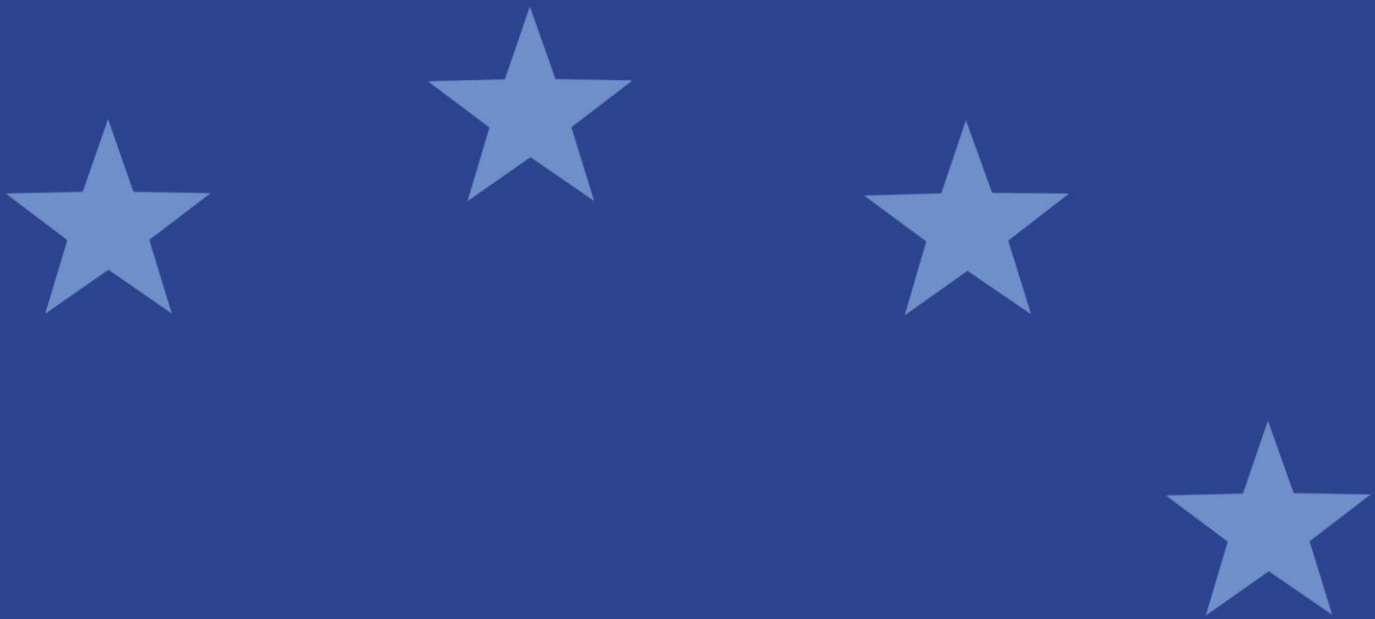




European Securities and  
Markets Authority

# Consultation Paper

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



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **30 June 2020**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

### Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

### Who should read this paper

This document will be of interest to (i) alternative investment fund managers, UCITS management companies, EuSEF managers and/or EuVECA managers and their trade associations, (ii) distributors of UCITS, alternative investment funds, EuSEFs and EuVECA, as well as (iii) institutional and retail investors investing into UCITS, alternative investment funds, EuSEFs and/or EuVECA and their associations.



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# 1 Executive Summary

## Reasons for publication

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

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

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

This consultation paper represents the first stage in the development of the draft ITS described above and sets out proposals on those ITS on which ESMA is seeking the view of external stakeholders, as further explained in the following sections.

## Contents

Section 2 explains the background to our proposals. Sections 3 to 5 give detailed explanations on the content of the proposals and seek stakeholders’ input through specific questions.

Annex I sets out the list of questions contained in this paper.

Annex II contains the legislative mandates to develop draft ITS.

Annex III provides for the cost-benefit analysis related to the draft ITS.

Annex IV contains the text of the draft ITS which is submitted to public consultation.

## Next Steps

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

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## 2 Background

1. In 2015, the European Commission adopted an action plan for building a Capital Markets Union (“CMU”) with the objective of achieving a true single market for capital in Europe. One of the priorities identified by the European Commission consisted in facilitating cross-border investing in the internal market<sup>1</sup>. Following the publication of the initial Action Plan, the Mid-Term Review of the CMU Action Plan further identified the possibility to develop a legislative proposal to facilitate the cross-border distribution and supervision of UCITS and AIFs<sup>2</sup>.
2. On 12 March 2018, a proposal for a Regulation on facilitating cross-border distribution of collective investment funds was adopted by the European Commission<sup>3</sup>.
3. Following the legislative negotiations, the Regulation was published in the *Official Journal* on 12 July 2019 and entered into force on 1<sup>st</sup> August 2019<sup>4</sup>.
4. The Regulation, along with the directive on cross-border distribution of collective investment undertakings<sup>5</sup>, aims at facilitating the cross-border marketing of UCITS and AIFs, including EuSEFs and EuVECAs, throughout the EU by removing existing barriers and enhancing the protection of investors.
5. In order to achieve this goal, the Regulation contains various IT-related tasks ascribed to ESMA that involve setting-up the following, inter alia:
  - (i) a central database containing a summary of the applicable national laws, regulation and administrative provisions governing marketing requirements for AIFs and UCITS, and the hyperlinks to the websites of NCAs where this information is published (Article 6 of the Regulation),
  - (ii) publication, on ESMA’s websites, of hyperlinks to the websites of NCAs listing the fees and charges levied for carrying out NCAs’ duties in relation to the cross-border activities of funds or, where applicable, the calculation methodologies for those fees and charges (Article 11(1) of the Regulation);
  - (iii) a central database listing the AIFs (as well as their AIFMs, EuSEF manager or EuVECA manager) and the UCITS (as well as their management companies) marketed on a cross-border basis and the Member States in which they are marketed (Article 12(1) of the Regulation); and
  - (iv) a notification portal on which NCAs can upload information relevant to the databases of funds marketed on a cross-border basis (Article 13(2) of the Regulation).

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<sup>1</sup> COM(2015) 468 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0468>.

<sup>2</sup> COM(2017) 292 final, Priority action 7, available at: [https://ec.europa.eu/info/sites/info/files/communication-cmu-mid-term-review-june2017\\_en.pdf](https://ec.europa.eu/info/sites/info/files/communication-cmu-mid-term-review-june2017_en.pdf).

<sup>3</sup> COM(2018) 110 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018PC0110&from=EN>.

<sup>4</sup> Regulation (EU) 2019/1156 of the European Parliament and the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014.

<sup>5</sup> Directive (EU) 2019/1160 of the European Parliament and the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border marketing of collective investment undertakings.

6. ESMA is required to develop ITS setting out standard forms, templates and procedures for the notification and publication that NCAs are obliged to make for the development and maintenance of these new IT tools.
7. ESMA is now consulting stakeholders on the aspects of the ITS to be drafted pursuant to the Regulation which relate to the publications to be made by NCAs on their websites. As the aspects of the ITS relating to the notifications to be made by NCAs to ESMA have no direct impact on stakeholders, the corresponding provisions are not included in the scope of this public consultation.

### **3 Website publication of marketing requirements (Article 5(3) of the Regulation)**

8. Article 5 of the Regulation requires NCAs to publish and maintain, on their websites, up-to-date and complete information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS, and the summaries thereof in, as a minimum, a language customary in the sphere of international finance. These publications shall be made in accordance with the standard forms, templates and procedures set out in the ITS that ESMA shall develop by 2 February 2021.
9. The purpose of these ITS is to ensure transparency on the legal and regulatory framework applicable in each Member State as regard the conditions for marketing UCITS and AIFs. The publication of marketing requirements on NCAs' websites aims at helping fund managers in their decision-making to engage in marketing activities in host Member States, and at enhancing investor protection by making information on these marketing requirements more easily accessible.
10. These objectives can be achieved in the ITS by clarifying the obligations of NCAs as regard the publication of information. As further explained below, these ITS could specify the scope of the information that NCAs should publish on their websites (3.1.), the format of the publication (3.2.) and the main characteristics of the summaries of marketing requirements (3.3.).

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

11. In ESMA's view, the information to be published by NCAs on their website should encompass complete and precise information relating to the specific requirements for the marketing of investment funds, which are applicable within each Member State, in relation to both domestic and cross-border marketing. Hence, this information should cover, inter alia, home Member States' rules on marketing of domestic funds in the said Member State or in a host Member State, where applicable, and host Member States' rules on marketing of funds established in a home Member State.
12. In order to ensure transparency on all marketing requirements, ESMA considers that NCAs could also make reference, along with the requirements specifically designed for the marketing of investment funds, to other bodies of domestic law – which are not set out

specifically for the marketing of UCITS and AIFs – that could apply in the event of marketing to retail investors, such as consumer protection laws, as it would enhance transparency and help stakeholders understand the extent of the requirements relating to the marketing of investment funds in each Member States.

13. This approach appears to be in line with the objectives of the Regulation as set out in Recital (4)<sup>6</sup>.

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

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

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

15. In consideration of the difference between the structures of marketing requirements applicable within each Member State, ESMA considers that the format of the publication should be flexible and should focus on highlighting the requirements applicable to each type of funds rather than focusing on the form of the publication (e.g. text or table). In this context, the format proposed in the ITS remains general and only requires NCAs to clearly identify the requirements applicable to the marketing UCITS and those applicable to the marketing of each type of AIFs existing under national law, on both a domestic and a cross-border basis.

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

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<sup>6</sup> « *In order to increase transparency and investor protection and facilitate access to information on national laws and regulations and administrative provisions applicable to marketing communications, competent authorities should publish such texts on their websites in, as a minimum, a language customary in the sphere of international financial, including their non-official summaries which would allow managers of collective investments undertakings to get a broad overview of those laws, regulations and administrative provisions*» (emphasis added).

### **3.3 Format of the publication of the summaries of marketing requirements**

16. The ITS should also set the standard forms and templates for the publication of the summary of marketing requirements that NCAs shall publish on their websites pursuant to Article 5(1) of the Regulation.
17. These summaries aim at providing stakeholders with a broad overview of the marketing requirements in a clear and simple manner. They should constitute high-level guidance on the applicable requirements, giving sufficient information to understand the main steps to be taken with a view to marketing UCITS or AIFs in the concerned jurisdiction, and include a reference to where more detailed information is available (e.g. hyperlinks to the full version of any relevant provisions of law, decree, circular, guidance on specific requirements applicable to each category of AIFs, etc.). However, they should not be designed as exhaustive lists of the marketing requirements, nor constitute a legally binding document for the NCAs.
18. The ITS should not restrict the format of these summaries, which could take the form of a text setting out a general overview of the applicable requirements, of a table setting out different scenarios and a summary of the rules applicable to each one, or a combination of these two formats. In ESMA's view, the main focus should be to ensure that the summary is concise, clear, easy to read, and gives sufficient information to understand the main requirements for marketing in the Member State, notwithstanding the fact that the format for the submission of this information will also have to be harmonised.

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

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

19. Article 10(1) of the Regulation requires NCAs to publish and maintain, on their websites, up-to-date and complete information listing the fees or charges they levy for carrying out their duties in relation to the cross-border activities of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies, or, where applicable, the calculation methodologies for those fees or charges, in, as a minimum, a language customary in the sphere of international finance. These publications shall be made in accordance with the standard forms, templates and procedures set out in the ITS that ESMA shall develop pursuant to Article 10(3) of the Regulation by 2 February 2021.
20. The purpose of this ITS is not to determine the type or the amount of fees and charges levied by NCAs in relation to cross-border activities carried-out by fund managers within their jurisdiction as this is left to NCAs' discretion. The purpose of this ITS is limited to ensuring transparency on the applicable fees and charges in each Member State. Hence, it could set out the scope of the information to be published by NCAs in relation to the fees



and charges levied by them in relation to cross-border activities of fund managers within their jurisdiction (4.1.), and the form of the publication thereof (4.2.).

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

21. As the ITS relates to the publication of information on the fees or charges levied by NCAs in relation to cross-border activities of fund managers or, where applicable, the calculation methodologies for those fees and charges, it should first determine the scope of the information to be published by NCAs on their websites. ESMA is of the view that the provisions of Article 10(1), which makes no distinction between cross-border marketing and cross-border management, should be understood as encompassing all existing regulatory fees and charges levied by NCAs in relation to any cross-border activities within their jurisdiction, whether inwards or outwards. This seems to be in line with the purpose of the Regulation, which aims at enhancing transparency on the regulatory framework applicable to cross-border activities of fund managers.
22. It should also be noted that, in some Member States, no fees or charges are levied in relation to certain activities, e.g. inwards cross-border marketing. For clarity purposes, ESMA's view is that NCAs should make it clear that there are no other fees or charges other than those listed on their websites.
23. It should also be noted that Article 10(1) of the Regulation foresees the publication of the list of regulatory fees and charges "*or, where applicable, the calculation methodologies for those fees and charges*" (emphasis added). This wording seems to imply that NCAs have a discretionary option to publish either the list of regulatory fees and charges or the calculation methodologies thereof where such methodologies exist. Hence, ESMA is of the view that this alternative should be mentioned in the ITS, as the main objective of the ITS should be to ensure that stakeholders can easily determine the amount of the fees and charges that would be levied for their cross-border activities in the concerned Member State only by referring to the NCA's website.

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

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

24. Another aspect of the ITS is to determine the standard forms for the publication of information on regulatory fees and charges on NCAs' websites. ESMA considers that the publication should be made in a harmonised manner by NCAs, which could be made in the form of a table that may be accompanied by some explanatory text. Such table should be easy to read and provide at least:
  - a detailed breakdown of the different type of applicable regulatory fees and charges, including the amount to be paid as either a fixed fee or a percentage (and the basis for calculation, as applicable);

- the type of activity to which the fee relates (e.g. marketing by a domestic manager of a fund established in another Member State to domestic investors, etc.);
- the legal basis for levying the fee;
- the periodicity of the fee, as applicable; and
- the person or entity who is liable for paying the fee.

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

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

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

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

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

26. Article 12 of the Regulation requires ESMA to publish on its website a central database on cross-border marketing of AIFs and UCITS, publicly accessible in a language customary in the sphere of international finance, listing all AIFs and UCITS that are marketed in a host Member State, their AIFM, EuSEF manager, EuVECA manager, or UCITS management company, and the Member States in which they are marketed. The creation and maintenance up-to-date of this central database necessitates that NCAs communicate to ESMA some information regarding any notification, notification letter or information referred to in Article 93(1) and Article 93a(2) of the UCITS Directive and in Article 31(2), Article 33(2) and Article 32a(2) of the AIFMD, and any change to that information, if such changes would result in a change to the information in that central database.

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



28. The content of these ITS relates only to the bilateral relationship between NCAs and ESMA for the purpose of the communication of information. Hence, ESMA considers that it would be highly disproportionate to seek stakeholders' views on these ITS.

29. However, the purpose of this communication of information is to develop and maintain up to date a central database listing funds marketed on a cross-border basis, which will be published on ESMA's website by 2 February 2022.

30. In this context, stakeholders are invited to share their views on their use of the information to be contained in this central database. This feedback may prove of help for the purpose of developing a tool that answers the needs of the public, to the extent possible.

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

## **6 Annexes**

### **6.1 Annex I: Summary of questions**

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

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

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

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

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

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

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

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



## 6.2 Annex II: Legislative mandates to develop ITS

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

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

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

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

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

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

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

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

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

## 6.3 Annex III: Cost-benefit analysis

### 1. Introduction

1. The Regulation, together with Directive (EU) 2019/1160, sets out a new harmonised framework for the distribution of collective investment undertakings on a cross-border basis within the EU.
2. In order to facilitate the cross-border marketing of UCITS and AIFs throughout the EU, the Regulation contains provisions which aim at enhancing the transparency of the regulatory framework applicable to the distribution of collective investment undertakings and of the funds which are made available to marketing in each Member State. To this end, it mandates ESMA to develop draft ITS to specify certain technical aspects of the Regulation, described in sections 3 to 5 of this consultation paper.
3. This consultation paper sets out proposals for the aspects of the ITS relating to the publications to be made by NCAs on their websites with respect to marketing requirements and to regulatory fees and charges.
4. This draft CBA is qualitative by nature. Should relevant data be received through the consultation process, ESMA will take it into account when finalising the ITS and will include it in the CBA accompanying the final report.

### 2. Technical options

5. The following options were identified and analysed by ESMA to address the policy objectives of the ITS required under the Regulation.
6. In identifying the options set out below and choosing the preferred ones, ESMA was guided by the relevant rules of the Regulation.

#### 2.1. Draft ITS relating to marketing requirements

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

	<p>the publication to be made in relation to the application national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS, and the summaries thereof, in their jurisdiction.</p> <p>The main benefit of the proposed ITS is to ensure that market participants, whether fund managers or investors, will easily have access to clear and comprehensive information on marketing requirements applicable in each Member State. This will ultimately facilitate the decision-making for marketing, or investment in, a UCITS or an AIF in a given Member State.</p>
<b>Option 1</b>	The ITS would provide a detailed table for the publication of information on marketing requirements, including all categories of information to be disclosed to the public.
<b>Option 2</b>	The ITS would provide general guidance for the publication to be made in relation to national marketing requirements and would focus on highlighting the requirements applicable to each type of funds rather than focusing on the form of the publication (e.g. text or table). In this context, the ITS would remain general and only require NCAs to clearly identify the national rules applicable to the marketing UCITS and those applicable to the marketing of each type of AIFs existing under national law, on both a domestic and a cross-border basis.
<b>Preferred option</b>	<p>ESMA decided to consult on option 2 and discarded option 1.</p> <p>Given the difference existing between the structures of marketing requirements for UCITS and AIFs applicable within each Member State, ESMA believe that a “one-size-fits-all” table cannot be drawn. Hence, the focus should be with ensuring that the relevant publication is made by each NCA in a harmonised manner, taking into account the specificities of the national regulatory framework.</p>

## 2.2. Draft ITS relating to regulatory fees and charges

<b>Policy objective</b>	The Regulation (Article 10) requires NCAs to publish and maintain on their websites up-to-date and complete information on their websites listing the fees or charges they levy for carrying out their duties in relation to the cross-border activities of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies, or, where applicable, the calculation methodologies for those fees or charges, in, as a minimum, a language customary in the sphere of international finance.
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<p>Under Article 10(3) of the Regulation ESMA is required to develop draft ITS to determine the standard forms, templates and procedures for the publications under this Article. ESMA has to submit those draft ITS to the Commission by 2 February 2021.</p>	
<p><b>Baseline scenario</b></p>	<p>The baseline scenario should be understood for this CBA as the application of the requirements in the Regulation (i.e. the provisions of Article 10 of the Regulation) without any further specification. This would leave NCAs discretion to determine the content and precise outlook of the publication to be made in relation to the regulatory fees and charges to be borne by fund managers in their jurisdiction.</p> <p>The main benefit of the proposed ITS is to ensure that fund managers will easily have access to clear and comprehensive information on the regulatory fees and charges relating to their cross-border activities applicable in each Member State. This will ultimately facilitate the decision-making for marketing, or investment in, a UCITS or an AIF in a given Member State.</p>
<p><b>Option 1</b></p>	<p>The ITS would provide a detailed table for the publication of information on regulatory fees and charges, including all categories of information to be disclosed to the public.</p>
<p><b>Option 2</b></p>	<p>The ITS would provide general guidance for the publication to be made in relation to regulatory fees and charges and would focus on highlighting the requirements applicable to each type of fee or charge set out at national level. In this context, the ITS would remain general and only require NCAs to clearly identify and explain the structure of all the existing regulatory fees or charges relating to cross-border activities of fund managers.</p>
<p><b>Preferred option</b></p>	<p>ESMA decided to consult on option 2 and discarded option 1.</p> <p>Given the difference existing between the fees or charges structures existing within each Member State, ESMA believe that a “one-size-fits-all” table cannot be drawn. Hence, the focus should be with ensuring that the relevant publication is made by each NCA in a harmonised manner, taking into account the specificities of the national regulatory framework.</p>

### 3. Assessment of the impact of the various options

#### 3.1. Draft ITS relating to marketing requirements



Option 2		Qualitative description
<b>Benefits</b>	Ensure that market participants, whether fund managers or investors, will easily have access to clear and comprehensive information on marketing requirements applicable in each Member State. This will ultimately facilitate the decision-making for marketing, or investment in, a UCITS or an AIF in a given Member State.	
<b>Costs</b>	Potential additional costs will be borne by NCAs only, as no action is required from fund managers or from investors. Depending on the current architecture and content of their websites, NCAs may have to publish additional content as regards the rules applicable within their jurisdiction for marketing UCITS or AIFs. While it is expected that they will be limited, this should incur one-off costs as the publication will imply mobilising human and technical resources for updating their websites, and ongoing costs for monitoring that the relevant page of the NCA's website is up to date.	

### 3.2. Draft ITS relating to regulatory fees and charges

Option 2		Qualitative description
<b>Benefits</b>	Ensure that fund managers will easily have access to clear and comprehensive information on the regulatory fees and charges levied in relation to their cross-border activities in each Member State. This will facilitate the decision-making regarding whether to engage in cross-border distribution of funds in a given Member State.	
<b>Costs</b>	Potential additional costs will be borne by NCAs only, as no action is required from fund managers. Depending on the current architecture and content of their websites, NCAs may have to publish additional content as regards the fees and charges relating to cross-border activities of fund managers within their jurisdiction. While it is expected that they will be limited, this should incur one-off costs as the publication will imply mobilising human and technical resources for updating their websites, and ongoing costs for monitoring that the relevant page of the NCA's website is up to date.	

## 4. Conclusions

In light of what has been illustrated above, ESMA believes that the overall (compliance) costs associated with the implementation of the new tools to be developed with the draft ITS under the Regulation are fully justified by the objectives described above and will be largely compensated by the benefits for market participants, either fund managers or



investors, in particular as regards transparency on the national frameworks for the cross-border distribution of funds and on the funds available for marketing within each Member State.

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



## 6.4 Annex IV: Draft ITS

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

of **XXX**

**laying down implementing technical standards for the application of Regulation (EU) 2019/1156 of the European Parliament and of the Council with regard to publication by competent authorities of marketing requirements as well as fees and charges**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014<sup>7</sup>, and in particular Articles 5(3) and 10(3) thereof,

Whereas:

- (1) It is appropriate to set out standard forms, templates and procedures for the publications by competent authorities pursuant to Articles 5(3) and 10(3) of Regulation (EU) 2019/1156 with regard to national marketing requirements and regulatory fees and charges.
- (2) The information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS should be published by competent authorities on their websites in a clear and comprehensive manner. For this reason, competent authorities should publish that information on a dedicated webpage on their websites. The publication may take the form of a text listing all the requirements, that would enable AIFMs, EuVECA managers, EuSEF managers and UCITS management companies to understand the national provisions relating to marketing funds in the Member State.
- (3) In addition to up-to-date and complete information on the national provisions governing marketing requirements, competent authorities should also make reference to other bodies of domestic law which are not set out specifically for the marketing of UCITS and AIFs that may be applicable at the occasion of marketing. Such provisions could be mentioned in a general statement including an indicative list of the relevant bodies of national law that could apply, such as laws on the protection of consumers that may apply in the event of marketing to retail investors.
- (4) Competent authorities should also publish a summary of these marketing requirements. In order to ensure the ease of access to the information, such summaries should be published on the same page of competent authorities' websites as the complete and

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<sup>7</sup> [OJ L 188, 12.07.2019, p. 55.](#)

up-to-date information on the applicable provisions governing marketing requirements. Such summaries could take the form of a text, a table, or a combination of both, and should be set out in a clear and concise manner, that is easy to understand.

- (5) To help AIFMs, EuVECA managers, EuSEF managers and UCITS management companies in their decision-making regarding whether to engage in cross-border activities in a host Member State, competent authorities should publish on their websites the list of all regulatory fees and charges relating to cross-border activities, whether cross-border marketing or cross-border management of AIFs and UCITS.
- (6) The fees and charges should be published in a clear and comprehensive manner, which should make it possible to determine in advance the overall cost of cross-border activities within each Member State. To this end, the publication shall be made in a harmonised manner, in the form of a table comprising the elements which are essential for determining the amount of the fees and charges to be paid. For clarity purposes, competent authorities should indicate that there are no regulatory fees or charges other than those listed.
- (7) The provisions in this Regulation are closely linked, since they set out standard forms, templates and procedures for the publication of information by competent authorities on their websites relating to the national framework for the cross-border distribution of AIFs and UCITS. It is therefore appropriate to include these implementing technical standards in a single Regulation.
- (8) This Regulation is based on the draft implementing technical standards submitted to the Commission by the European Securities and Markets Authority.
- (9) The European Securities and Markets Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based relating to the publication by competent authorities of marketing requirements and regulatory fees and charges on their websites, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>8</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

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

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

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<sup>8</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 25 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ([OJ L 331, 15.12.2010, p. 84](#)).



2. Competent authorities shall publish a summary of the information referred to in paragraph 1 in a clear and concise manner, using the template set out in Annex II. This summary shall be published on the same webpage as the information referred to in paragraph 1 or be made accessible from the same webpage through a clearly identifiable hyperlink.

#### *Article 2*

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

1. Competent authorities shall publish the fees and charges levied by them for carrying out their duties in relation to the cross-border activities of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies in accordance with Article 10(1) Regulation (EU) 2019/1156 on a dedicated webpage of their websites.

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

#### *Article 3*

### **Entry into force**

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

It shall apply from [date to be determined]. However, Article 1 shall apply from 2 August 2021.

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

Done at Brussels,

*For the Commission*

The

President



## ANNEX I

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

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

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

#### **Marketing requirements for AIFs**

*(Insert up-to-date and complete information on the applicable national laws, regulations and administrative provisions governing marketing requirements for each type of AIF separately, including the hyperlinks to the full version of those laws, regulations and administrative provisions.)*

**Disclaimer:** *[Name of the competent authority] has taken reasonable care to ensure that the information on the national provisions governing marketing requirements of UCITS and AIFs in [Name of the Member State] is up-to-date and complete.*

*In addition to the provisions referred to above, which are set out specifically for the marketing of UCITS and AIFs, there may be other legal provisions that apply to marketing in [Name of the Member State] depending on the individual situation of the persons involved in the marketing of shares or units or UCITS or AIFs. In particular, marketing in [name of the Member State] may trigger the application of other requirements, such as [specify the relevant bodies of national law that could be applicable].*



## ANNEX II

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

**Summary of the marketing requirements for UCITS**

*(Insert the summary of marketing requirements for UCITS)*

**Summary of the marketing requirements for AIFs**

*(Insert the summary of marketing requirements for AIFs)*

## ANNEX III

### Template for the publication of national provisions concerning and charges

<b><i>(Name or a short description of the fee or charge)</i></b>
<i>(Legal basis)</i>
<i>(Entity liable for paying the fee or charge)</i>
<i>(Activity giving rise to the fee or charge)</i>
<i>(Description of the fee or charge structure, including, inter alia, the amount – where it is set out as a fixed amount – or the calculation methodology for calculating the fee or charge – including, in particular, the percentage and calculation basis –, and the periodicity.)</i>