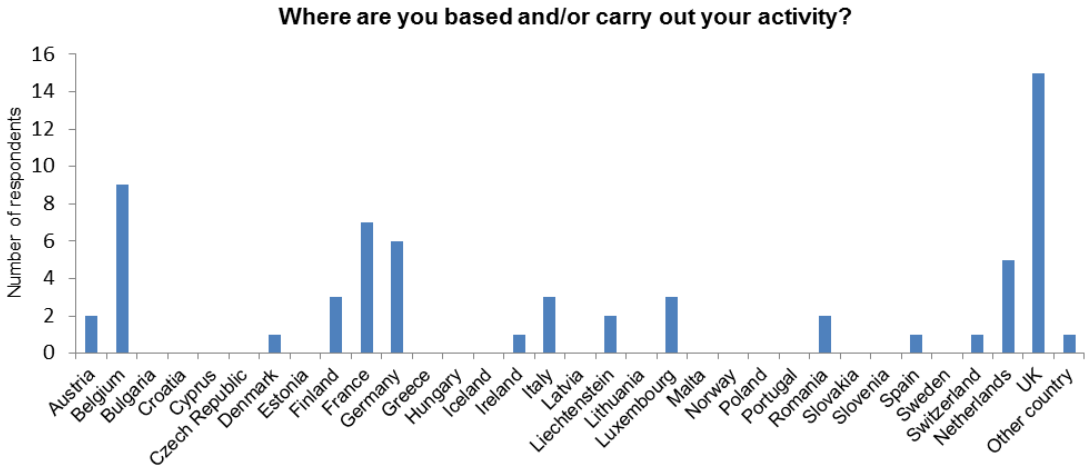
1. About the respondents

The majority of responses to the consultation were from industry associations, representing circa a third of the replies. Individual firms represented a further 29% of responses. The remainder of replies came from public authorities and a range of other respondents including consumer organisations and private individuals.

Are you replying as:	**Answers**	**Ratio**
a private individual	4	6%
an organisation or a company	52	81%
a public authority or an international organisation	8	13%

Type of organisation:	**Answers**	**Ratio**
Academic institution	0	0%
Company, SME, micro-enterprise, sole trader	15	29%
Consultancy, law firm	1	2%
Consumer organisation	2	4%
Industry association	27	52%
Media	0	0%
Non-governmental organisation	1	2%
Think tank	1	2%
Trade union	1	2%
Other	4	8%
Type of public authority	**Answers**	**Ratio**
International or European organisation	0	0%
Regional or local authority	0	0%
Government or Ministry	4	50%
Regulatory authority, Supervisory authority or Central bank	4	50%
Other public authority	0	0%

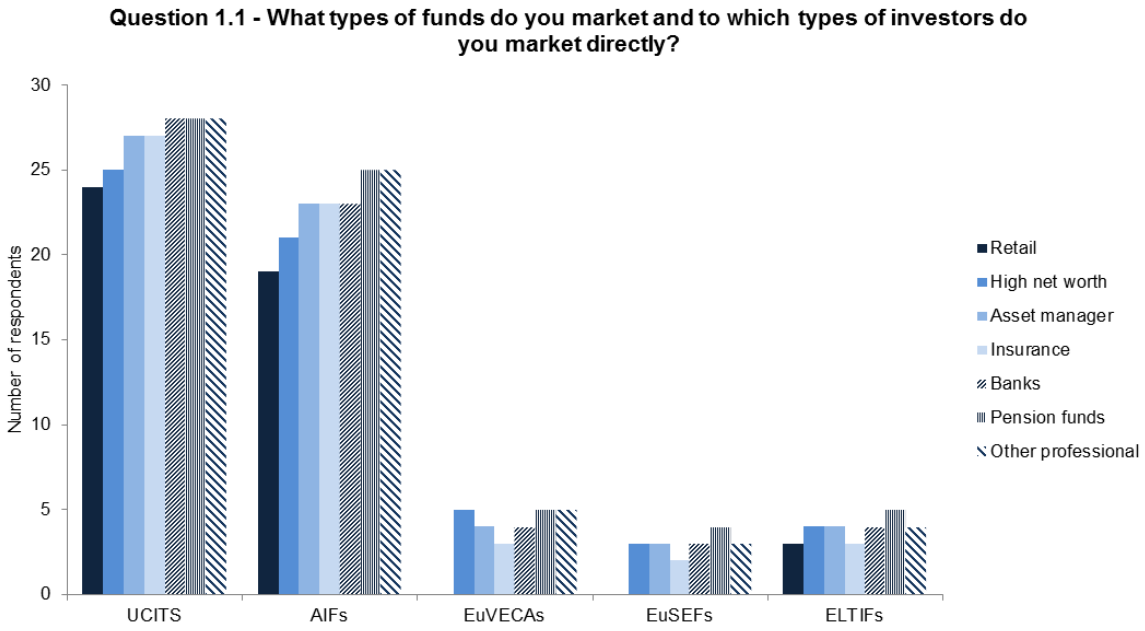
Roughly a quarter of responses came from the United Kingdom, with Belgium (most of the European association are based in Belgium), France, Germany, the Netherlands, Italy and Luxembourg providing most of the remaining replies.



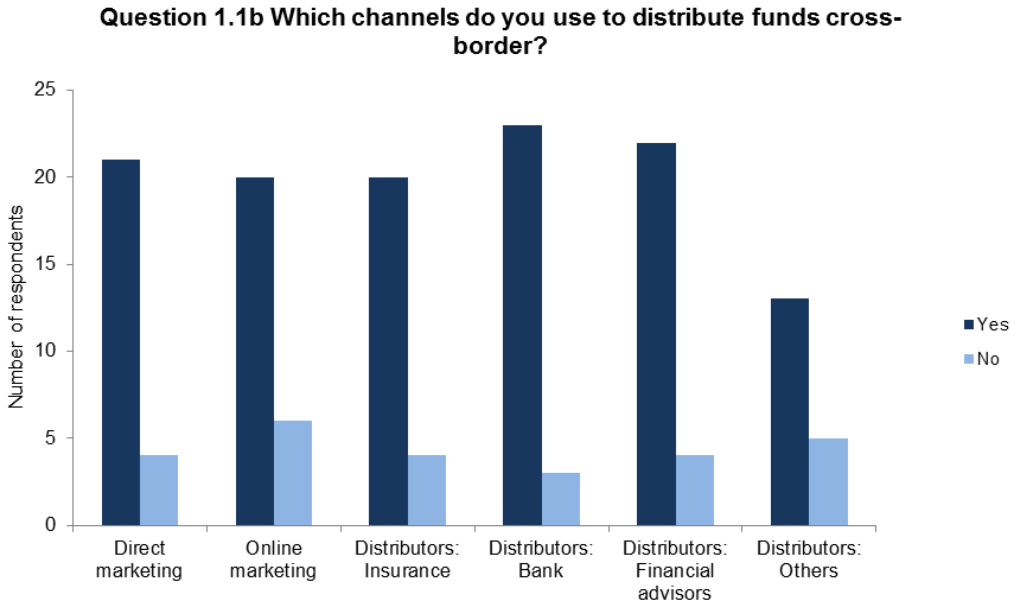
Of the firms and trade bodies responding, 37 - circa 60% were asset managers, 19% were banks and 10% were distributors/platforms.

Field of activity or sector (if applicable): [respondents could select more than one field]	**Answers**
Banking	12
Distributors / platform	6
Family office	0
Institutional investors	8
Insurance	5
Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)	37
Law firm	2
Legal advisors	2
Market infrastructure operation (e.g. Stock exchanges)	4
Pension provision	7
Retail investors	8
Retail investors representatives	6
Other	7
Not applicable	4

The overwhelming majority of asset managers responding market both UCITS and AIFs. Both UCITS and AIFs are marketed extensively to professional and retail investors – but slightly more to professional investors for both categories of funds (see graph below).



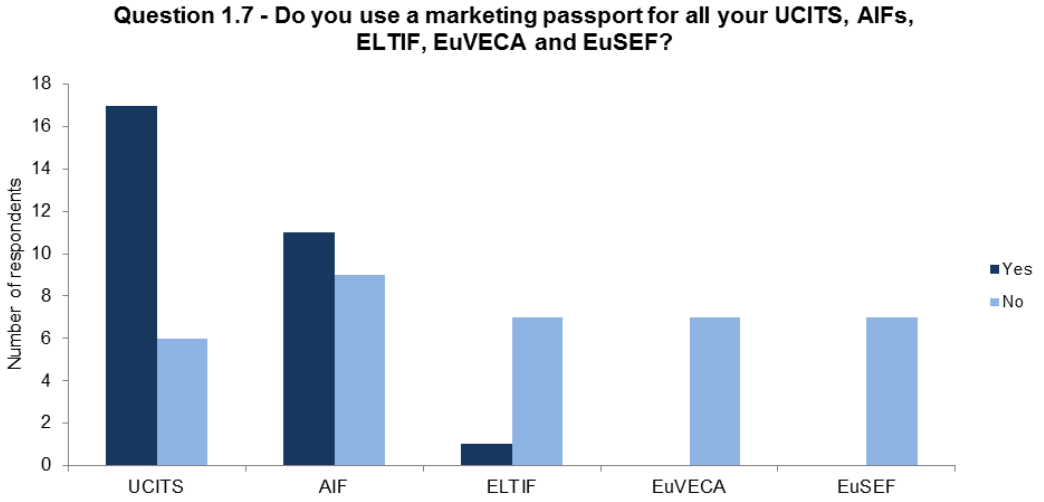
Respondents reflect the use of a fairly even spread of channels used to distribute funds cross-border, with direct distribution, online distribution and use intermediary distributors all represented.



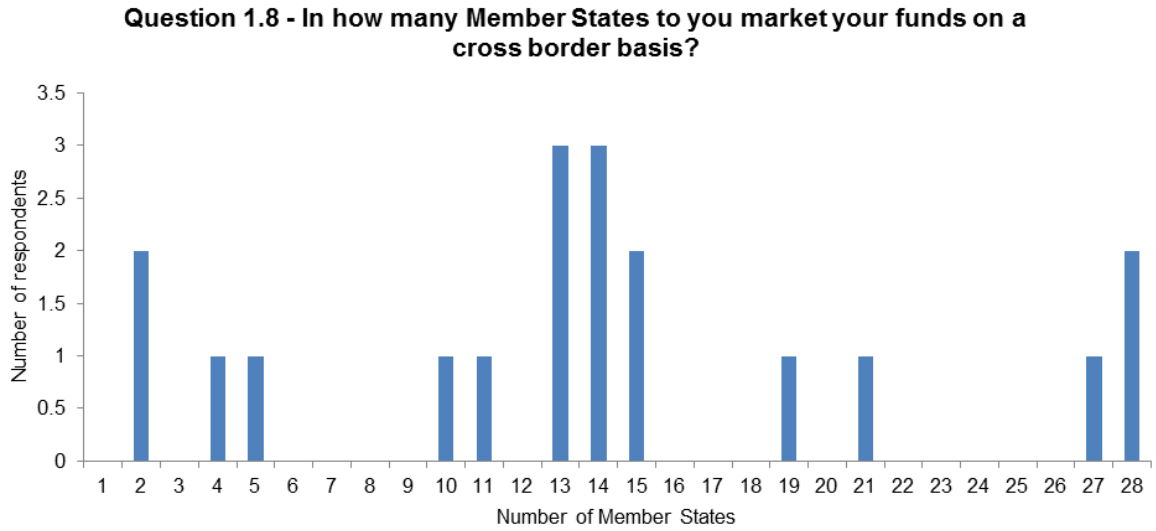
Responses to the consultation confirm that the marketing passport is widely used by asset managers for the marketing of their funds across the EU. 87% of respondents to this question use the UCITS marketing passport and 79% use the AIF marketing passport in order to market their funds in the EU.

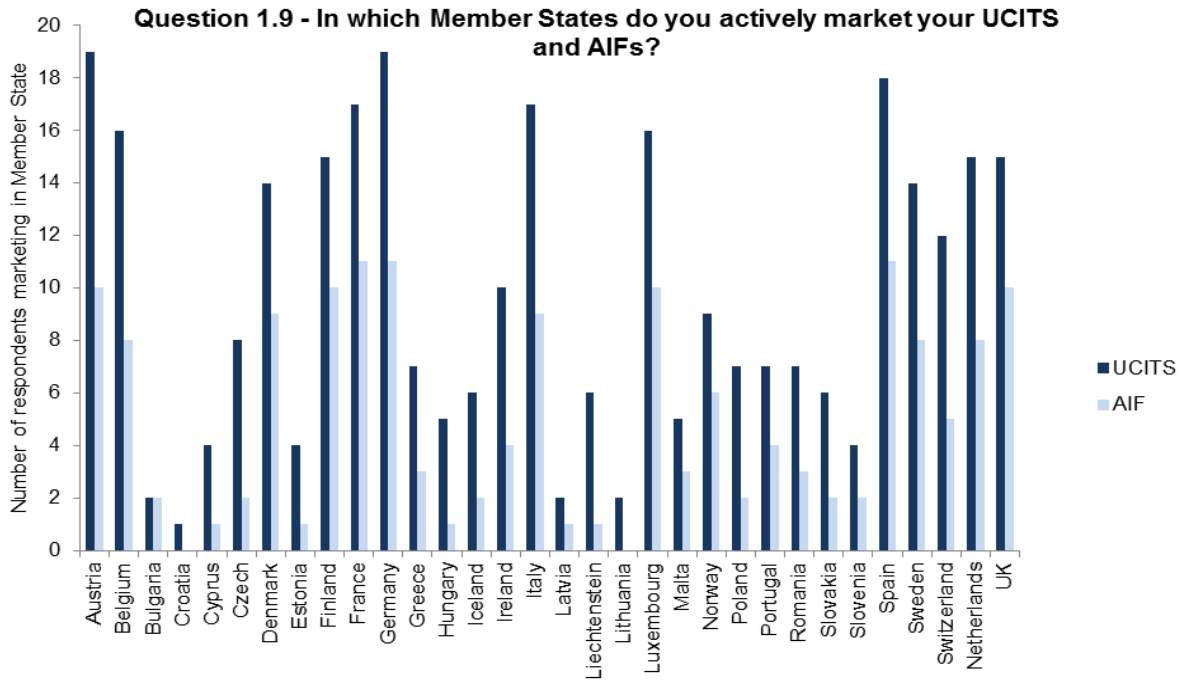
Question 1.5 – Do you use the UCITS passport in order to market your UCITS funds in other EU Member States?	**Answers**	**Ratio**
Yes	27	87%
No	2	6%
Don’t know / no opinion / not relevant	2	6%

Question 1.6 – Do you use the AIFMD passport in order to market your EU AIFs in other EU Member States?	Answers	Ratio
Yes	23	79%
No	2	7%
Don't know / no opinion / not relevant	4	14%



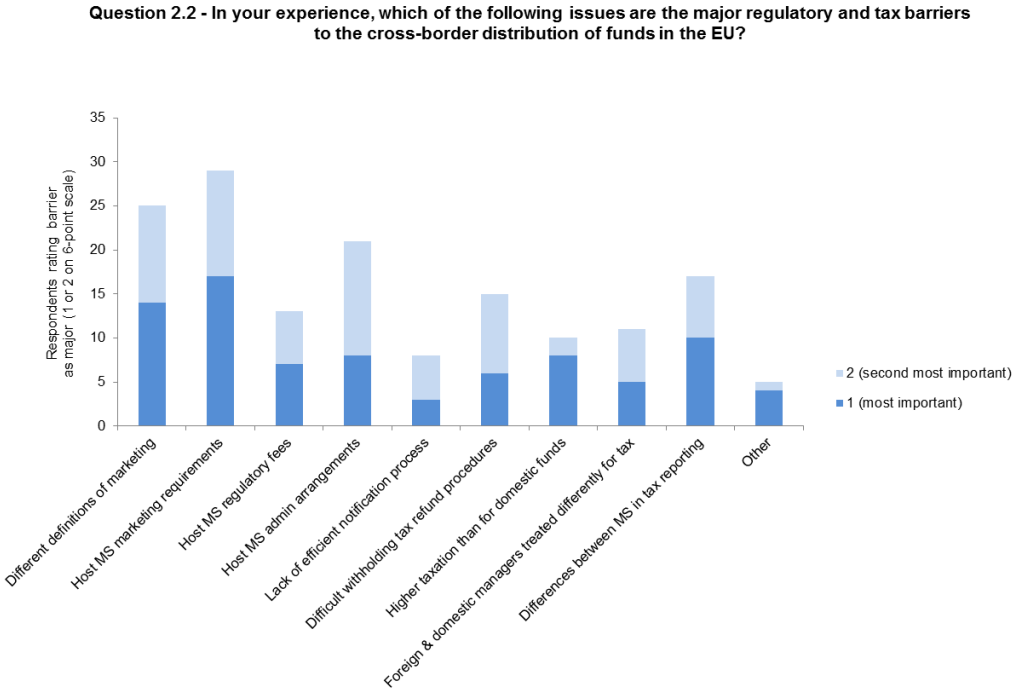
The largest markets in Europe unsurprisingly see the greatest marketing by respondents – given they are likely to have the biggest pool of investors, with significant representation also by the Member States traditionally acting as fund domiciles. The majority of respondents to this question market in at least 10 Member States, with 10 respondents marketing to between 10 and 15 MS, and three marketing to 27 or 28.





2. Overall findings

There was strong support from respondents for the aims of the consultation. Detailed responses clearly identify barriers than can be addressed to improve functioning of the single market in the area of fund distribution. Lack of a clear definition of marketing in AIFMD, host Member State marketing requirements, regulatory fees, and taxation were the main concerns of respondents, followed by administrative requirements such as local agents and difficulties with the notification process. However, rather than any one these individual areas being the major problem, responses from the consultation suggest that the overall complexity of the requirements and their cumulative effects seem to diminish the effectiveness and the efficiency of the EU passport.

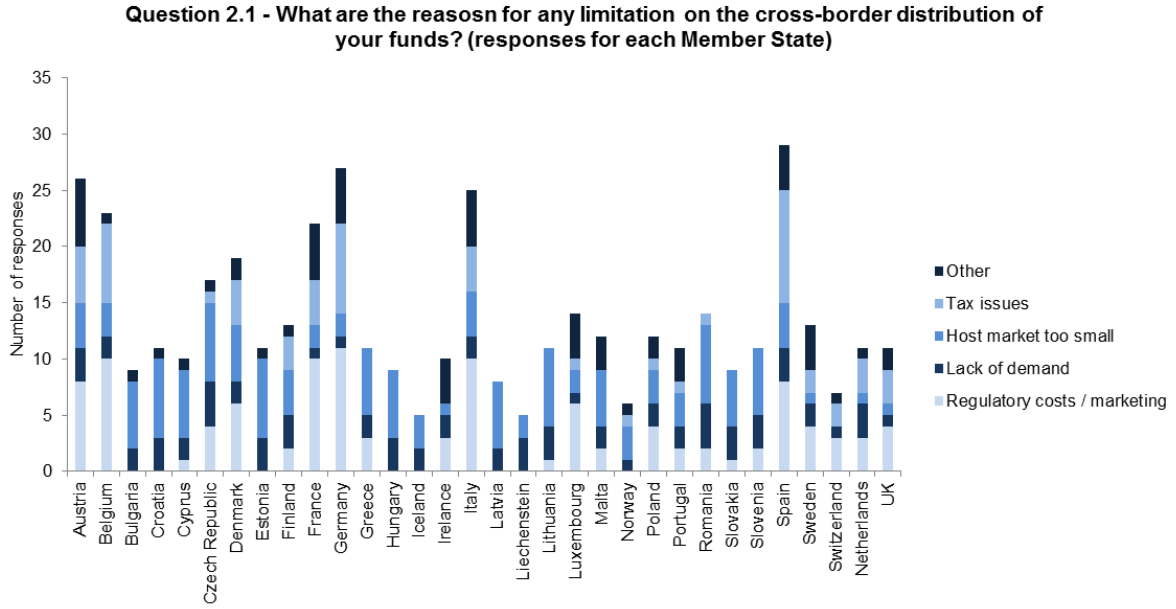


A number of Member States and National Competent Authorities (NCAs) consider the marketing passport of funds to function smoothly overall, citing the high and rising number of cross-border activities and low associated costs. They also refer to their initiatives to restore investor confidence and the risk of miss selling damaging that confidence.

Other factors cited by industry, consumer groups, regulators and others stakeholders that have a (negative) impact on cross-border distribution include:

- Vertical distribution models owned by national banks;
- Size of the host market;
- Cultural reasons, including a strong home bias and differing levels of consumer financial sophistication across the EU;
- Cost involved in penetrating a foreign market (as in any industry); and
- Lack of understanding/awareness by retail investors of their rights and mediation options.

The challenge of encouraging broader distribution to smaller Member States is also clear from the responses to the consultation (see graph below), with a lack of demand or a small market size cited as a dominant factor for some of these countries (albeit responses were from a small number of managers).



To address the barriers identified, there were some calls by industry respondents for harmonising diverging national rules and practices through ESMA rather than Level 1 legislation. Reasons given for this were speed of implementation and regulatory stability.

A more detailed account of the feedback received in the various areas covered by the consultation, is provided below.

3. Marketing

When EU funds are marketed across borders to investors, they are usually required to comply with national requirements set by host Member States. In the case of AIFMD, marketing is defined but there are wide varieties in interpretation of what is considered marketing. In the case of UCITS Directive there is no definition at all. In summary, consultation responses:

- Argued for harmonised definitions of marketing in the AIFMD and the UCITS Directive, which address inconsistent application of the definition through carve-outs including for pre-marketing and reverse solicitation;
- Identified a range of practical burdens impeding the use of the marketing passports, including pre-authorisation requirements, different disclaimer and disclosure requirements, registration procedures, and differing approaches in language requirements in marketing.
- Did not identify examples out outright protectionism by Member States, but rather considered gold plating to be a greater challenge.
- Saw a strong role for ESMA in harmonising requirements but there was a mixed reaction to expanding its remit.

3.1. Identifying the barriers

a. Definitions of marketing in the AIFMD and the UCITS Directive

Diverging interpretations across Member States – AIFMD defines the scope of marketing as "*a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the Union*", whereas UCITS leaves marketing undefined and for member states to define. However, many respondents noted a wide divergence for both directives in the activities Member States consider being marketing.

Activities which may or may not be considered to be marketing depending on the Member State practises include, for example:

- Pre-marketing and reverse solicitation (e.g. responses to Requests for Proposal);
- Acquisition of a fund within discretionary portfolio management;
- Investments made by another investment fund;
- Transactions in the remuneration of professionals of the management company or AIFM and transactions on their behalf;
- Participation in conferences and events; and
- Raising brand awareness.

In some Member States (such as Germany), the same definition of marketing is used for UCITS and AIFs, whereas in other Member States it differs. This was argued to be inappropriate given the different needs of professional investors. In some jurisdictions, filing requirements are not just triggered when an activity is defined as marketing but also whether this is an initial registration of a fund or additional share classes have to be filed separately.

The majority of respondents stating a view claimed that this difference materially affected the cross-border distribution of investment funds. Respondents (including NCAs)[158] called for greater convergence and clarity in order to reduce costs and complexity in interpreting differing requirements across the EU and to ensure that market practices beneficial for managers and investors, such as the ability to shape funds to meet professional investors' needs, are preserved. Nonetheless, those NCAs stressed the need to protect retail investors as they are a more vulnerable group of investors. For this reason, one NCA considers that the concept of reverse solicitation should not apply to retail investors.

[158] These NCAs agree with the approach retained by the Expert Group on barriers to the free movement of capital. The suggested definitions of pre-marketing and reverse solicitation are reasonable.

Question 3.1a – Are you aware of member state interpretations of marketing that you consider to go unreasonably beyond of what should be considered as marketing under the UCITS Directive*?	Answers	Ratio
Yes	18	45%
No	13	33%
Don't know / no opinion / not relevant	9	23%

Question 3.1b – Are you aware of member state interpretations of marketing that you consider to go unreasonably beyond the definition of marketing in AIFMD?	Answers	Ratio
Yes	16	43
No	10	27%
Don't know / no opinion / not relevant	11	30%

Question 3.1c – Are you aware of any of the practices described above having had a material impact upon the cross-border distribution of investment funds?	Answers	Ratio
Yes	22	56%
No	5	13%
Don't know / no opinion / not relevant	12	31%

Pre-marketing – Many stakeholders, and in particular asset managers, asked for recognition of pre-marketing and a harmonised approach to pre-marketing. This was mainly in the context of AIFMD but some respondents desired this for UCITS. Arguments here were that managers need to be able to determine investor needs prior to refining their products – and also cannot justify registering in all jurisdictions with the associated regulatory and administrative costs without knowing if there is demand from investors.

Pre-marketing reflects normal market practice in certain asset management segments targeting professional investors or high net worth individuals, such as private equity or venture capital. Unlike UCITS which are offered on a continuous basis to retail investors, many AIFs which are closed-ended or which only offer periodic opportunities to invest may need significant prelaunch commitments from professional investors. It was argued that Member States which did not permit pre-marketing are denying their investors the opportunity to participate (and benefit from) initial capital rounds on advantageous terms, meaning they could only participate in later rounds or the secondary market.

b. Practical burdens impeding the use of the marketing passport

Respondents considered there to be a wide range of issues with the practical implementation of the marketing passport which impinge upon managers' use of it to distribute funds across borders. Different interpretations of what constitutes marketing, as described above, was considered the most burdensome challenge, together with different methods for managers to comply with the requirements such as approaches to approval and content of documentation including the marketing documents. A number of respondents reported that this prevents or reduces their marketing of funds in some Member States, particularly where they would have to change all their marketing materials.

Pre-approval of marketing documents – A number of Member States, including France, Belgium, Finland and Croatia require NCA pre-approval of documents marketing to retail investors for some or all funds. This pre-approval is significantly more time-consuming in some Member States than others and can take up to four months, rendering the material

outdated when informing clients on evolving market conditions. The scope for changes means a lack of certainty over documentation and that it's not possible to reuse it across the EU. One trade body reports this has led to managers providing less explanatory material for retail investors in Member States with a lengthy approval process. Other NCAs are more principles-based and supervise marketing documents ex-post.

Most NCAs also require marketing materials addressed to retail investors to be translated into a domestic language. This requirement is also seen as burdensome by some respondents.

Small differences in approach can cumulatively add to cost and complexity according to respondents. For example, while some Member States require pre-approval of marketing documentation, others merely require copies of marketing documents to be lodged with the relevant NCA while others have no such obligation. Different methods for complying with marketing requirements, for example operational filing processes and how updates to KIIDs are submitted also add to costs. When filing, aspects such as feedback, deadlines and language requirements are sometime not clear.

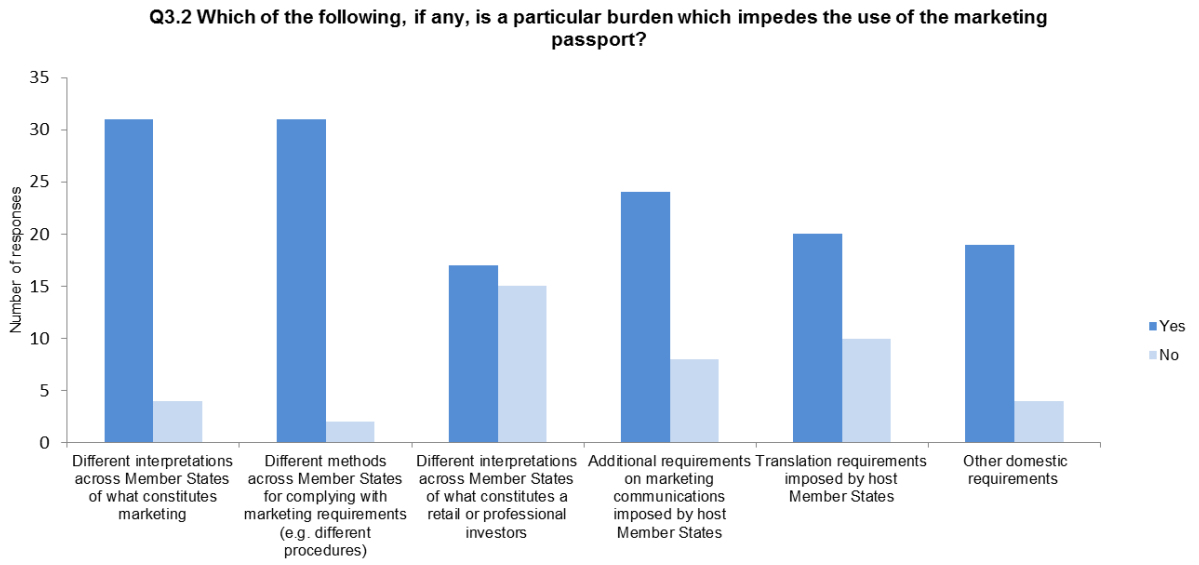
Some Member States also require some modifications to the KID or the prospectus or product sheet. For example, Belgium requires particular types of chart to be used. So asset management companies need to have a specific process for producing Belgian product sheets.

Several NCAs consider that taking additional measures based on random samples and/or as a response to complaints received is in the interest of (retail) investor protection.

Distinction between retail and professional investors – Some asset managers also experienced different interpretations of what constitutes a retail or professional investor. They considered this to be a particular burden, though others did not. However, differences in rules in marketing to retail investors included different requirements for investor disclosure (with some Member States supplementing mandatory investor disclosure requirements), minimum subscription limits and different approaches to the definition of complexity.

The differing approach to semi-professional investors was also cited, including by private equity managers, who want to market to high net worth and sophisticated investors for whom the MiFID definition is too stringent (for example investments are made infrequently by Private Equity investors) and for whom the AIFMD does not allow the marketing on a cross border basis of AIFs to high net worth individual via the passport.

The NCA of one Member State, which was considered by managers to have relatively burdensome requirements, argues that these requirements do not in practice prevent marketing. It cited that since 80% of the funds marketed in its jurisdiction are from other EU Member States its requirements cannot be considered to act as major obstacles to marketing.



c. Lack of harmonisation on marketing requirements for funds passporting into Member States

Respondents generally did not report stricter marketing rules being applied to funds passported in to Member States compared to domestic funds. Rather, the patchwork of domestic requirements and differing application of rules could put up costs and act as a disincentive to exercising widely the marketing passport. It was also argued that the application of additional requirements for funds passporting in to Member States was itself against the principle of the marketing passport.

Another trade body raised the impossibility for registered AIFMs (sub-threshold fund managers) to market under the national private placement regimes into Denmark and the Netherlands. Neither of these countries allows non-domestic sub-threshold fund managers (i.e. sub-threshold managers based in another EU country) to market under the NPPR into their domestic markets.

Respondents from Liechtenstein reported that their attempts to use the marketing passport were often rebuffed, despite being in the EEA and having full passporting rights. It is possible that this problem has eased since the EEA treaty was updated to include AIFMD, but this needs to be reviewed.

Two NCAs argued that any reduction of the ability of national competent authorities to take action in their own markets – for example over marketing material from companies based in other Member States - could lead to investor detriment and a loss of confidence. This view is also shared in some extent by some other industry stakeholders.

Several NCAs and also one Member State noted that host NCAs know best their markets' specificities, the level of financial education and all applicable regulatory requirements (e.g. taxation law, advertisement rules, consumer protection rules, etc.) and are more able to supervise marketing communication in their local jurisdiction.

Moreover, one NCA stated that care must be taken to ensure that opportunities for fraud or failures in investor protection are not created owing to the lack of a genuine supervisory mechanism.

One Member State mentioned that marketing communication rules for marketing investment funds to retail investors could be harmonized, as long as a sufficient level of consumer protection is safeguarded

Question 3.3 – Have you seen any examples of Member States applying stricter marketing requirements for funds marketed cross-border into their domestic market than funds marketed by managers based in that Member State?	**Answers**	**Ratio**
Yes	6	18%
No	14	42%
Don't know / no opinion / not relevant	13	39%

d. Ease of finding and understanding Member State rules

A number of respondents reported that Member State marketing requirements are often not clear and not translated into English or into another language. Requirements need to be found and translated by the asset managers or its advisors. In consequence, asset managers and distributors face a risk of having an inaccurate translation and incur extra costs for hiring external counsel.

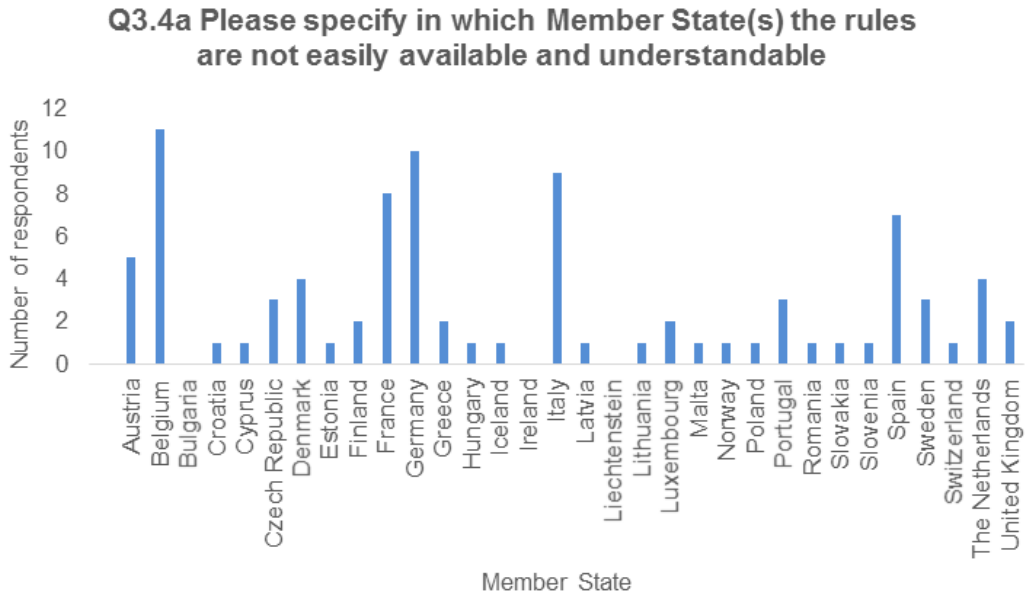
It is often not clear at first glance which (local) marketing requirements apply exactly unless a manager or distributor has very detailed knowledge of the applicable local law. Local regulators often give additional guidance on how to interpret local law which is not always in a single rule book. There are also Member States that refer to non-financial legislation (such as regulation on advertising and marketing practices (Spain, Sweden). In practice this means that external counsel needs to be engaged to determine how to comply with local rules. Regular changes to marketing requirements introduce additional cost, meaning such costs are incurred on a regular basis.

In some EU Member States, guidance is not available in writing. Direct contact with the regulators can provide the clarity required, but then managers claim that there is no way to know whether this guidance is arbitrary, applied consistently to other fund managers or likely to change the next time the same question is asked, particularly if a different person in the same office is contacted.

Some responses also noted that the scope of what Member States considered to be marketing did not always appear to be publicly available – and that where this was available, it needed to be clearer, for example on whether pre-marketing is allowed.

The interaction with MiFID – which provides for specific rules regarding marketing communication, was also considered to be problematic by a limited number of respondents – with one manager noting that the rules are interpreted differently among the Member States, for example regarding what is allowed to show as past performance, which costs should be taken into account etc.

Question 3.4 – Are domestic rules in each Member State on marketing requirements (including marketing communications) easily available and understandable?	**Answers**	**Ratio**
Yes	4	11%
No	23	66%
Don't know / no opinion / not relevant	8	23%



3.2. Addressing the barriers

a. Cross-EU alignment of marketing rules

Question 3.15 – Do you consider that rules on marketing communications* should be more closely aligned in the EU?	**Answers**	**Ratio**
Yes	36	80%
No	3	7%
Don't know / no opinion / not relevant	6	13%

An overwhelming majority of respondents expressing a view agreed that marketing communications should be more closely aligned, in order to eliminate duplication, divergence and conflict among national regulators. This would bring benefits of simplicity and reduced administrative burden.

The majority of responses (including responses from NCAs) focused on the definition of what constitutes marketing, as described in responses to earlier questions (in particular pre-marketing, reverse solicitation, and practical activities that should be considered marketing). However, a single set of requirements for the content of marketing communications was also requested by a significant number of respondents, which sought greater convergence on areas falling outside the KID / KIID:

- Examples of divergence given are the calculation of performance and cost disclosures – divergence in the components, the basis and the time period of measurement
- The benchmarking of past performance – divergence in the specification of benchmarks and disclosure of benchmarks in key investor information and the prospectus
- Risk warnings – divergence in the definition, content and thresholds for risk disclosure
- The treatment of disclosure of intra-group service arrangements.
- Prior approval of pre-approval for marketing materials. One respondent requested at least a prescribed time period for the host Member State review of UCITS marketing communications required under local rules.

One trade body referred to the potential for MiFID II and PRIIPs to reduce discrepancies between national practices regarding marketing communications over the next few years – and that major measures should not be taken before the impact of these is understood. They also noted a general statement confirming that all marketing material compliant with MiFID II can be used in any jurisdiction for direct distribution would be helpful.

Another request was for a single definition of "obligatory investor disclosures" under UCITS.

One company noted in particular the need to update guidance on the use of marketing technology and the development of social media on a pan-European Level, using a benchmark for example the Social Media Foundation initiative. Most Member States offer no specific guidance on the use of websites or online communication as a marketing tool.

A number of trade bodies argued that harmonisation should be undertaken by ESMA through guidelines to harmonise pre-marketing and reverse solicitation based upon existing national practices, complemented by positive examples of what should be considered as pre-marketing. A small number of responses also referred positively to the work being carried out by the Expert Group on the Free Movement of Capital to achieve consensus through voluntary agreement.

Increased dialogue between the national supervisory authorities would also be deemed helpful – for example publishing examples of good and bad practices, feedback on peer reviews and individual thematic reviews.

National authorities and competent authorities were somewhat more cautious. One Member State supported closer alignment provided a sufficient level of consumer protection is safeguarded – citing description of the investment strategy, risk profile, fees, presentation and the wording of information about the funds as being areas that could be harmonised for retail investors – this wouldn't be relevant for marketing materials targeted at professional investors. Another Member State noted that its regulator adopts a risk-based approach whereas others use a rule-based approach – as mentioned also by other Member States and NCAs further work through ESMA or voluntary arrangements to assess the scope to harmonise more could be helpful though it was important to remain some flexibility so that regulators more familiar with local consumers' needs could choose the most suitable approach.

One other Member State argued that marketing communication requirements should depend of the type of fund. The marketing communication requirements for complex investment funds (e.g. private equity or high leverage funds) to retail investor should be more detailed. Marketing requirements for plain vanilla investment funds could be more general containing the main elements of the investment fund. One asset manager considered that complex funds or high leverage funds should be marketed to retail investors with extra caution and clear explanation. In consequence, the marketing requirements on marketing communication should take the level of complexity of the funds into consideration

One trade body argued that harmonised requirements should include recognition that any information document produced under a mandatory requirement should not automatically be considered a marketing activity.

b. Harmonising marketing communications for other types of investment products (other than investment funds)

There were a range of responses on this topic. Responses in favour noted the potential to reduce costs and improve comparability for consumers:

- Further harmonisation based upon MiFID – especially with regard to insurance-based investment products covered by IDD – where EIOPA guidance should be given specifying how the principle of fair, clear and not misleading information should be applied.
- Exchange traded products (other than UCITS ETFs which are already covered by UCITS, structured notes and other instruments marketed to retail investors) should be covered.
- The PRIIPs approach of ensuring a level playing field across all investment types should be further enhanced by moving towards a set of marketing rules covering other types of investment product such as insurance, though one national industry association noted that insurance products are already subject to similar marketing disclosure rules. Several Member States and NCAs expressed a similar view that marketing requirements should not only be harmonised for funds but also to other products marketed to retail investors.
- Article 15 (now 21) of the Prospectus Regulation foresees general principle that are applicable to advertisements for public offerings of securities[159] and give the power to the host authority to exercise control on the advertising activity. Several NCAs and one Member State are also in favour of a harmonised approach across investment products.
- One respondent argued that ESMA's initial focus should be on harmonising disclosures for investment funds. Several investors associations also advocated harmonising advertisements for public offerings of securities.
- The few respondents giving reasons for why there should be not harmonisation argued that the impact of PRIPS should be assessed first.

Question 3.16 – Is there a case for harmonising marketing communications for other types of investment products (other than investment funds)?	**Answers**	**Ratio**
Yes	13	38%
No	5	15%
Don't know / no opinion / not relevant	16	47%

c. The role of ESMA and NCAs in relation to the supervision and the monitoring of marketing communications and in the harmonisation of marketing requirements

There were a range of views on the relationship between ESMA and Competent Authorities, focusing on different features of ESMA's work.

Some supported the status quo, with ESMA's contribution to the EU single rulebook providing a degree of guidance. It would then be up to NCAs to interpret and implement the guidance, working in close cooperation with NCAs.

There was considerable support from industry, but also from Member States and NCAs, for ESMA providing guidance through guidelines - or to a lesser extent through Level 2 based on ESMA advice - on the marketing concepts subject to different interpretations in order to avoid inconsistent implementation. One manager cautioned against further harmonisation beyond this as it could take too long to achieve.

[159] Article 21.3 of the Prospectus Regulation: Advertisements shall be clearly recognisable as such. The information contained in an advertisement shall not be inaccurate or misleading. *The* information contained in an advertisement shall also be consistent with the information contained in the prospectus, where already published, or with the information required to be in the prospectus, where the prospectus is published afterwards

Other contributors sought the eventual development of a maximum harmonised pan-European set of cross-border marketing guidelines, distinguishing in the guidelines between retail and professional investors and including examples. The contributors highlighted the benefits in their being able to market across the EU with one set of marketing documents.

Some respondents argued that ESMA should play an additional role, becoming a common repository for marketing passport notifications and AIFMD regulatory reporting.

A number of industry respondents were keen for ESMA to reduce costs for managers by publishing on its website, ideally in English (and possibly German and French) the marketing requirements of each member state.

Very few respondents saw ESMA taking on a direct supervision and monitoring role, with the argument instead made that national competent authorities are best placed to undertake this role in the interests of efficiency and investor protection. One NCA argued that ESMA could only begin fulfilling the role of regulating marketing communications once the legal provisions are aligned. This means that ESMA would need additional staff in order to check marketing communication in numerous languages. In consequence, this NCA concluded that developing new roles for ESMA that are now already taken by the NCA seems to be less desirable.

Two consumer groups argued that ESMA and NCAs should play an active ex-ante role. Two investor groups proposed that all Member States should require ex-ante approval of marketing communications.

A number of NCAs argued the need for NCAs to be able to take appropriate action in their Member State, given their knowledge of their national market and its specificities including regulatory requirements and levels of investor education. This might include addressing, for example, aggressive marketing to retail investors of complex products with the potential for high capital losses. This is particularly the case where the home authorities of NCAs fail to act or do not have resources to act.

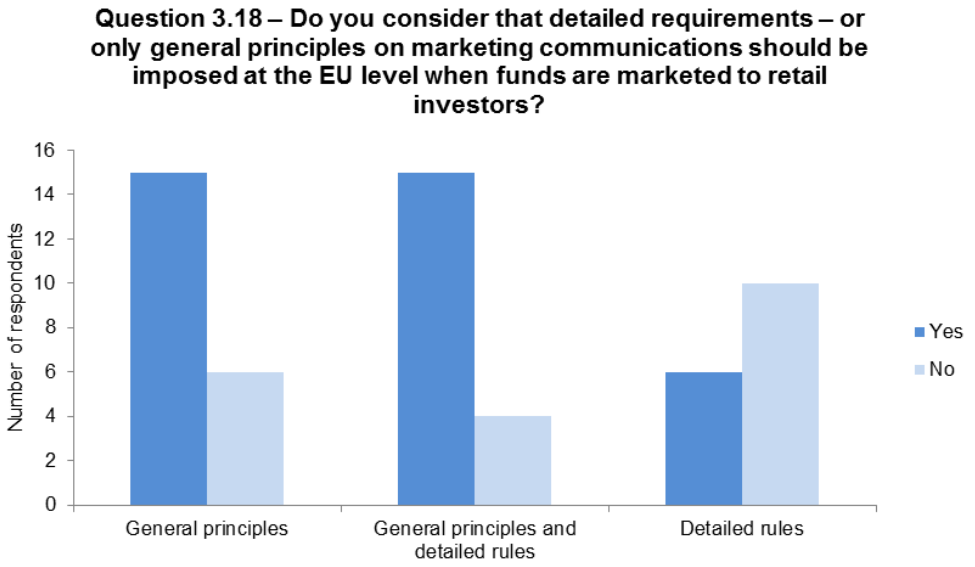
d. Degree of harmonisation when marketing to retail investors

Most respondents were in favour of at least general principles being imposed at the EU level for marketing communications aimed at retail investors, but respondents – including industry responses – were split over whether detailed rules would be desirable as well.

Most of the industry respondents who were supportive of both general principles and detailed rules argued that they were necessary to reduce the difference in approach between NCAs, allowing greater efficiency in marketing – though there was some acknowledgement that this would take time and the prioritisation would be needed. Most of the asset manager representatives suggested that ESMA guidelines would be more appropriate than level 1 regulation, given the time and detail needed.

They noted that introducing more detailed requirements would impose further burdens, but that general principles such as compliance requirements laid down in MiFID II should also be sufficient would be helpful.

Several respondents noted the need to note that sophisticated investors could sometimes be deemed ‘retail’ and that the principle of marketing communications facilitating availability was an important one.



The majority of respondents considered that it was appropriate for retail marketing communication requirements to depend upon the type of fund – where funds are more complex or there is a higher potential risk, for example. This would be necessary in order to, for example, provide greater detail so that the risk or complexity could be understood or to draw the attention of investors to a specific characteristic.

One manager argued that specific requirements should be linked to the MiFID target market analysis, with the marketing of products not designed for retail clients or execution only distribution reflecting this decision, and differentiation between direct and intermediated marketing.

Managers arguing against this dependence argued that the prospects of each fund have to be explained in a transparent, easy-to-understand, balanced and comprehensive way in any case – and that different types of disclosure could prove confusing, burdensome and costly.

Consumer and user groups argued that marketing communication requirements should be applicable to all types of fund, though detailed rules may reflect specificities. The argument was also made that AIFs sold to retail investors should be subject to the same requirements as UCITS. Consumer and used groups also stated that marketing communications should be made available in the local languages of the Member State in which the fund is marketed.

Two investor associations considered that detailed marketing rules should be harmonised at ESMA level (level 2 or level 3) in order to avoid fragmentation of the EU market. However, the actual supervision and enforcement should stay at national level, with the NCAs. In addition, they suggested that marketing communications should be approved ex-ante on the basis of detailed ESMA requirements (level 2 or level 3).

Question 3.19 – Do you consider that the requirements on marketing communications should depend on the type of funds or the specific characteristics of some funds (such as structured funds or high leverage funds) when those funds are marketed to retail investors?	**Answers**	**Ratio**
Yes	16	57%
No	9	32%
Don't know / no opinion / not relevant	3	10%

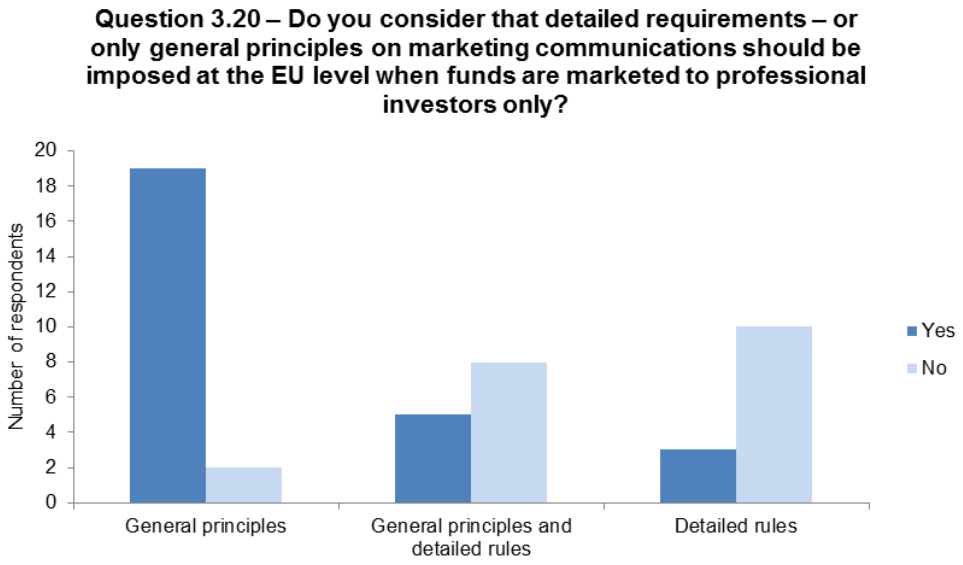
e. Degree of harmonisation when marketing to professional investors

The majority of respondents argued that detailed requirements set at EU level were not required for distribution to professional investors; specific principles were sufficient.

Respondents favouring detailed requirements argued that as Member States were in some cases requiring detailed rules, it would be better to ensure these were consistent, in order to reduce costs and ensure a level playing field. However, the rules would not have to be as strict as those for retail investors.

Respondents arguing against detailed requirements made the case that general principles only should apply – in practice professional investors would be unlikely to use the information that was specified under detailed requirements as it would need to be tailored to their own specific needs and other regulation they had to comply with. Professional investors are also more likely to undertake their own due diligence.

A number of respondents agreed that only general principles should apply, but considered it important to clarify that professional investors would genuinely need expertise in the financial sector. For example, a public body or high net worth individuals without this specialism may need further protection.



4. Costs of cross-border distribution

Consultation respondents were asked about the overall costs of distributing funds – in terms of work to comply with regulations and costs of distribution. In practice, few respondents were able to indicate costs directly and solely linked to cross-border distribution by type and Member State because of the complexity involved and sometimes due to the confidentiality of the information. However, answers given by some respondents can be taken as illustrative. Regulatory fees are covered separately in the next section.

According to respondents, factors that can trigger costs or influence their level include:

- Individual price schedulers of service providers;
- Openness of the distribution network;
- Frequency of documentation updates;
- Fund volume; and

- Complexity and different national requirements of host markets (e.g. appointment of paying agents, specific marketing requirements).

As an illustration, two trade bodies ranked the regulatory costs of asset managers in relation to cross-border distribution as:

1. Administrative arrangements: principally the costs of local facilities/local agents
2. Marketing requirements: such as the obligation to provide translation of documents, specific document and/or supplement (e.g. prospectus supplement), development of multi-market websites, the local marketing communication rules which are not harmonised in the EU, etc.
3. Legal costs: third party (law firms, consultants, etc.)
4. Legal costs: internal legal analysis
5. Other (e.g. notification and maintenance of notification, filing requirements, translation)

a. UCITS costs

One stakeholder reported that on average, for an umbrella UCITS with 5 sub-funds that are registered in key markets in the EU such as the United Kingdom, Germany, France, Austria, Italy, Spain the registration and distribution costs are estimated at €150,000 to €200,000 per year. Costs associated with tax reporting in the UK, Germany and Austria (also Switzerland) make up the biggest part of that amount, followed by costs for the appointment of local agents, such as paying agents of local representatives. Legal advice on compliance marketing is also a significant cost.

Local representatives and/or paying agents are mandatory in most EU jurisdictions (e.g. the United Kingdom, Germany, France, Italy, Spain, Austria, Nordic countries). According to industry respondents, local agents charge on average from €5,000 to €10,000 on an annual basis, but are rarely used in practice, unless they are performing additional distribution or trading services.

Table – Example of additional costs (without taking into account tax reporting costs and regulatory fees) that have to pay an UCITS manager when it markets its funds across the EU to retail investors

Member States	Translations costs	Service Provider Fees*	Additional Costs
AT	**KIID Translations** €150/€200 per KIID	**Information/Paying Agent** – Minimum Annual Fees €6,000	**Third Party registration services**: Initial: €2,000 Annual: €4,000
DE	**KIID Translations** €150/€200 per KIID	**Information Agent** – Minimum Annual Fees €6,000	Addendum to Prospectus is required. (**Legal Costs**) **Third Party registration services**: Initial: €2,000 Annual: €4,000
FR	**KIID Translations** - €150/€200 per KIID	**French Centralizing Correspondent** – Minimum Annual Fees €6,000	**Third Party registration services**: Initial: €2,000 Annual: €4,000
Switzerland (Non-Qualified Investors)	Circa CHF 15,000	**Swiss Rep** – Initial Fees CHF 10,000 Annual Fees CHF 10,000 for 1st sub fund CHF 7,000 for additional sub	**Third Party registration services**: Initial: €2,000 Annual: €1,000

		funds **Paying Agent –** CHF1,500 – 3,000 per fund	
UK	**KIID Translations** - €150/€200 per KIID	**Facilities Agent** – Minimum Annual Fees €6,000	**Third Party registration services**: Initial: €2,000 Annual: €4,000

b. AIF costs

Aside from regulatory fees[160], overall costs for obtaining the AIFM licence are significant according to respondents, as well as cost for reporting. In addition, the costs of filing Article 42 AIFMD notifications for AIFs in multiple jurisdictions are significant and each country has specific requirements which can require customisation of formatting and method of delivery of the documents.

The level of the various types of costs[161] (in particular legal costs, regulatory fees and administrative arrangements) in relation to the overall fund costs varied and depend on various parameters such as individual price schedules of service providers, frequency of fund prospectus updates as well as the fund volume, etc.

The national requirements of host Member States (e.g. appointment of a local paying agents, up to the different level of marketing costs) also have a direct impact on the level of costs. Based upon an analysis of a sample of individual funds, a trade body estimated the cost level between 1% and 4% of the overall fund costs in some individual situations.

Even where direct costs are relatively low, coordinating the legal and organisational aspects of a cross border distribution require dedicated resources due to deviating requirements of different markets. Consequently, respondents considered that any harmonisation would contribute to cost saving.

Table – Example of additional costs (without taking into account tax reporting costs and regulatory fees) that have to pay an AIF manager when he markets its funds across the EU to professional investors

Member State	Translations costs	Service Provider Fees*	Additional Costs
AT	N/A	N/A	Third Party registration services: Initial: €3,000
DE	N/A	N/A	Third Party registration services: Initial: €3,000
FR	N/A	N/A	Third Party registration services: Initial: €3,000
Switzerland	N/A	N/A	N/A
UK		N/A	Third Party registration services: Initial: €3,000

[160] See section 7 focused on Regulatory fees.

[161] Other costs, such as retrocession fees payments to the distributors that vary from country to country or distribution situations are excluded from the analysis, the percentage of costs related to the overall fund costs would significantly raise.

5. Regulatory fees

Respondents to the Call for Evidence and the CMU Green Paper have referred to the range of regulatory fees charged by host Member States as hindering the development of the cross-border marketing of funds across the EU. A preliminary assessment by the Commission services showed that the level of fees levied by host Member State on asset managers varies considerably, both in absolute amount and how they are calculated, including some Member States who may not apply fees.

The consultation sought further evidence from NCAs and industry on the level of regulatory fees, and to what extent they constitute a barrier to the cross-border distribution of funds.

The vast majority of respondents do not consider regulatory fees to be a significant barrier. However, they consider the cumulative effect of the regulatory fees with other requirements to constitute such a barrier. The responses[162] received confirm the initial expectations of the Commission and set out the following issues: **(a)** lack of transparency; **(b)** diverging level of fees levied; **(c)** lack of harmonisations regarding the method of calculation and payment of fees; **(d)** absence of a deregistration procedure; and **(e)** absence of an invoice. More details are set out below.

a. Lack of transparency

In order to compare regulatory fees, consultation respondents were asked to set out costs for two examples: 1) a UCITS fund with 5 sub-funds marketed on cross-border basis to retail investors and 2) an AIF with 5 sub funds marketed to professional investors on cross border basis.

Responses received vary considerably; this lack of consistency in responses to such a simple scenario suggests that it is challenging for asset managers - and especially small ones - to determine the level of regulatory fees charged by host competent authorities. Nonetheless, responses illustrated the considerable variance in fees between NCAs.

Example 1: an asset manager will have to pay €1,500 as one off fees and €10,275 yearly to market its UCITS with 5 sub-funds in Belgium when the stakeholders expect to pay between €1,500-1,885 for one off fees and €10,275 - €12,900 for ongoing fees.

Example 2: an asset manager will have to pay €4,000 of ongoing fees to market its UCITS with 5 sub-funds in Italy when stakeholder expect to be charged between € 0 and €4,000 of one off fees and between €4,000 and €10,800 of ongoing fees.

The uncertainty illustrated is likely due to a lack of transparency over regulatory fees frameworks, including that they are not always available in languages other than those accepted in the Member State. A further difficulty reported by managers is that an invoice is not always supplied by the NCA to the entity acting on behalf of the asset manager/ or the asset manager.

b. Level of fees charged

The level of fees charged by host competent authorities varies significantly from one Member State to the other. Fees charged for a single UCITS marketed to retail investors are usually comprised of both one-off and ongoing fees. According to respondents, the level can vary from:

[162] A vast majority of the respondents has replied to the question on regulatory fees via the European trade body for investment funds.

- €0 to €2,500 for the one-off fees,
- €0 to €4,000 for the ongoing fees.

Host NCAs argued that fees are necessary in order to fund their supervisory functions, in particular marketing supervision, with one NCA noting the importance of supervisions costs being paid by those institutions being supervised.

Many national regulators levy fees for the marketing of AIFs in their jurisdiction. Depending on the level of the fee, this additional charge is likely to make the AIFMD passport less attractive.

One national trade association stated that while some national regulators apply no or reasonable fees, the fees levied by the other regulators seem to be particularly high. The fees levied by most regulators do not seem to be excessive, but still not proportionate to the work performed.

c. Lack of harmonisation in the calculation and differences in terms of payment

Depending on the jurisdiction, the regulatory fees take the form of a tax levy set by national parliament or fees determined by the market authority of the host country or ministry of finance.

These fees may in turn be broken down into several different categories, including the cost of applying to enter the country, the cost of the passport itself, publication and public offering fees, plus potential annual or monthly supervision fees. Several Member States draw also a distinction based on the number of single funds, umbrella funds and sub-funds while others does not. These fees may further increase depending on the number of sub-funds or the type of funds (AIF versus UCITS) or if the funds is marketed to retail or not. Other Member States provide a discount for the first sub-fund ,others have capped the level of fees or decreased marginal costs after the first few sub-funds.

The regulatory fees are calculated in different ways across the EU: some Member States charge one off fees and ongoing fees, while others charge only one or none. In several Member States when the AIF is marketed to professional investors there is no fee charged, however in most Members States one off fees and/or ongoing fees apply.

Furthermore, the fees structure differs between Member States, and may apply at the level of the fund, the umbrella and sometimes the level of the sub-fund. Moreover, the method of calculation varies - for example in some Member States, no fees are levied beyond a certain number of sub-funds or marginal fees are lower, whereas other Member States do not take into account the number of sub-funds.

More details on the calculation methodology of regulatory fees in each Member State can be found in annex 11.

d. Absence of invoice received

According to industry respondents, in some Member States (e.g. Germany and Austria) pre-payment is required for marketing notifications; in others this is not expected. In Ireland, written confirmation to the regulator in a prescribed format of the appointment of the paying agent is required; although this is not required elsewhere. In the UK, Ireland, Denmark, Austria and Germany, there is a requirement for a country specific annex to be appended to the fund Prospectus. Overall, this variation in practices is costly and time consuming to keep track of and limit the benefits of the marketing passport.

Some stakeholders describe not receiving invoices for regulatory fees. This can create accounting difficulties – and they may be obliged to wait for reminder notices in order to pay the regulatory fees. Sometimes, this can lead to delay the passporting process as proof of payment is required by some host NCAs to be send to them before marketing commences.

6. Administrative requirements

The consultation has sought feedback on **(a)** what arrangements and requirements imposed by host Member States are barriers to the cross-border distribution of funds, including quantitative and financial evidence of the impact of these barriers. Additionally, the consultation has sought input on **(b)** what administrative arrangements would be necessary to support and protect (retail) investors and **(c)** possible measures to improve the efficiency and effectiveness of administrative arrangements in Member States. Specifically from the perspective of (retail) investors, the consultation has sought feedback on **(d)** the problems and obstacles when investing in funds domiciled in another Member State.

a. Identified barriers

Local (paying) agents – Almost all respondents pointed to the national requirement to appoint a local (paying) agent or a transfer agent for UCITS or AIFs marketed to retail investors as an unnecessary and costly barrier to the cross-border distribution of funds. Respondents note that the initial and ongoing costs of appointing local agents are significant – it can be in the region of up to €10,000 a year[163] per agent or 47 bps – while they are hardly used by investors and fund managers. The appointment of a local agent is also time-consuming and can lead to significant delays in marketing funds, as negotiating the agreement involves the management company's legal and business teams as well as the fund's depository and operational oversight teams.

A large number of respondents – including some Members States and NCAs – consider technological developments to have negated the need to appoint a local agent, as access to information, payments and issue handling services can be provided by other means, most notably electronically. However, some respondents (banks and financial intermediaries, who typically act as local agents) caution against removing this requirement with the argument that local agents also actively support the functioning of the asset manager by providing a full range of services and act as a point of contact and are thus useful from an investor protection perspective. In this context, some of these respondents noted that even if new information channels have been introduced over the recent years, not all end-investors are systematically equipped to access information electronically. In addition, they may need to exchange with an interlocutor in a language they can fully understand. They also noted that local agents are a privileged contact for NCAs who may have some difficulties in getting access to a relevant interlocutor of an EU foreign asset management company.

Besides questioning the need to appoint local agents, many respondents consider the diverging requirements between Member States regarding the appointment and role of local agents as a significant barrier. Consequently, several respondents would welcome further harmonisation in this area.

Some respondents noted that the appointment of local agents can also be required for AIFs marketed to investors and called for harmonisation of these requirements. In addition, when

[163] One trade body estimates the costs for local agents at €5.000-10.000 per agent on an annual basis (in their section 4 response), One asset manager (markets UCITS & AIFs to professional investors) estimates costs at between 0bps and 47bps for MS it markets in. Another asset manager estimates 3-6 bps per fund for administrative arrangements.

AIFs are marketed to retail investors, Member States can impose stricter requirements than those applicable to AIFs marketed to professional investors. Certain Member States seem to have used this option to require the appointment of local agent(s) when marketing AIFs in their jurisdiction. However, since marketing of AIFs to retail investors is not harmonised on an EU-level and these AIFs not eligible for the marketing passport, this is outside the scope of this consultation.

Additional disclosure requirements - Several respondents mentioned that certain Member States require additional documentation to be provided with the prospectus (addenda) for the benefit of local investors, sometimes subject to pre-approval by the NCA, including proof of payment of the regulatory fees. This delays cross-border marketing and adds costs as local expertise is needed to complete and file the documentation.

Other barriers – One respondent also mentioned the lack of a depositary passport for UCITS as a barrier to the cross-border distribution of funds, although this was not further substantiated. Another respondent pointed to the requirement in some Member States (e.g. Poland) to operate a registry of local unit/shareholders.

b. Ensuring investor protection

No local administrative arrangements necessary – When asked what local administrative arrangements would be necessary to support and protect retail investors when marketing funds cross-border, a large majority of the respondents – including a consumer association– answered that no local (additional) administrative arrangements are necessary. In their view the requirements that apply to the fund in the home Member State and the technology available to receive cross-border payments, remotely access information and contact the distributor or the management company are sufficient to protect and support retail investors. Additionally, a consumer association [Better Finance] stressed that it is essential that the all facilities and administrative arrangements are available in the local language of the Member state where the fund is marketed. Some respondents also referred to the draft RTS under the ELTIF Regulation, which would allow management companies to provide their services electronically.

Even so, several respondents consider that instead of existing arrangements, a requirement should be in place to ensure access to the selling intermediary and asset manager via a number of means: (a) online access to information related to the investment; (b) possibility to introduce complaints via electronic means and in a language customary in the sphere of international finance; and (c) access to information provided by NCAs on funds that are notified for marketing in their country of residence. The creation of an online repository with (detailed) information on the funds available in a particular jurisdiction is also advocated by some other respondents, although they do not specify who should be responsible for administering such a repository.

Distinguishing between retail and professional investors – Since most respondents do not think administrative arrangements physically present in the host Member State are necessary for retail investors, respondents think this is equally so for professional investors. In general, respondents consider that professional investors should be treated differently due to their more extensive knowledge and ability to access the most relevant information.

c. Measures suggested by respondents to increase efficiency and effectiveness of administrative arrangements

Remove requirement to appoint local agents – Consistent with the provided input regarding the main barriers to the cross-border distribution of funds, many respondents recommend removing the requirement to appoint local agent(s) in the host Member State for UCITS marketed on a cross-border basis.

Encourage further adoption of digital technologies – Building upon the recommendation to remove the requirement to have a physical presence in the host Member State, some respondents desired a more encouraging regulatory environment towards the use of digital technology and digital distribution of funds.

Improving settlement of cross-border transactions – Multiple respondents recommend removing limitations with regard to the processing of transactions of fund units by a local distributor directly or indirectly through the management company, the custodian bank or the transfer agent of the fund.

d. Problems with cross-border investing – investors' perspectives

Question 6.9 – In general have you experienced any problems in being able to obtain information on, and invest, in foreign EU funds?	Answers	Ratio
Yes	5	56%
No	3	33%
Don't know / no opinion / not relevant	1	11%

Lack of comprehensive information regarding funds - Although we have received only a limited number of responses to the questions aimed at investors in this section, consumer associations seem to agree that the main problem when trying to invest cross-border is the lack of comprehensive and independent information enabling investors to compare investment funds across different jurisdictions (e.g. through a website). According to these consumer associations the current requirement in the UCITS Directive to translate the KIID into the local language of the Member State where the fund is marketed should be retained.

Distribution – Other respondents (investor associations and NCAs) point to the closed architecture of distribution networks as a barrier for cross-border investing. They note that in many Member States banks are the biggest distributors of retail investment funds, offering in some cases predominantly in-house funds. According to these respondents, independent advice should be promoted in order ensure retail investors are made aware of opportunity to invest in funds domiciled in other Member States.

Local tax rules and practices – Several respondents note that local tax rules and practices pose a problem for investors as they typically need to hire (local) expertise in order to comply, which is costly. Furthermore, investors often face difficulties reclaiming dividend tax paid in other Member States. In this context, some respondents would welcome relief-at-source mechanisms, as suggested in the CMU action plan.

Language barriers – Respondents seem divided on whether language is an important issue when investing cross-border. Three respondents note that language is not important, while other respondents (consumer groups) are of the opinion that language is a barrier if the KIID and other relevant information are not translated into the local language.

Other problems – Other issues with cross-border investing that were mentioned by respondents were residence requirements, currency risks, home-bias of investors, information asymmetry and diverging consumer/investor protection rules.

7. Direct and online distribution of funds

The increasing use of online platforms to distribute funds has the potential to support cross-border distribution. However, this opportunity is not being exploited to its full potential. For example, investors in one Member State are rarely able to purchase funds from a platform located elsewhere in the EU. Hence, respondents were asked about the barriers that hinder the use of online and direct distribution across borders.

a) Challenges faced in marketing directly and online cross-border

Respondents reported a range of factors that prevent them from distributing directly, which to some extent mirror the factors that prevent distribution more broadly, such as marketing requirements, administrative arrangements and tax rules. There are factors which, however, pose a particular challenge for managers seeking to distribute directly – and these range right across the transaction – from marketing through to administrating orders:

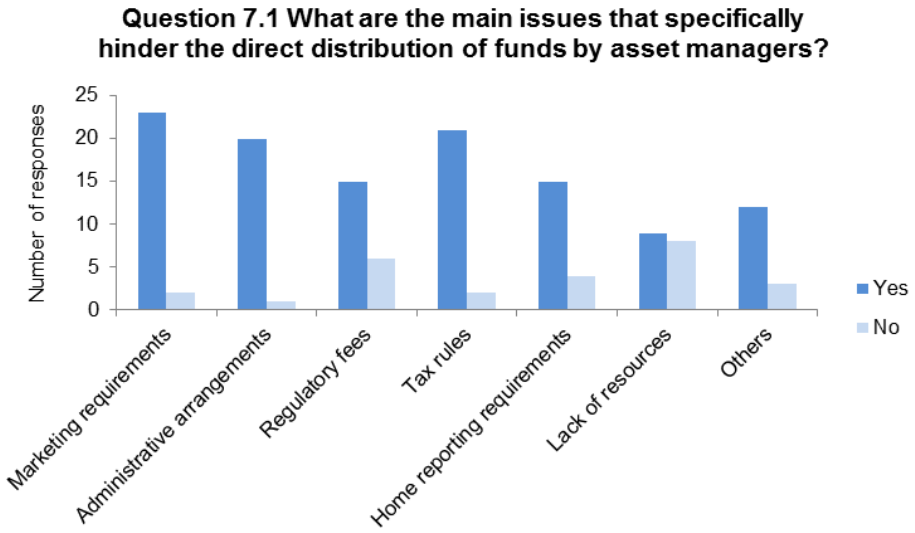
Cultural and home bias – Industry respondents pointed out that there is a strong cultural challenge in that many investors are not used to purchasing funds directly from managers as they normally go through intermediate distributors such as banks and may have a home bias towards funds from their domestic market.

Distribution model - One trade body noted that the current distribution model is complex, risky and expensive both at the sales and operational levels. In consequence, it does not leave sufficient room for the value added activities (e.g. client advice and service) because too much cost, time and energy goes to transaction costs. In particular, this stakeholder claimed that no EU harmonised operating model for fund transaction is available in the EU. An EU fund transaction costs a few dozen Euro while a US funds transaction costs a few dozen cents.. The EU funds transaction may take several days while a transaction security on a market is settled in a second.

KYC and AML requirements – Divergent, paper-based requirements, such as Know Your Customer and Anti-Money Laundering checks in many Member States, were considered by a significant number of managers as a costly complication where managers are seeking market directly online. The current process is regarded as costly and labour-intensive, requiring renewing and maintaining Know Your Customer processes, monitoring, maintenance of sanctions lists, on-site visits etc. In consequence, the absence of a single digital platform available across the EU is seen by one stakeholder as hindering the development of online distribution.

One asset manager also considered there to be very low interest among retail investors for non-domestic funds.

In addition, one NCA noted that technological evolution and, more precisely, the increased use of internet platforms pose also new challenges to NCAs, especially when the platform is domiciled in another Member State. One Member State suggested the Commission to further assess the EU fund frameworks in the light of the development of the digital environment in order to check whether these are compatible. An investor association considered it important that a fund platform is independent or fully transparent about their links with specific fund providers and the inducements they receive from these providers. In addition, full transparency on costs is of major importance.



Managers and distributors seeking to create a digital platform to sell funds cross-border face all of the factors above. However, in addition to the factors described above, there are a number of particularly prominent challenges relating to both cross-EU rules and local legislation when seeking to distribute online.

Robo-advice – Many retail investors are required to – or choose to (in the case of non-complex UCITS products) – take advice when purchasing funds. However, one investor association noted that they have seen a decline in personal investment advice in their country as it is getting rather expensive for retail investors with a portfolio below €25.000. This relates to the full ban on commissions that was introduced in 2014.

In consequence, robo-advice offers the potential to provide advice online, but the EU regulatory framework is not considered to allow for this by industry respondents, as there is insufficient clarity on whether this can constitute advice, and the liabilities that flow from this. One or two Member States are reviewing how they consider robo-advice – for example the UK, but a more consistent approach is needed. One asset manager suggested that the EU should look at the US securities regulatory regime, which has proved more permissive.

A lack of clear marketing rules means **local microsites** are often necessary, with additional rules not necessarily related to financial regulatory requirements (for example rules related to privacy and data retention).

A number of managers noted that online distribution shouldn't be seen as a panacea – client acquisition costs are still high, as traditional marketing can be required to build scale. Related to this, there isn't at present much demand in most EU countries as investors don't yet expect to purchase funds online.

Question 7.3 – Are there aspects of the current European rules on marketing, administrative arrangements, notifications, regulatory fees and other aspects (such as know your customer requirements) that hinder the development of cross–border digital distribution of funds beyond those described in earlier sections?	**Answers**	**Ratio**
Yes	11	50%
No	3	14%
Don't know / no opinion / not relevant	8	36%

Question 7.3b – Are there aspects of the current national rules on marketing, administrative arrangements, notifications, regulatory fees and other aspects (such as know your customer requirements) that hinder the development of cross–border digital distribution of funds beyond those described in earlier sections?	Answers	Ratio
Yes	10	63%
No	2	13%
Don't know / no opinion / not relevant	4	25%

b) A framework for pan-EU distribution of funds

Asset managers and distributors proposed a number of steps to promote cross-border online distribution of funds:

- There was widespread agreement over the need for greater coordination of national AML / KYC requirements – a number of respondents also favoured an approach which allows this check to be carried out by one provider and used for others.
- More broadly, several industry associations [EFAMA, ICI Global] repeated its call made in response to the Green Paper on retail financial services for a **"digital passport"**, which once completed and validated by a single provider would allow a consumer to purchase investments with more providers across Member States. This could potentially be based upon the ongoing eIDAS work.
- The development of common standards for digital advice was considered to provide clarity. Such standards would need to distinguish between tools that guide investors and those that make clear recommendations.
- Harmonisation of online marketing requirements was also considered helpful – both in terms of what is captured as marketing and requires notification, and the details of requirements so that documents can be translated without having to be redesigned. At the very least, increased standardisation of marketing requirements, together with the use of standard form documentation could help to address barriers caused by the use of different languages by reducing translation costs.
- Harmonisation of consumer redress arrangements was regarded as helpful – one approach suggested is akin to rights have passengers have with airlines, so they are confident about their rights when dealing with managers without a physical presence in their Member State.
- One trade body also encouraged the Commission to examine Member State and ESAs' FinTech initiatives which may in time help to address issues such as post-trade fragmentation.
- One Member State encouraged a more general simplification in administrative arrangements in the light of further digitalisation – especially where funds are marketed to professional investors.

c) The investors' perspective

Very few respondents gave their views, but those that did noted the utility of price comparison websites. However, these had the potential to mislead if there wasn't transparency over the range of providers listed and whether inducements caused certain products to be highlighted.

Question 7.6 – Do you invest in funds via an on–line fund platform or a website?	Answers	Ratio
Yes	6	75%
No	0	0%
Don't know / no opinion / not relevant	2	25%

8. Notification

A number of respondents to the CMU Green Paper and the Call for Evidence noted difficulties with the notification process where funds are marketed on a cross-border basis. Respondents also found the need for documentation to be updated or modified burdensome, in part because changes in the information provided to the NCA of the home Member State have to be notified to the NCA of the host Member State as well.

The consultation has sought input on **(a)** difficulties with the UCITS and AIFMD notification process for the EU marketing passport; **(b)** unjustified delay in the notification process; and **(c)** possible measures to improve cross-border distribution of funds.

a. Difficulties notification process

UCITS

Question 8.1 – Do you have difficulties with the UCITS notification process?	Answers	Ratio
Yes	18	58%
No	10	32%
Don't know / no opinion / not relevant	3	10%

Initial notification process – Almost all respondents consider the initial notification process – which is done in the home Member Sate – efficient and sufficient to allow a UCITS to be distributed to retail investors in almost all Member States. Nonetheless, some respondents say that there is often a delay in updating the host Member State's register (following the transmission of the initial notification from the home Member State), resulting in uncertainty about whether there is permission to commence marketing activities in the host Member State. Furthermore, respondents noted that some NCAs of the host Member State ask for a proof of payment of the regulatory fees[164] or require other information to be disclosed before allowing the marketing of the fund in their jurisdiction, although this is not foreseen in the UCITS Directive.

Maintenance of notification – A majority of the respondents indicated they have difficulties with the UCITS process for the maintenance of notifications, as this is managed by the host Member State and is not harmonised or standardised. Under the UCITS Directive, the initial notification is send to the NCA of the home Member State, who subsequently transmits the notification and all accompanying documentation to the NCA of the host Member State. However, changes to the information contained in the initial notification have to be sent directly to the NCA of the host Member State. In this context, respondents reported that some host Member States impose burdensome requirements like ongoing information on approved distributors, sales and risk classification of the funds marketed in their jurisdiction.

De-registration – Respondents also noted that in many Member States no clear procedure exists for de-registering a fund. Additionally, several respondents note that some Member States only permit de-registration of a fund once the number of investors drops below a minimum specified amount or after certain publication requirements are fulfilled. Moreover,

[164] See section on regulatory fees.

in some Member States NCAs charge significant costs for deregistration. According to these respondents, difficulties with de-registration considerably influence the decision of a fund manager to access a market in the first place.

AIFMD

Question 8.3 – Do you have difficulties with the AIFMD notification process?	Answers	Ratio
Yes	14	50%
No	9	32%
Don't know / no opinion / not relevant	5	18%

Initial notification – Several respondents that indicated having difficulties with the AFIMD notification process, noted that in practice a large number of NCAs (of the home Member State) regularly ask for amendments to the initial notification, with the consequence that the notification period (of 20 working days) starts again. This can lead to significant delays in marketing AIFs on a cross-border basis. Consequently, respondents call for further standardising the notification process.

Notification of material changes – Other respondents noted that the requirement under AIMFD to update notifications when there are material changes (Article 23 AIFMD) can create difficulties as it is unclear what constitutes a material change and whether marketing activities are allowed during that period. Since Member States have taken different approaches on this, respondents indicated they would welcome further guidance from ESMA.

Marketing to retail investors – Although not directly related to the notification process, a number of respondents called for harmonising the requirements applicable to the marketing of AIFs to retail investors. Currently, AIFMD does contain any requirements or procedures for marketing to retail investors, but simply gives Member States the option to allow AIFMs to market to retail investors in their territory. In such cases, Member States may impose stricter requirements than those applicable to AIFs marketed to professional investors in their territory (Article 43).

b. Unjustified delay notification process

UCITS

Question 8.3 – Have you experienced unjustified delay in the notification process before being able to market your UCITS in another Member State?	Answers	Ratio
Yes	7	26%
No	15	56%
Don't know / no opinion / not relevant	5	19%

Use of full notification period – Although a majority of the respondents have not experienced unjustified delay in the notification process for UCITS, several respondents note that there are significant differences between Member States with regards to the time used by NCAs to verify and transmit notifications. For example, in Luxembourg a notification is typically processed within two working days, while in other Member States NCAs reportedly use the full notification period of ten working days as specified in the UCITS Directive.

Unjustified delay – Most respondents who did experience unjustified delay in the notification process, attribute this to the diverging interpretations of what constitutes 'marketing' across Member States. Fund managers often have to hire local expertise to advise on the requirements of each jurisdiction, which results in delays and adds considerable cost to the notification process. One respondent pointed to the practice of some NCAs to suspend the notification period in case amendments need to be made to the notification, regardless whether these are material or not, as an example of unjustified delay.

AIFMD

Question 8.5 – Have you experienced unjustified delay in the notification process before being able to market your AIFs in another Member State?	Answers	Ratio
Yes	7	32%
No	6	27%
Don't know / no opinion / not relevant	9	41%

Initial notification – Two industry associations note that many NCAs use the full notification period of 20 working days before transmitting the notification file to the Member States where the AIFM intends to market it funds. One of these respondents notes that it also occurs that NCAs do not respond within the notification period, which prevents the fund manager from marketing their AIF before the (full) notification period has lapsed. One other respondent referred to the practice of some NCAs to suspend the notification period in case amendments need to be made to the notification – regardless whether these are material or not – as a source of unjustified delay.

Notification of material changes (1) – Several industry respondents that indicated having experienced unjustified delay in the notification process were of the opinion that the procedure for notifying material changes to the initial notification is disproportionate. They noted that the initial notification letter is very detailed (format and content determined by Level 2) and therefore any material changes to the offering documentation have to be fully reviewed and notified to the NCA of the home Member State one month before the changes are implemented. Since most changes only relate to the marketing materials, this procedure is considered disproportionate by respondents in comparison to the costs and delay incurred. One respondent remarks that notification process, in particular the requirement to notify material changes, is difficult to apply to closed-end funds where marketing takes place on an iterative basis.

Notification of material changes (2) – Other industry respondents found it difficult that there is no clear timeframe applicable to the notification of material changes, in particular with regards to the approval by the NCA of the home Member State. This leads to uncertainty about when the updated documentation can be used and provided to local investors. In this context, one respondent wonders whether fund managers have to wait for the NCA of the home Member State to confirm that the changes have been transmitted to the NCA of the host Member State before being allowed to distribute the updated documentation.

c. Measures to improve cross-border distribution of funds

Centralised notification platform or record (1) – Many industry respondents suggested or supported calls for a centralised platform or record of notifications for European investment funds. Such a system would allow for a single EU notification for cross-border distribution, as the fund manager would submit its notification only to the NCA of the home Member State, which in turn would transmit the notification to a centralised platform or record for notifications, hosted by ESMA. This platform or record would then be accessible for all NCAs, fund managers and possibly investors. Respondents believe that this platform should not only cover initial notifications, but also any updates or changes to fund documentation and marketing materials and de-registration of funds. In this context, respondents also refer to the Commission proposal on EuVECA/EuSEF for a publicly accessible central database listing all managers and funds using the designations EuVECA/EuSEF as an example and a welcome step forwards.

Centralised notification platform or record (2) – Additionally, several asset managers considered that such a platform or record could also cover the reporting requirements under AIFMD, as this type of platform would have the basic benefit of reporting under the same publicly available conditions and requirements, thus eliminating additional costs needed for local services such as research, translation, etc. Moreover, the respondents believe that for UCITS it could include any subsequent update of relevant fund documentation such as the prospectus, (semi-)annual reports and accounts, KIID/KID, etc. and act as a comprehensive source of information for investors.

Harmonise de-registration of funds – Quite a few respondents note that due to lack of consistency and clear information as to the de-registration procedure in Member States, fund managers are hesitant to start cross-border marketing of their funds. They believe a more harmonised approach, possibly through ESMA guidelines, could help foster the cross-border distribution of funds.

Further harmonise maintenance of notification – A number of respondents call for further harmonisation of the process for updating notifications for the EU marketing passport. In this context, some of these respondents believe that fund managers should only be required to notify the NCA of the home Member State of changes to the initial notification, as is currently the case under AIFMD for AIFs marketed to professional investors.

Other suggested measures – Other stand-alone suggestions made by respondents were: harmonising the national private placement regime (NPPR), including a specified timeframe; creating a central register outlining the applicable national requirements and regulatory fees per Member State; aligning the timeframe of the AIFMD notification procedure for the EU marketing passport with UCITS; and improving the format of the notification letters.

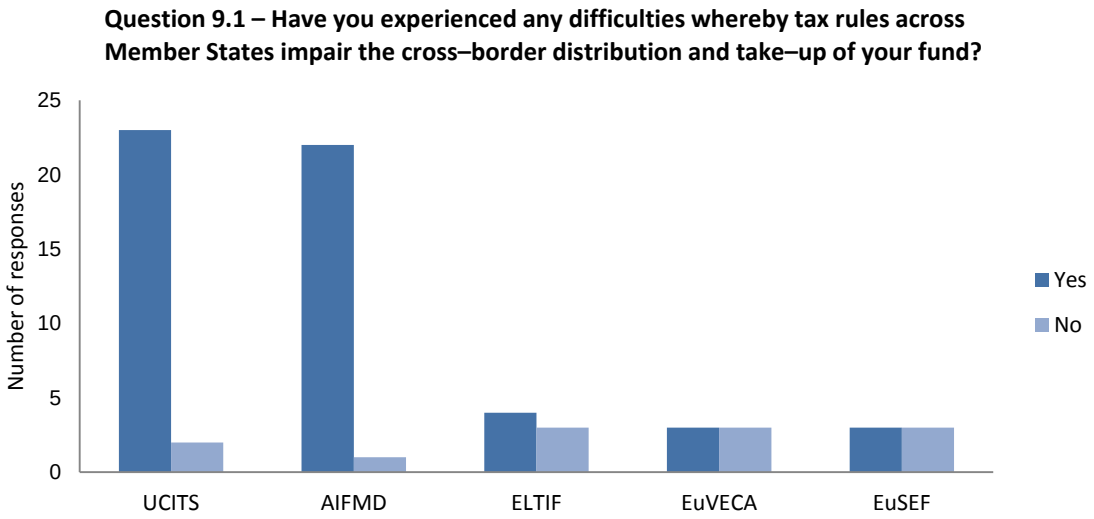
9. Taxation

Many respondents to the CMU Green Paper pointed to taxation as an important barrier to the cross-border distribution of funds. The issues seem to range from a lack of access to double tax treaties to difficulties with tax reporting to unjustified tax discrimination.

The consultation has sought input from industry on **(1)** whether, and if so, which tax rules impair the cross-border distribution and take-up of funds; **(2)** difficulties with access to double tax treaties and claiming of withholding tax relief under these treaties; **(c)** difficulties with tax reporting; and **(3)** any form of tax discrimination.

Specifically from investors, the consultation has sought input on **(4)** difficulties with taxation of investments in funds sold on a cross-border basis; and **(5)** to what extent tax rules prevent investing cross-border. Finally, all respondents were asked **(6)** whether they see any other tax barriers to the cross-border distribution of funds.

9.1. Tax barriers



A vast majority of the respondents considered tax rules to be a barrier to the cross-border distribution of UCITS and AIFs. For ELTIFs, EuVECA and EuSEF the (limited) responses offer no obvious conclusions. This might be explained by the fact that these frameworks are relatively new and take-up has been limited so far. Nonetheless, it is likely that where tax rules impair the cross-border distribution and take-up of UCITS and AIFs this is equally or at least partially so for funds under the ELTIFs, EuVECA and EuSEF frameworks.

Identifying the tax barriers, respondents agreed that the following issues are the main tax barriers that impair the cross-border distribution and take-up funds:

Lack of or difficulties with access to double tax treaties – Respondents pointed out that investment funds struggle to meet the eligibility criteria for double tax treaties. Investment funds are generally exempt from tax in the territory where they are located, whereas tax treaties often make eligibility dependent upon being a 'tax resident'. Furthermore, in order to benefit from double tax treaties investment funds are often confronted with the requirement to show that its investors meet particular residence or nationality requirements, which is difficult or even impossible to proof for widely distributed funds.

Difficulties in obtaining refunds of withholding taxes (WHT) or relief at source – When they did have access to double tax treaties, respondents reported several difficulties due to inconsistent WHT recovery processes, which are defined and applied at a national level. Deadlines, forms and required supporting documentation for WHT refunds diverge between Member States. Furthermore, Member States often require physical tax reclaim forms, which have to be signed and stamped by all relevant actors in the distribution chain, translation services are required and foreign intermediaries are excluded from offering WHT relief.

National requirements for income tax reporting – Certain Member States (e.g. Austria, Belgium, Denmark Finland, Germany, Italy, Sweden and UK) impose requirements for investor income tax reporting, which are meant to facilitate investor compliance with local tax law. However, respondents noted that these requirements are widely different among Member States, resulting in additional complexity and costs for funds distributed on a cross-border basis. In this context several respondents also referred to the requirement in some Member States to appoint a tax agent or representative for foreign domiciled funds as burdensome.

Tax discrimination of non-resident investment funds – Respondents claim to have encountered local tax rules – not related to specific tax reporting requirements – that make it

much easier for investors to buy domestic funds compared to foreign funds. For example, in some countries local income tax on distributions or redemptions is collected at source by imposing a final withholding tax on any distributions, reportable income or capital gains. However, such rules typically only apply for domestic funds; for their investments in foreign funds investors have to file a special tax return, thus discouraging (retail) investors to invest cross-border.

9.1.1. Difficulties with double tax treaties

Question 9.2 – Have you experienced any specific difficulties due either to the absence of double taxation treaties or to the non–application of treaties or to terms within those treaties which impede your ability to market across borders?	**Answers**	**Ratio**
Yes	17	77%
No	2	9%
Don't know / no opinion / not relevant	3	14%

a) Access to double tax treaties

An overwhelming majority of the respondents reported difficulties with access to double tax treaties. Identifying the difficulties, respondents distinguished between **(1)** whether an investment fund is eligible to claim the benefits of a double tax treaty and **(2)** whether it can meet the administrative requirements to support its claim.

Tax residency – With regards to eligibility, respondents noted that double tax treaties – which are negotiated on a bilateral basis – are typically intended to benefit only residents of the two treaty countries and are often silent on the specific treatment of investment vehicles. Consequently, investment funds that pool investors from multiple jurisdictions have difficulties meeting the criteria for eligibility as they are usually exempt from tax in the territory where they are located, whereas double tax treaties often make eligibility dependent upon being a 'tax resident'. Although this was recognised in 2010 by the OECD report on the granting of treaty benefits with respect to the income of collective investment vehicles (CIVs)[165], little progress has been made in improving tax treaty access for investment funds according to respondents. Additionally, a couple of respondents voiced their concerns about the work undertaken by the OECD on BEPS Action 6 on 'preventing the granting of treaty benefits in inappropriate circumstances', which – in their view – would further limit the access to double tax treaties for investment funds that are distributed globally.

Limitation of benefits requirement – As for the administrative requirements, respondents indicated that the main difficulty is the 'limitation of benefits' (LoB) requirement in double tax treaties. This requires funds to proof that its investors meet particular residence or nationality requirements in order to benefit from the treaty. However, since many funds are widely distributed and held by or through distributors or through central securities depositories (CSDs), information with respect to the end investor resides with these parties, which – mostly for commercial and legal reasons – often are not willing or able to share the information with the fund. This makes it difficult or even impossible for funds to comply with the LoB rules.

Treatment of fund vehicles - Other difficulties with access to double tax treaties arise from differences in how fund vehicles are treated under local tax rules. For example, respondents noted that some fund vehicles (e.g. contractual or partnerships) may not benefit from double tax treaties because they are not considered legal entities and therefore deemed as tax

[165] https://www.oecd.org/tax/treaties/45359261.pdf

transparent (which means the investors instead of the fund should claim tax relief). On a related note, respondents reported that more country specific investment vehicles are not always understood by foreign tax authorities, making it even more difficult to obtain access to double tax treaties.

b) Measures suggested by respondents to improve access to double tax treaties

Several respondents offered possible solutions to address the difficulties with or lack of access to double tax treaties.

Fund as beneficial owner of income – One proposed solution – which was supported by a number of respondents – was to regard the fund (and not the investors) as the beneficial owner of income or a qualified person and to impose no further (LoB) requirements on funds in order to qualify for double tax treaties. This solution, which according to respondents is in part supported by the 2010 OECD report on CIVs, should be applied at least to all widely held open ended funds. Similar to the aforementioned solution, one respondent recommended treating all widely-held funds as tax opaque vehicles eligible to double tax treaties benefits in their own right. He noted that a similar rationale is applied by the OECD in their BEPS 6 recommendation for exchange-traded funds (ETFs). Under BEPS 6, ETFs benefit from much lighter double tax treaty eligibility requirements on the basis that such funds cannot properly track their investor base. The respondent believed that the same rationale should be applied to all widely-held funds, irrespective of whether such funds are traded on an exchange or not.

Equivalent beneficiaries clause – Other respondents referred to the option proposed by the OECD to include an "equivalent beneficiaries" clause in double tax treaties. This would enable a fund to meet the LoB-requirement if sufficient investors are either resident in the treaty country or in other countries which have a double tax treaty with the other treaty country which is at least as favourable. They note that in today's global marketplace, it makes little sense to limit treaty benefits to the residents of the two treaty countries if a source country provides the same benefits to residents of other countries – and those residents invest in globally-distributed funds.

In general respondents agreed that the Commission should encourage or even require Member States to include the abovementioned arrangements in any double tax treaty being negotiated.

Abolishing or limiting WHT rate - A more ambitious – but widely supported – solution offered by respondents is the abolishment of WHT on transferable securities for payments made to UCITS and AIFs within the EU or, alternatively, to impose an EU wide limit on the WHT rate equal to the rate foreseen in most double tax treaties, which is 15 percent. Respondents argued that this is a less radical proposal than it may at first appear. First, generally abolishing WHT or limiting applicable WHT rates on cross border dividend payments were possible options presented by the Commission in its 2011 consultation on tax problems that arise when dividends are paid across borders.[166] Second, further to the judgement of the European Court of Justice (ECJ) on the principles of the free movement of capital[167] some Member States already abolished WHT for certain types of foreign CIVs under certain circumstances (e.g. France, Spain and Poland) or limited the WHT rate to 15 percent (e.g. Netherlands, Belgium and Germany from 2018). Other Member States do not levy WHT on certain types of income paid on the basis of their domestic legislation (e.g. UK).

[166] http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/common/consultations/tax/withholding_taxes/wht_public_consutation_en.pdf

[167] See in particular ECJ Judgement of 10 May 2012, *Santander*, C-338/11, EU:C:2012:286 and ECJ Judgement of 10 April 2014, *Emerging Markets*, C-190/12, EU:C:2014:249.

9.1.2. Claiming withholding tax relief

Although some respondents acknowledged that the ECJ decisions on free movement of capital – and the subsequent step by some Member States to abolish or to reduce the rate of WHT on dividends and/or interest for funds domiciled in other jurisdictions – had reduced some of the difficulties with WHT relief, all respondents indicated having experienced difficulties with claiming WHT relief. Respondents attributed these difficulties mainly to diverging national procedures and practices:

Practical difficulties – Forms for tax reclaims, filing frequency and deadlines differ for each Member State. The supporting documentation needed to supplement the tax claim varies and can be substantial. In some Member States documentation has to be translated. In many Member States the reclaim forms also need to be signed and stamped by all relevant parties in the distribution chain (investors, local tax authorities, paying agents, etc.). Moreover, the possibility for an investment fund to appoint a local representative, such as a depository bank, to file tax reclaims on its behalf is not always granted. Respondents also reported differences in interpretation between local and foreign tax authorities as to who is eligible to claim WHT relief, often resulting in a refusal by tax authorities to issue certificates of residence or to sign foreign tax certifications. All these conditions make it impossible according to respondents to standardise the tax reclaim process, thus making the reclaim process expensive and time consuming. One respondent noted that the reclaim process can take up to 10 years in some cases and can cost between €10,000 and €100,000 for each fund, which equals up to 50% of the expected WHT refund.

Different tax treatment of transferable securities – Respondents reported substantial differences between Member States on the tax treatment of transferable securities. Some Member States impose WHT on dividends and/or interest, while others do not. For those Member States that impose WHT, the rates are different. Furthermore, some Member States provide tax relief at source (taxes or not withheld from dividend and/or interest or against reduced rate) while other Member States provide tax relief through a (ex-post) tax reclamation system. Respondents pointed out that the lack of a relief at source mechanism increases costs for funds and investors and advocated for adopting relief at source as the standard tax relief mechanism in all Member States. As regards reclaiming tax relief ex post, respondents noted that a key issue is the differences in timing and delay in getting the reclaim back. For an open-ended fund, this can lead to pricing difficulties if irrecoverable WHT is accrued in the fund price. One industry association reported that one of its members files tax reclaims in 27 Member States and that 60% of its claims have not yet been recovered and are outside the standard timeframe suggested by its custodian.

Implementation of TRACE – In order to ease the difficulties with WHT relief and reduce tax barriers, several respondents called for implementation of the OECD Treaty Relief and Compliance Enhancement (TRACE) package in all EU Member States. TRACE is a self-contained set of agreements and forms to be used by any country that wants to implement a standardized system for claiming WHT relief at source on portfolio investments. Respondents believe TRACE could provide more reliable treaty access for funds; increased comfort for tax authorities that treaties benefits are only given to qualified end recipients; and reduced administrative burden for both tax authorities and fund industry through avoiding the requirement of certificates of tax residence. Nevertheless, one of the respondents voiced concerns that implementation of TRACE will not in all cases ensure treaty access for widely held investment funds and stressed that harmonised WHT rules remain necessary.

Compliance costs WHT regimes - Most respondents could not quantify the compliance costs of managing withholding tax regimes. The few respondents that did, reported estimates

ranging from 1 to 7 basis points of assets under management, although one respondent reported that compliance costs for WHT amounted up to 15% of its total costs. A number of respondents (fund managers) also pointed out that managing WHT regimes can be part of an all-inclusive fee agreement with the custodian, making it difficult to determine which costs are attributable to managing WHT relief.

Respondents agreed that the compliance costs for managing WHT regimes essentially consist of costs for tax and legal advisors and that these costs vary depending on the Member State and volume of business. Most respondents indicated that the costs of managing WHT generally did not have a material impact on the distribution strategy, although it was recognised that high compliance costs could create a barrier to entry, particularly for smaller funds. Other respondents noted that these costs are taken into account when determining the overall marketing strategy in a particular Member State.

9.1.3. Difficulties with tax reporting

National requirements income tax reporting – Respondents indicated that difficulties with tax reporting do not so much arise from the existence of the obligation itself, but from the fact that (national) requirements for tax reporting are widely different among Member States. Consequently, fund managers have to provide different information in relation to each of its funds and run several reporting systems, which is considered costly and time consuming. In this context, respondents pointed in particular to the requirement for fund managers to prepare income tax reports for their investors in certain Member States (e.g. Austria, Belgium, Denmark, Germany Italy and UK). Moreover, several respondents noted that in some Member States foreign domiciled funds are even required to appoint a tax representative for this purpose.

Single income tax reporting format – A large majority of the respondents agreed that introducing a single income tax reporting format in those Member States that require reporting, could provide a solution to the difficulties with income tax reporting and significantly reduce costs. Although most respondents were unable to quantify the costs saved, one fund manager estimated that introducing a harmonised income reporting format would save him up to €400,000-500,000 a year. Some respondents noted that since tax reporting is based on national requirements, it may be necessary to harmonise these requirements first before introducing a single (EU) reporting format. One trade body believed that a single income reporting format should not be introduced for investors' taxable accounts, as it could raise privacy issues if a host Member State requires detailed investor information because it treats its funds as tax transparent, while the fund is considered tax opaque in its home Member State.

9.1.4. Tax discrimination

Although respondents acknowledged that case law by the ECJ and national courts has significantly contributed to eliminating discriminatory tax treatment with regard to WHT, they also indicated that differing treatment between domestic and foreign investment funds in relation to WHT still occurs.

Discriminatory tax treatment - In this context, a significant number of respondents noted that in certain Member States (France and the Netherlands) investors are entitled to claim a tax credit for WHT incurred by a (local) fund domiciled in that Member State, but not for WHT incurred by foreign funds. Other reported practices or local tax rules that differentiate between foreign and local funds were: complex procedures and/or requirements for foreign funds to receive the same (beneficial) tax treatment (Poland and Spain); and taxes levied by

Member States on foreign funds on the value of shares/units placed in its jurisdiction (Belgium). For more details on some of these practices, please see the box below.

Although the following may not qualify as tax discrimination, some local tax rules or practices do make it easier and more attractive for investors to buy domestic funds compared to foreign funds.

Double taxation due to tax treatment of fund vehicle – Several respondents indicated that some Member States (e.g. Belgium and Germany) do not accept that a foreign fund vehicle itself is a taxable person (tax opaque). Accordingly, the foreign fund should demonstrate that the investors are also resident in the country where the fund is domiciled in order to obtain double tax treaty benefits. This is especially a problem for funds that are marketed cross-border in many different countries, since these funds cannot fulfil this requirement. Although this does not result in double taxation for the fund, this may be the case for its investors. For example, a fund domiciled in Member State A can be subject to WHT on its dividend or interest as a result of it structure being considered tax opaque. However, the domicile of the investor in Member State B may treat the fund as tax transparent and impose income taxes on the same (after-tax) dividends or interest distributed by the fund and received by the investor, thus resulting in double taxation for the investor.

9.2. Investors' perspective

a) Difficulties with taxation of investments in funds

Very few respondents gave their views, but those that did indicated that direct retail investments into UCITS typically do not have the same tax advantages as investing in specific purpose AIFs and funds in wrapped products such as unit-linked insurance products or personal pension products. Another respondent reported difficulties with taxation of accumulation ETFs, as these are taxed differently among Member States.

b) Tax burden of cross-border investments in funds

In response to the question whether investors are worse off tax-wise if investing in cross-border funds, several consumer groups reiterated their criticism on the less favourable tax treatment of pan-European UCITS compared to (domestic) AIFs and wrapped products like unit-linked insurance products and personal pension products.

One of these respondents also noted that differences in tax treatment of fund vehicles (tax transparent versus tax opaque) among Member States may result in a higher tax burden for foreign funds, as investors may be subject to double taxation (see also previous section 9.2.4.)

Finally, two respondents (investor associations) pointed out that difficulty with reclaiming WHT for dividends received through foreign investment funds may result in a higher tax burden vis-à-vis domestic funds.

c) Tax rules as an obstacle for cross-border investing

Almost all respondents that expressed their views [five] indicated that tax rules prevent them from investing across borders in funds. Unfortunately, only one respondent provided further explanation. He indicated that the risk of not complying with (unknown) foreign tax rules deterred him from investing cross-border.

9.3. Other tax barriers

Tax treatment of mergers of UCITS or AIFs – Several industry associations identified the diverging tax treatment of mergers of UCITS or AIFs as a tax barrier. Under UCITS IV all

EU countries are obliged to allow cross-border mergers from a legal and regulatory point of view. While some countries allow tax neutrality for domestic mergers, many countries impose tax on foreign and cross-border fund reorganizations at the level of the fund and/or at level of the investors. Industry associations argued that in practice this prevents funds from realising cost savings and increasing the size of funds – which is an objective of CMU. Respondents offered different solutions to this issue. Two industry associations recommended introducing a separate EU directive for fund mergers in order to ensure and promote the further development of the EU fund market. Another trade body recommended that Member States should be required to respect the tax treatment provided by another Member State to the merger of two funds organised in the funds' Member State – specifically where this is treated as tax-neutral.

Financial Transaction Tax – A number of industry associations voiced concerns about the current discussions in relation to the introduction of a financial transaction tax (commonly named FTT) in certain EU Member States. They believe it would negatively affect investment in funds and the ability of investors to alter their investment, as a FTT – even if not applied to interests in funds – will tend to increase the cost of capital and depress liquidity in the secondary market. Further, respondents argued that transactions will involve parties and intermediaries not located in FTT jurisdictions, which will render the single market imperfect as well as less competitive than capital markets outside the EU.

Cross-border master-feeder structures – Two industry associations reported that negative tax consequences may occur when it comes to cross-border master-feeder structures. The main problem is that WHT might be levied on profit distributions from the master to the feeder fund. The reason this is a problem according to the industry associations is that the feeder funds are normally exempt from tax in the registration country. Accordingly, the withholding tax in the country where the master fund is registered is an extra cost. However, the feeder funds may in many cases be able to reclaim the withheld tax on basis of ECJ case law, since such withholding taxes may discriminate foreign feeders compared to domestic feeders. Nevertheless, funds will incur the administrative burden of WHT relief and cash deferral disadvantages.

Tax barriers for outbound distribution – Two investor associations noted that some local tax rules prevent local funds managers from distributing their investment funds in other EU-member states. An example is when local dividend taxes are levied upon foreign investors on any distributions/reportable income or capital gain (e.g. in Denmark). Foreign investors will have to ask for tax relief in order to reduce the WHT in the source country (where the fund is domiciled) and secondly, they will have to ask for a tax credit against the local tax in the country of residence in order to avoid any double taxation. This will discourage investors to buy this fund, thus preventing manager from cross-border distribution of the funds.

Tax barriers for cross-border management of funds – One industry association reported that complex tax issues arise when investments funds are managed cross-border. Many EU countries define tax residency where the business is effectively managed. Accordingly, the investment funds that are managed cross-border may become liable to tax in the country where the management company is established, given rise to several taxation issues. For example, since no taxation rules exist for the relocation of an investment fund from one jurisdiction to another, some jurisdictions may consider the transfer to be a liquidation of the fund in their country. This may trigger taxation of unrealized capital gains on the underlying investments. Furthermore, the jurisdictional separation of the management company and the fund could lead to double taxation or double non-taxation at fund level. Although certain Member States have introduced rules and guidelines to eliminate the taxation risk with the single management company passport (e.g. Germany, Ireland, Italy, Luxembourg and the

Netherlands), the industry association argues that an investment manager exemption should be introduced in EU legislation.

10. Other issues raised in the consultation

Respondents have raised a number of other issues in the consultation response which fall outside the categories above.

NCA home regulation- A broad point, made by severals NCAs, is that in order for there to be acceptance of the marketing passport without significant host NCA involvement, there needs to be reassurance that home NCAs have sufficient skilled resources. For example, there are currently significant concerns about unsuitable marketing of products cross-border such as Forex and binary option products. In this context, home NCAs seem to have difficulties supervising products and services that are offered/provided only in other Member States and sometimes more than thousands of kilometers away and marketed using languages other than the home Member State's national languages. Although the determination to facilitate the cross-border marketing of investment products is considered laudable by NCAs, they warn that care must be taken to ensure that opportunities for fraud or failures in investor protection are not created owing to the lack of a genuine supervisory mechanism.

Notification fees – A trade body argued that regulatory fees charged upon notification in the host Member State should not be charged at all – and if they are charged should be limited to the manager rather than levied on individual AIFs, as AIFMD regulates the manager.

Explore benefits of the creation of a European ISIN-code – Several respondents suggested that the creation of a centralised platform or record for notification could be combined with opportunity for funds compliant with one or more of the EU fund-frameworks to be granted a ".eu" ISIN code (instead of the national codes). According to these respondents, the merit of this proposal is that a European label would enhance transparency and safety to the benefit of the end investor.

Single fund authorisation process – A few industry respondents suggested to replace the authorisation process for UCITS, AIFs, ELTIF, EuVECA and EuSEF with one single authorisation covered by only one regulation or directive that harmonises all the rules for funds (with maximum harmonization), taking into account the differences between marketing funds to professional investors and marketing funds to retail investors.

ANNEX 8: Other EU legislative frameworks for investment funds (in addition to UCITS and AIFMD)

The **European Venture Captial (EuVECA) Regulation** covers a subcategory of AIFs that focus on start-ups and early stage companies. In order to qualify for the EuVECA label and benefit from the EU-wide marketing passport, managers must prove that their fund invests 70 % of the capital it receives from investors in supporting young and innovative companies; provides equity or quasi-equity finance to these SMEs; and does not use leverage. The regulation also sets out uniform quality criteria for managers that wish to use the EuVECA label. These requirements cover everything from the way they organise and conduct themselves to the manner in which they inform investors about their activities and investment policies.

The **European Social Entrepreneurship Funds** (**EuSEF) Regulation** covers AIFs that focus on social enterprises. These are companies that are set up with the explicit aim to have a positive social impact and address social objectives, rather than only maximising profit. Funds that market themselves using this label have to direct at least 70 % of their investments to social businesses. In addition, they have to provide key information to investors about the

fund’s social objectives; the social businesses it invests in; and how it assesses whether these businesses achieve their social goals. Once a fund has provided the required information and meets the requirements on its organisation and operation, it can benefit from an EU-wide marketing passport.

European Long Term Investment Funds (ELTIF) are also a subcategory of AIFs and equally benefit from an EU-wide marketing passport. Their managers must fully comply with the AIFMD Directive. ELTIFs have a fixed lifetime and usually offer no early redemptions. ELTIFs need to invest at least 70% of the money in the fund in eligible, illiquid long-term assets, which must be diversified and can cover: equity or quasi-equity, debt instruments, loans granted by the ELTIF to a qualifying portfolio undertaking with a maturity no longer than the life of the ELTIF, other ELTIFs, EuVECAs and EuSEFs as well as individual real assets with a value of at least EUR 10 million. Under the marketing passport, ELTIFs can also be marketed to retail investors, but additional rules need to be respected in this case.

More recently, a **Regulation on Money Market Funds (MMF)** has been added to the legislative framework for investment funds and managers. The regulation reflects commitments taken on international level (within the framework of G20 and FSB) and aims at making MMFs' markets more robust. The Regulation lays down common standards to ensure that MMFs invest in well-diversified assets of a good credit quality. Moreover the Regulation introduces common standard to increase the liquidity of money market funds, so that they can face sudden redemption requests.

ANNEX 9: Number of investment funds (broken down by Member State, data source and type)

Table 1 - percentage of non domestic funds registered for sale in each MS (including EEA countries)

Country	Home-domiciled UCITS (EFAMA-December 2016)	Home-domiciled UCITS (Morningstar-June 2017)	Home-domiciled AIFs (EFAMA-December 2016)	Home-domiciled AIFs (Morningstar-June 2017)	Total domestic funds (EFAMA - December 2016)	Total domestic funds (Morningstar - June 2017)	Foreign funds registered for sale (EFAMA - December 2016)	Foreign funds registered for sale (Morningstar - June 2017)	Total nr. of funds (EFAMA - December 2016)	Total nr. of funds (Morningstar-June 2017)	% of total market foreign funds (EFAMA - December 2016)	% of total market foreign funds (Morningstar - June 2017)
Austria	1 021	948	1 010	211	2 031	1 159	7 305	5 819	9 336	6 978	**78%**	**83%**
Belgium	613	708	532	611	1 145	1 319	577	205	3 041	1 524	**19%**	**13%**
Bulgaria	118	19	3	53	121	72	-	273	-	345	-	**79%**
Croatia	89		29		118	-	22	-	140	-	**16%**	-
Cyprus	21	0	148	-	169	-	27	627	196	627	**14%**	**100%**
Czech Republic	141	4	182	14	323	18	1 453	1 115	1 794	1 133	**81%**	**98%**
Denmark	595	586	354	77	949	663	-	2 742	-	3 405	-	**81%**
Estonia		11		0	-	11		536		547		**98%**
Finland	350	374	109	90	459	464	-	4 015	-	4 479	-	**90%**
France	3 164	2 915	7 788	2 320	10 952	5 235	-	5 542	-	10 777	-	**51%**
Germany	1 754	1 254	4 257	295	6 011	1 549	9 890	8 264	17 450	9 813	**57%**	**84%**
Greece	158	92	7	14	165	106	110	1 571	381	1 677	**29%**	**94%**
Hungary	21	12	587	321	608	333	2 993	981	3 934	1 314	**76%**	**75%**
Ireland	4 051	2 455	2 419	368	6 470	2 823	-	2 102	-	4 925	-	**43%**
Italy	923	1 036	723	34	1 646	1 070	3 748	6 655	6 464	7 725	**58%**	**86%**
Latvia		22		1	-	23		406		429		**95%**
Liechtenstein	334	305	336	89	670	394	140	820	1 204	1 214	**12%**	**68%**
Lithuania		9		1	-	10		410		420		**98%**
Luxembourg	9 805	9 139	4 406	1 410	14 211	10 549	1 291	1 671	26 051	12 220	**5%**	**14%**
Malta	91	48	557	58	648	106	-	497	606	603	-	**82%**
Netherlands	105	121	1 706	221	1 811	342	-	5 011	-	5 353	-	**94%**
Norway	720	306	-	65	720	371	1 100	3 151	2 191	3 522	**50%**	**89%**
Poland	322	29	575	303	897	332	-	875	-	1 207	-	**72%**
Portugal	127	124	281	44	408	168	2 916	2 507	3 492	2 675	**84%**	**94%**
Romania	75	0	24	-	99	-	96	172	195	172	**49%**	**100%**
Slovakia	70	0	17	-	87	-	461	787	548	787	**84%**	**100%**
Slovenia	105	117	11	2	116	119	196	215	431	334	**45%**	**64%**
Spain	1 656	1 982	747	2 790	2 403	4 772	941	5 621	8 116	10 393	**12%**	**54%**
Sweden	498	543	94	182	592	725	8 544	4 768	9 861	5 493	**87%**	**87%**
United Kingdom	1 960	2 154	592	824	2 552	2 978	1 153	5 409	6 683	8 387	**17%**	**64%**
Total/average	28 887	25 313	27 494	10 398	56 381	35 711	42 963	72 767	102 114	108 478	**46%**	**78%**

Source: Morningstar database and EFAMA Fact Book 2017

ANNEX 10: Statistical data from ESMA on cross-border marketing activity

Cross-border marketing activity under the UCITS and AIFMD notification frameworks[8]

	UCITS domiciled in home Member State (including compartments)	UCITS marketed in other Member States (including compartments)	Local AIFs (incl. compartments) marketed in home MS by AIFM domiciled in home MS	EU AIFs (incl. compartments) marketed in home MS by AIFM domiciled in home MS	Local AIFs (incl. compartments) marketed in other EU MS by AIFM domiciled in home MS	EU AIFs (incl. compartments) marketed in other EU MS by AIFM domiciled in home MS
AT	1057	629	1052	3	17	2
BE	624	n/a	639	1	5	5
BG	116	0	0	0	0	0
CY	20	6	8	n/a	2	2
CZ	54	8	193	11	4	0
DE	1381	74	277	2	27	69
DK	600	230	378	3	21	0
EE	14	4	4	0	2	0
EL	165	1	8	5	0	5
ES	2015	2	3464	2	4	n/a
FI	392	105	314	2	11	6
FR	3500	589	1047	89	88	77
HR	76	3	30	0	0	0
HU	21	8	654	0	0	n/a
IE	3929	n/a	79	18	376	50
IS	46	0	0	0	0	0
IT	883	16	690	0	7	0
LI	329	87	28	0	0	0
LT	13	10	1	0	1	0
LU	9806	8331	3063	0	704	21
LV	28	13	6	0	1	3
MT	81	36	0	n/a	13	5
NL	371	39	940		70	16
NO	344	10	133	13	6	13
PL	289	0	870	0	0	0
PT	130	0	0	0	0	0
RO	78	0	0	0	0	0
SE	602	152	83	22	5	13
SI	115	20	3	0	0	0
SK	67	8	22	2	1	2
UK	2862	437 (managers only)	4689	1342	338	316

[8] Date of reference: 30 June 2016. FI: date of reference for UCITS: 31 December 2015. NO: records for UCITS marketed cross-border incomplete, number likely higher. UK: date of reference for AIFMD figures: April 2015.

ANNEX 11: Mapping of the regulatory fees charged in the EEA

*Table 1 - Regulatory fees for UCITS with 5 sub-funds marketed to **professional investors** on cross-borders basis – Figures provided by national competent authorities*[168]

Member State	One-off fees	On-going fees
Austria (AT)	€1,980	€1,400
Belgium (BE)	None	None
Bulgaria (BG)	None	None
Croatia (HR)	-	€3,480
Cyprus (CY)[169]	€2,400	€2,000
Czech Republic (CZ)	None	None
Denmark (DK)	€50	€2,405
Estonia (EE)	None	None
Finland (FI)	€1,600	None
France (FR)	€10,000	€10,000
Germany (DE)	€575	€2,470
Greece (GR)	€5,120	€5,120
Hungary (HU)		
Ireland (IE)	None	None
Italy (IT)	None	€4.000
Latvia (LV)	None	None
Liechtenstein (LI)	€2,957	€5,687
Lithuania (LT)	€2,500	
Luxembourg (LU)	€5,000	€5,000
Malta (MT)	€4,750	€5,500
Netherlands (NL)	€1,500	None
Norway (NO)		
Poland (PL)	€4,500	None
Portugal (PT)		€125
Romania (RO)	None	€5,000
Slovakia (SK)	None	None
Slovenia (SI)	€4,000	€1,800
Spain (ES)	€1,000	€2,500
Sweden (SE)	None	None
The United Kingdom (UK)	€1,159	€1,159

[168] The figures for MS that are not in the Euro Zone have been converted in € in order to facilitate the comparison.

[169] The Cypriotic national competent authority (CySEC) is currently in the process of evaluating its pricing policies and considering whether to amend/abolish some of the fees charged currently. The methodology considered for calculating the new fee policy, is the amount of actual work required by CySEC to supervise these entities.

*Table 2 - Regulatory fees for UCITS with 5 sub-funds marketed to **retail investors** on cross-borders basis – Figures provided by national competent authorities*[170]

Member State	**One-off fees**	**On-going fees**
Austria (AT)	€1,980	€1,400
Belgium (BE)	€1,500	€10,275
Bulgaria (BG)	None	None
Cyprus (CY)	€2,400	€2,000
Croatia (HR)		€3,480
Czech Republic (CZ)	None	None
Denmark(DK)	€750	€2,405
Estonia (EE)	None	None
Finland (FI)	€1,600	None
France (FR)	€10,000	€10,000
Germany (DE)	€575	€2,470
Greece (GR)	€5,120	€5,120
Hungary (HU)		
Ireland (IE)	None	None
Italy (IT)	None	€10,000
Latvia (LV)	None	None
Liechtenstein (LI)	€2,957	€5,687
Lithuania (LT)	€2,500	None
Luxembourg (LU)	€5,000	€5,000
Malta (MT)	€4,750	€5,500
Netherlands (NL)	€1,500	None
Norway (NO)	-	-
Poland (PL)	€4,500	None
Portugal (PT)	None	€125
Romania (RO)	None	€5,000
Slovakia (SK)	None	None
Slovenia (SI)	€4,000	€1,800
Spain (ES)	€1,000	€2,500
Sweden (SE)	None	None
The United Kingdom (UK)	€1,159	€1,159

[170] The figures for Member States that are not in the Eurozone have been converted in € in order to facilitate the comparison.

Table 3 - Regulatory fees for AIF with 5 sub-funds marketed to professional investors on cross-borders basis – Figures provided by national competent authorities[171]

Member State	One-off fees	On-going fees
Austria (AT)	€1,980	€1,400
Belgium (BE)	None	None
Bulgaria (BG)	None	None
Croatia (HR)	None	€3,500
Cyprus (CY)	None	None
Czech Republic (CZ)	None	None
Denmark(DK)	None	€3,000
Estonia (EE)	None	None
Finland (FI)	€800	None
France (FR)	€10,000	€10,000
Germany (DE)	€3,860	€1080[172]
Greece (GR)	€5,120	€5,120
Hungary (HU)		
Ireland (IE)	None	None
Italy (IT)	None	€4,000
Latvia (LV)	€1,209	None
Liechtenstein (LI)	€2,957	€5,687
Lithuania (LT)		
Luxembourg (LU)	€5,000	€5,000
Malta (MT)	€4,750	€5,500
Netherlands (NL)	None	None
Poland (PL)	€4,500	None
Portugal (PT)	None	€125
Romania (RO)	None	€5,000
Slovakia (SK)	None	None
Slovenia (SI)	€4,000	€1,200
Spain (ES)	€12,500	€15,000
Sweden (SE)	None	None
The United Kingdom (UK)	€1,159	€1,159

[171] The figures for MS that are not in the Euro Zone have been converted in € in order to facilitate the comparison.
[172] In case of modification of the information and documents concerning arrangements made for marketing are changed

Table 4 - Calculation methodology regulatory fees for UCITS per Member State[173]

Member State	Stand-alone/ Umbrella/ Sub-funds	One off fees	On-going fees (annual)
Austria (AT)	Stand alone	€1,100	€600
	Sub-funds	€,1,100 for the first sub fund and €220 for each sub-fund	€600 for the first sub fund and €200 for each sub-fund
Belgium (BE)	Stand-alone/ Sub funds	€377 for each sub-fund when the fund is offered to the public. If not, the fees are €0.	€2,580 for each sub-fund when the fund is offered to the public. If not, the fees are €0.
Bulgaria (BG)	Stand-alone/ Umbrella/ Sub-funds	None	None
Croatia (HR)	Stand-alone		€1,880 or €2,700 if marketed through a branch. *should be paid on monthly basis
	Umbrella/ Sub-funds		€1,880 or €2,700 from the second sub-fund and each subsequent sub-fund €400 *should be paid on monthly basis
Cyprus (CY)	Stand-alone/ Umbrella/ Sub-funds	€800 for the first sub-funds and €400 for each additional sub-fund (up to 15th) and €250 per sub fund as from the 16th	€1000 for a stand-alone fund €2000 for umbrella funds
Czech Republic (CZ)	Stand-alone/ Umbrella/ Sub-funds	None	None
Denmark(DK)	Umbrella	€750 for each notification or application on cross-border marketing	€2,405 annual fee
Estonia (EE)	Stand-alone/ Umbrella/ Sub-funds	None	None
Finland (FI)	Stand-alone	€1,600 for the first fund and an additional €200 for any subsequent undertakings.	None
	Umbrella/sub-funds	€1,600 per umbrella	None
France (FR)	Stand-alone/ Sub-funds	€2,000 per fund and per sub-fund	€2,000 per fund and per sub-fund (no ongoing fee the first year)
Germany (DE)	Sub-funds	€115 per sub-fund	€494 per sub-fund
Greece (GR)	Stand-alone/ Umbrella/ Sub-funds	€1,024 per sub-fund	€1,024 per sub-fund
Hungary (HU)	Stand-alone/ Umbrella/ Sub-funds		

[173]The figures for MS that are not in the Euro Zone have been converted in € in order to facilitate the comparison.

Ireland (IE)	Stand-alone/ Umbrella/ Sub-funds	None	None
Italy (IT)	Stand-alone/ Umbrella		€4,000 per fund (when the fund is marketed to professional investors)
	Umbrella/ Sub-funds		€ 4.000 for the first two sub-funds marketed to retail investors and € 2.000 from the 3rd sub-funds + € 1.410 in case of public offer closed in the previous years but the fund has got Italian residents as subscribers
Latvia (LV)	Stand-alone/ Umbrella/ Sub-funds	None	None
Liechtenstein (LI)	Stand-alone/ sub-funds	€682 per fund €682 for the first sub-fund and €455 for each additional sub-fund	€1,137 per fund €1,137 per sub-fund
Lithuania (LT)	Stand-alone/ Umbrella/ Sub-funds	€2,500.000 per fund	
Luxembourg (LU)	Stand-alone	€2,650 per fund	€2,650 per fund
	Umbrella/ sub-funds	€5,000 per umbrella	€5,000 per umbrella
	Stand-alone	€2,500 per fund	€3,000 per fund
Malta (MT)	Umbrella	€2,500 per umbrella	€3,000 per umbrella
	Sub-funds	€450 per sub-fund	€500 per sub-fund (up to the 15th) and €0 as from the 16th
Netherlands (NL)	Stand-alone/ Umbrella	€1,500 per fund[174]	None
Norway (NO)		None	None
Poland (PL)	Umbrella	€4,500 per umbrella	None
Portugal (PT)	Umbrella	None	€125 per umbrella
Romania (RO)	Stand-alone/ Umbrella/ Sub-funds	None	€1,000 per fund/sub funds
Slovakia (SK)	Stand-alone/ Umbrella/ Sub-funds	None	None

[174]http://www.digitaal.loket.afm.nl/en-US/Diensten/Beleggingsinstellingen/Melding/Pages/aanmelding-buitenlandse-icbe-beleggingsinstelling.aspx?tab=2

Slovenia (SI)	Stand-alone/ Umbrella/ Sub-funds	€ 1,200 per fund (stand-alone) € 2,000 per umbrella € 800 per sub-fund	€ 200 per fund for execution of the procedure € 800 per year for supervising compliance with rules regarding marketing
Spain (ES)	Stand-alone/ Umbrella	€1,000 per umbrella or funds	€2,500 per umbrella or funds
Sweden (SE)	Stand-alone/ Umbrella/ Sub-funds	None	None
The United Kingdom (UK)	Stand-alone/ Umbrella/ Sub-funds	From 1-2 sub-funds= £410 From 3-6 =£1,025 From7-15: £2,050 From 16-50=£4,510 >50 = 9,020	From 1-2 sub-funds= £410 From 3-6 =£1,025 From7-15: £2,050 From 16-50=£4,510 >50 = 9,020

Table 5- Calculation methodology regulatory fees for AIF marketed to professional investors per Member State[175]

Member State	Stand-alone / Umbrella / Sub-funds	One-off fees	On-going fees
Austria (AT)	Stand-alone/ Umbrella	€1,100	€600
	Sub-funds	€1,100 for the first sub fund and €220 for each subsequent sub-fund	€600 for the first sub fund and €200 for each subsequent sub-fund
Belgium (BE)	Stand-alone/ Umbrella	None	None
Bulgaria (BG)	Stand-alone/ Umbrella	None	None
Croatia (HR)	Stand-alone		€1,880 or €2,700 if marketed through a branch *should be paid on monthly basis
	Umbrella/ Sub-funds		Freedom of services €1,880 or €2,700 + from the second and each subsequent sub-fund €400 *should be paid on monthly basis
Cyprus (CY)	Stand-alone/ Umbrella/ Sub-funds	€100 for notification by an AIFM in the Republic for the marketing of EU AIFs in the Republic.	
Czech Republic (CZ)		None	None
Denmark(DK)	Stand-alone / Umbrella		€600 per registered AIF and for each compartment registered €600
Estonia (EE)		None	None

[175]The figures for MS that are not in the Euro Zone have been converted in € in order to facilitate the comparison.

Finland (FI)	Stand-alone / Umbrella	€800	None
France (FR)	Stand-alone / Sub-funds	€2,000 per fund and per sub-fund	€2,000 per fund and per sub-fund
Germany (DE)	Stand-alone/Umbrella/ Sub-funds	€2,520	+ €216 per AIF or compartment, in case where the information and documents concerning the arrangements made for marketing are changed
Greece (GR)	Stand-alone/ Umbrella/ Sub-funds	€1,024 per sub-fund	€1,024 per sub-fund
Hungary (HU)			
Ireland (IE)	Stand-alone / Umbrella/ Sub-funds	None	None
Italy (IT)	Stand-alone / Umbrella		€4,000 per fund
Latvia (LV)	Stand-alone / Umbrella	€1,209 per fund	
Liechtenstein (LI)	Stand alone/ Sub-funds	€682 per fund €682 for the first sub-funds and €455 for each additional sub-fund	€1,137 per fund €1,137 per sub-fund
Lithuania (LT)		€2,500	
Luxembourg (LU)	Stand-alone	€2,650 per fund	€2,650 per fund
	Umbrella/ Sub-funds	€5,000 per umbrella	€5,000 per umbrella
Malta (MT)	Stand-alone	€2,500 per fund	€3,000 per fund
	Umbrella	€2,500 per fund	€3,000 per fund
	Sub-funds	€450 per sub-fund	€500 per sub-fund (up to the 15th) and €0 as from the 16th
Netherland (NL)	Stand-alone/ Umbrella	None	None
Norway (NO)		None	None
Poland (PL)	Stand-alone/ Umbrella	None	None
Portugal (PT)	Umbrella	None	€125 per umbrella
Romania (RO)	Stand-alone/ Umbrella/ Sub-funds	None	€1,000€ per fund/sub fund
Slovakia (SK)	Stand-alone/ Umbrella/ Sub-funds	None	None

Slovenia (SI)	Stand-alone/ Umbrella/ Sub-funds	€ 1,200 per fund (stand-alone) € 2,000 per umbrella € 800 per sub-fund	€ 200 per fund for notification for marketing € 200 per year for supervising compliance with rules regarding marketing
Spain (ES)	Stand-alone/ Sub-funds	€2,500 per sub-fund	€3,000 per sub-fund
Sweden (SE)	Stand-alone/ Umbrella/ Sub-funds	None	None
The United Kingdom (UK)	Stand-alone/Umbrella	From 1-2 sub-funds= £410 From 3-6 =£1,025 From7-15: £2,050 From 16-50=£4,510 >50 = 9,020	From 1-2 sub-funds= £410 From 3-6 =£1,025 From7-15: £2,050 From 16-50=£4,510 >50 = 9,020None

Table 6 – Overview of type of regulatory fee charged per Member State

	No fees	**Either one-off fees or on-going fees**	**One-off fees and on-going fees**
UCITS marketed to retail investors	BG, CZ, EE, IE, NO, SK, SE, LV.	HR, FI, IT, NL, PL, PT, RO	AT, BE, CY, DK, FR, GE, GR, LU, LI, MT, ES, SI, UK
UCITS marketed to professional investors	BE, BG, EE, IE, SE SK, LV	HR, IT, FI, NL, PT, RO	AT, FR, ES, DK, GE, GR, LI, LU, SI, UK
AIF marketed to professional investors	BE, BG, CZ, EE, IE, NL, NO, PL, SK, SE	CY, HR, FI, IT, LT, LV, PT, RO	AT, DE, DK, FR, GE, GR, LI, LU, MT, ES SI, UK

Table 7 – Overview of calculation methodology per Member State

	Fees apply at the level of the funds and the umbrella only	**Fees apply at the level of the funds and umbrella and/or sub-funds**
UCITS marketed to retail investors	CY, FI, LU, NL, PT, ES	AT, BE, BG, CY, FR HR, DK, DE, GR, IT, LI, LT, MT, RO, SI, UK
UCITS marketed to professional investors	IT, ES, CY, FI, LU, NL, PT	AT, BG, HR, DK, FR DE, GR, LI, RO, SI, UK
AIF marketed to professional investors	FI, DK, IT, LV, LU, PT.	AT, CY, HR ES, FR, DE, GR, LI, MT, RO, SI, UK.

ANNEX 12: Costs and cost reductions

Mapping exercise

Drivers	Type of costs	Description of costs/challenges	Target group	Impact
Costs for industry				
Marketing: national requirements differ and lack transparency	Compliance costs in order to be able to fulfil national requirements: legal advice	Identify national requirements and comply with them	Asset managers	Quantitative element: Low to medium*
	Legal uncertainty regarding what does not qualify as marketing	Delay[176] or abstain from pre-marketing in certain Member States	Asset managers	Qualitative element: not applicable
Regulatory fees: national requirements differ and lack transparency	Compliance costs in order to be able to fulfil national requirements: legal advice	Identify the moment when the payment needs to be done, the methodology how to calculate and the amount to be paid	Asset managers	Quantitative element: Low to medium*
	Regulatory charges to be paid	Payment	Asset managers	Quantitative element: Low to medium
Administrative requirements: local agents	Compliance costs in order to be able to fulfil national requirements: legal advice	Find out whether a local agent is needed and which roles the agent needs to fulfil	Asset managers	Quantitative element: Low to medium*
	Compliance costs in order to be able to fulfil national requirements: external service by local facility	Find a local facility, sign a contract with it, pay for its services	Asset managers	Quantitative element: Medium- High (due to huge discrepancies between Member States)
Notification requirements: conditions for updates as well as for de-notification differ	Compliance costs in order to be able to fulfil national requirements regarding updates and de-notification: legal advice	Identify national requirements and comply with them	Asset manager	Quantitative element: Low- Medium*
	Administration associated with all new fund launches, changes, country registrations, dissemination of regulatory documents to host authorities.	Prepare and send required forms and documentation	Asset manager	Quantitative element: Low
	Uncertainty regarding or lack of de-notification in some Member States	Sometimes asset managers hesitate[177] to or abstain from entering a host market, because there is no	Asset manager	Qualitative element: not applicable

[176] This would cause hassle costs.
[177] This would cause hassle costs.

		(clear) exit strategy		
Costs for Competent Authorities: Enforcement costs				
Marketing: national requirements differ and lack transparency	Enhanced transparency	Publish marketing requirements on the website of the competent authority and ESMA	Competent authorities and ESMA	Quantitative element: Low
Regulatory fees: national requirements differ and lack transparency	Enhanced transparency	Publish regulatory fees on the websites of the competent authority and ESMA	Competent authorities and ESMA	Quantitative element: Low
	Adapt fee collection procedure	Reinforce debt collection activities, cooperation with other authorities	Competent authorities	Quantitative element: Low to medium
	Regulatory fee calculator	ESMA to set up and update fee calculator based on input by competent authorities	ESMA and competent authorities	Quantative element: medium (ESMA), Low (for competent authorities)
Notification requirements: conditions for updates as well as for de-notification differ	Database for notifications	*ESMA to set up and update database, input by competent authorities*	ESMA and competent authorities	Quantitative element: Low to medium (ESMA), Low (for competent authorities)

*Legal advice is attributed mostly "low to medium" burden per element, however in total the burden of legal advice is estimated as "high".

Cost quantification

The next tables analyse the quantitative elements classified as at least medium. They indicate price examples for the costs linked to cross-border distribution barriers on a per fund basis and on a total industry basis.

The total industry figure is calculated using the December 2016 figure of cross-border funds and the average number of host jurisdictions these funds are marketed to.

For **industry** the tables show the costs barriers currently cause. The tables also indicate estimated cost reductions on a per fund and on a total industry basis. The latter figure shows thus only expected cost reductions for existing funds, while the initiative aims at raising the number of cross-border funds. In this context, it is highlighted that the number of cross-border funds increased over the last 5 years on average per 6.8% p.a. and growth should further accelerate thanks to this initiative. Therefore the figures below show conservative estimates of costs reductions (additional growth is indicated in footnotes of the total cost reduction sections).

For **competent authorities** (national competent authorities and ESMA) the final table shows new costs stemming from the initiative.

The figures used are based on public data sources, input by stakeholders (indications received were used to calculate an average), indications by ESMA and some NCAs.

Costs and cost reductions for industry:

Scenario A describes quantitative elements of costs assuming that the asset management company uses in-house legal advice and undertakes fund administration itself.

Type of cost	Description of action	Base of evidence	Price example[178]	Frequency	Costs for all funds marketed cross-border[179]
Substantive compliance costs: direct labour costs	in-house compliance/ counsel, linked to analysis of marketing requirements, administrative requirements, notification, regulatory fees and out of scope drivers and to undertaking administration	Anecdotal evidence (feedback from two fund associations) on man hours, salary based on Robert Walters Global Salary Survey[180]	€4,297 one-off cost per fund and jurisdiction *(50-100 man hours one-off: for calculation 75 man hours are used)*	One-off	€264,059,244
			€1,146 per fund and jurisdiction (ongoing) *(20 man hours annually)*	ongoing (annually)	€70,423,992
Substantive compliance costs: costs of external services	Administrative requirements/ local facilities	Feedback received from industry regarding 15 host jurisdictions.	On average €4,930 annually per fund and jurisdiction	Ongoing	€302,958,360
Regulatory charges	Regulatory fees on national level in host Member States	Calculations based on Annex 9	Average: €1,819 one-off	One-off	€111,781,188
			Average: €2,194 ongoing	Ongoing	€134,825,688
Example for total costs			Up to €11,046 annually per fund and jurisdiction in the first year when entering into the jurisdiction	One-off	€678,798,792
			Up to €8,270 annually per fund and jurisdiction (ongoing, supposing the fund is still marketed)	ongoing (annually)	€508,208,040

[178] If possible, average figures are presented.

[179] 11,380 existing cross-border fund with ongoing marketing in an average of 5.4 host jurisdictions

[180] Robert Walters Global Salary Survey 2015: fund lawyer Luxembourg: 110k pa : 12:4 :40= salary per hour x hours indicated in the column

Cost reductions for Scenario A

Type of cost	Description of action	Change compared to current situation for one fund (in %)	Change compared to current situation for one fund (in monetary terms)	Change compared to current situation for all funds marketed cross-border
Substantive compliance costs: direct labour costs	in-house compliance/ counsel, linked to analysis of marketing requirements, administrative requirements, notification, regulatory fees and out of scope drivers	- 25-50%[181]: advice linked to taxation and market structure remains, evaluation of other elements and administration is simplified but not eliminated	- €1,074.25 to 2,148.5 (one-off costs)	- €66,014,811 to 132,029,622 (one-off)
			- €286.5 to 573 (ongoing)	- €17,605,998 to 35,211,996 (ongoing)
Substantive compliance costs: costs of external services	Administrative requirements/ local facilities	- 90 %[182]	- €4,437 annually	- €272,662,524 annually
Regulatory charges	Regulatory fees on national level in host Member States	- 5%[183]	- € 90.95 one-off	- €5,589,059 one-off
			- €109.70 ongoing	- €6,741,284 ongoing
Example for total costs			- €5,602.2 to 6,695.2 annually per fund and jurisdiction in the first year when entering into the jurisdiction	- €344,266,394.4 to 411,433,430[184]
			- €4,833.2 to 5,119.7 annually per fund and	- € 297,009,806 to 314,615,804

[181] The estimated change is based on the following elements: The initiative does not cover out of scope drivers, most importantly taxation. The public consultation showed that stakeholders consider that about 40% of the barriers are linked to out of scope drivers. With respect to each addressed barrier, the improvement will be significant, but not materialize in a 100% reduction, e.g. the barrier national marketing requirements sometimes lack transparency is addressed by creating transparency, while asset managers will still need to need legal advice to analyse the provided information. Moreover, the implications will differ from Member State to Member State, e.g. addressing the barrier national marketing requirements lack transparency will have little effect in France where information is already available while the impact in other Member States will be high, because these Member States do not (sufficiently) provide relevant information. As a consequence, an estimate with a positive impact of 25-50% cost reduction has been calculated.

[182] Costs for local facilities will fall, but some costs will be linked to providing information in the investor's language.

[183] The level of regulatory fees is not directly affected by the retained policy options, but increased transparency can have a slight indirect positive impact.

[184] Projection: One year later, the cost reduction for ongoing costs would be more important, as the number of cross-border funds would continue to increase (on average by 6.8%). This would lead to savings of 434,332.656,45 in the second year (instead of 406,678,517.28 as indicated above). Moreover growth should further accelerate thanks to this initiative. This remark is also valid for scenario B.

			jurisdiction (ongoing, supposing the fund is still marketed)	

Scenario B describes quantitative elements of costs assuming that the asset management company fully outsources legal advice and fund administration.

Type of cost	Description of action	Base of evidence	Price example[185]	Frequency	Costs for all funds marketed cross-border[186]
Substantive compliance costs: costs of external services (part 1)	Legal counsel costs, linked to marketing requirements, administrative requirements, notification, regulatory fees and out of scope drivers	Range based on anecdotal evidence from 6 respondents (5 industry, 1 lawyer)	Average: €8150 (range: 1,000-15,000) one-off costs per fund and jurisdiction[187]	One-off	Average: €500,833,800 (range: €61,452,000 to 921,780,000)
			Average: €6983 (range: €1,000-10,000) annually per fund and jurisdiction (ongoing)	ongoing (annually)	Average: €429,119,316 (range: €61,452,000 to 614,520,000)
Substantive compliance costs: costs of external services (part 2)	Administrative requirements/ local facilities	Feedback received from industry regarding 15 host jurisdictions.	On average €4,930 annually per fund and jurisdiction	Ongoing (annually)	Average: €302,958,360
Regulatory charges	Regulatory fees on national level in host Member States	Calculations based on Annex 9	Average: €1,819 one-off	One-off	€111,781,188
			Average: €2,194 ongoing	Ongoing	€134,825,688
Example for total costs			Average: €14,899 annually per fund and jurisdiction in the first year when entering into the jurisdiction	One-off	Average: €915,573,348
			Average: €14,107 annually per fund and jurisdiction (ongoing, supposing the fund is still marketed)	Ongoing (annually)	Average: €866,903,364

[185] If possible average figures

[186] 11,380 existing cross-border fund with ongoing marketing in 5.4 host jurisdictions (PwC, Benchmark your Global Fund Distribution, March 2017)

[187] Jurisdiction to be understood as host jurisdiction

Cost reductions for Scenario B

Type of cost	Description of action	Change compared to current situation for one fund (in %)	Change compared to current situation for one fund (in monetary terms)	Change compared to current situation for all funds marketed cross-border
Substantive compliance costs: costs of external services (part 1)	Legal counsel costs, linked to analysis of marketing requirements, administrative requirements, notification, regulatory fees and out of scope drivers and to undertaking administration	- 25-50%: advice linked to taxation and market structure remains, evaluation of other elements and administration is simplified but not eliminated	- €2,037.50 to 4,075 one-off	- €125,208,450 to 250,416,900 one-off
			- €1,745.75 to 3,491.50 ongoing	- €107,279,829 to 214,559,658 ongoing
Substantive compliance costs: costs of external services (part 2)	Administrative requirements/ local facilities	- 90 %: No local facility anymore, but website and customer service to be further developed	- €4,437 annually	- €272,662,524 annually
Regulatory charges	Regulatory fees on national level in host Member States	- 5%	- €90.95 one-off	- €5,589,059 one-off
			- €109.70 ongoing	- €6,741,284.4 ongoing
Example for total costs			- €6,565.45 to 8,621.70 annually per fund and jurisdiction in the first year when entering into the jurisdiction	- €403,460,033 to 529,820,708
			- €6,292.45 to 8,038.2 annually per fund and jurisdiction, supposing the fund is still marketed	- €386,683,637 to 493,963,466

Costs for competent authorities:

Type of cost	Description of action	Change compared to current situation for one fund (in %)	Change compared to current situation for one fund (in monetary terms)	Change compared to current situation for all funds marketed cross-border
Adapt fee collection procedure	Competent authorities need to reinforce debt collection activities, cooperation with other authorities	+ ≈95%: costs caused by European initiative	€ 400 per fund and jurisdiction (ongoing)[188]	+ €682,800 (ongoing per host jurisdiction) + €3,687,120 (ongoing for all host jurisdictions)[189]
Regulatory fee calculator	ESMA needs to set up and maintain a regulatory fee calculator for fees in host Member States	+ 100%	NA[190]	+ €500,000 one-off, €100,000 ongoing, and 1 FTE
Notification database	ESMA needs to set up and maintain a database for notifications, updates and de-notifications	+ 100%	NA[191]	+ €250,000 one-off, €50,000 ongoing, and 1 FTE

[188] This figure is based on input from some Competent Authorities regarding salaries of persons involved in the debt collection activities and number of hours required to reinforce debt collection per fund.
[189] The total figure strongly depends on the number of funds which do not directly pay regulatory fees. For the indications above the estimation of 15% has been used, representing an average of some indications received by Competent Authorities.
[190] No data received from ESMA on a by fund basis.
[191] No data received from ESMA on a by fund basis.