

GUIDELINES COMPLIANCE TABLE

Guidelines on performance fees in UCITS and certain types of AIFs (ESMA34-39-992)

The following competent authorities comply or intend to comply with ESMA's Guidelines on performance fees in UCITS and certain types of AIFs (ESMA34-39-992)

		Competent authority	Complies or intends to comply	Comments
Member States				
AT	Austria	Financial Market Authority (FMA)	Yes	https://www.fma.gv.at/en/eu/esma-guidelines/
BE	Belgium	Financial Services and Markets Authority (FSMA)	Yes	https://www.fsma.be/sites/default/files/public/content/FR/circ/2020/fsma_2020_17_fr.pdf
BG	Bulgaria	Financial Supervision Commission (FSC)	Intends to comply*	In Bulgaria the guidelines would require further legislative amendments of the existing legislation in order to be effectively integrated in the Bulgarian legal system. The respective legal provisions are expected to come into force when necessary legislative proceedings have been completed within the Bulgarian Parliament's legislative procedure.

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HR	Croatia	Hrvatska agencija za nadzor financijskih usluga (HANFA)	Yes	https://hanfa.hr/investicijski-fondovi/obavijesti-subjektima-nadzora/
CY	Cyprus	Cyprus Securities and Exchange Commission (CySEC)	Yes	These Guidelines have been complied with via the CySEC circular C422 issued on 15 December 2020 which can be found at https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=43590f7a-4084-48ea-9d2c3c54c2196eaa
CZ	Czech Republic	Czech National Bank (CNB)	Yes	https://www.cnb.cz/en/supervision-financial-market/legislation/management-companies-and-investment-funds/methodological-and-interpretative-documents/
DK	Denmark	Finanstilsynet	Yes	The Danish FSA applies the guidelines directly as published in its supervisory activities regarding the use of performance fee in UCITS and AIFs. Thus, the guidelines are part of the Danish FSA's interpretation of the articles concerning performance fee in UCITS and AIFs. The Danish FSA have published an article about that on our website (but only in Danish): https://www.finanstilsynet.dk/Nyheder-og-Presse/Sektornyt/20

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EE	Estonia	Finantsinspeksioon	Yes	https://www.fi.ee/et/juhendid/investeerimine/euroopa-vaartpaberiturujarele-valve-esma-suuniste-suunised-eurofondide-ja-teatud-tuupi
ES	Spain	Comisión Nacional del Mercado de Valores (CNMV)	Intends to comply*	By such time as the necessary legislative or regulatory amendments have been completed. In this sense, article 5 of Royal Decree 1082/2012 and Rule 4 of Circular 6/2008 of the CNMV set up a performance reference period of three years not on a rolling-basis for the HWM model. Meanwhile paragraphs 40 and 41 of the guidelines establish a five-year performance reference period and on a rolling basis for the HWM model. For these reasons article 5 of Royal Decree 1082/2012 and Rule 4 of Circular 6/2008 of the CNMV ought to be amended in order to be aligned to paragraphs 40 and 41. CNMV is already conveying to the Government the need to consider those amendments.

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				National rules are compliant with the rest of the Guidelines (apart from the aforementioned paragraphs 40 and 41) and CNMV already complies with them.
FI	Finland	Finanssivalvonta (FSA)	Yes	Supervisory press release concerning the Guidelines Amendments to regulations and guidelines on the organisation and code of conduct of investment fund activities and on alternative investment fund managers - 2020 - www.finanssivalvont.a.fi
FR	France	Autorité des Marchés Financiers (AMF)	Yes	The AMF complies with ESMA guidelines on performance fees in UCITS and certain types of AIF. A press release was published and our guidance will be updated.
DE	Germany	BaFin	Yes	https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Meldung/2020/meldung_2020_12_03_anwendung_ESMA_GL_offene_publikumsfonds.html;jsessionid=4E44B08DE9F5AC132B4423435F97DDF1.2_cid393
GR	Greece	Hellenic Capital Market Commission (HCMC)	Yes	http://www.hcmc.gr/el_GR/web/portal/elib/news

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HU	Hungary	Magyar Nemzeti Bank (MNB)	Yes	MNB Recommendations 11/2021 (VII.1.) implemented the guidelines.
IE	Ireland	Central Bank of Ireland	Yes	<p>The Central Bank has issued a Consultation Paper regarding the incorporation of the ESMA Guidelines into our regulatory regime. This Consultation Paper is available here. The Consultation Paper makes clear that the ESMA Guidelines apply from 5 January 2021. A Markets Update article highlighting the publication of the Consultation Paper and the application of the ESMA Guidelines on 5 January 2021 was also published. The Paper sets out the approach to the application of the ESMA Guidelines in the context of the continuation of existing requirements, i.e. how the Central Bank's requirements work in conjunction with the ESMA Guidelines.</p> <p>The legislative requirements related to UCITS are set out in Regulations 40 and 74 of the Central Bank's UCITS Regulations 2019 (S.I. 290 of 2019). Requirements are also set out in the UCITS application</p>

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				<p>form, Section 2 - Prospectus (see here).</p> <p>The requirements for Retail AIFs are set out in Chapter 1, Part 1, Section 1 (5) and Chapter 5, section (iv) Operating Conditions (5) of the AIF Rulebook and in Section 2 – RIAIF Prospectus of the Retail AIF application form (see here).</p>
IT	Italy	Commissione Nazionale per le Società e la Borsa (CONSOB)	Yes	<p>CONSOB's Regulation of Issuers</p> <p>Bank of Italy's Regulation on Collective Investment Activity</p>
LV	Latvia	Financial and Capital Market Commission (FCMC)	Yes	<p>To ensure compliance with the ESMA Guidelines on performance fees in UCITS and certain types of AIFs (ESMA34-39-992), the FCMC has published a statement on its webpage: https://www.fktk.lv/ja/unumi/evti-publiskojusti-pamatnostadnes-par-ieguldijumu-fondu-un-dazuveidu-alternativo-ieguldijumu-fondu-maksu-par-darbibas-rezultatiem/ regarding application of the Guidelines by the FCMC in its supervisory practice. It is expected that investment</p>

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				management companies and alternative investment fund managers will comply with the Guidelines when applying the performance fees in UCITS and certain types of AIFs.
LT	Lithuania	Bank of Lithuania	Yes	https://www.lb.lt/uploads/documents/docs/27853_c3b961d7c9b798574009862e93b5d8f7.pdf
LU	Luxemburg	Commission de Surveillance du Secteur Financier (CSSF)	Yes	https://www.cssf.lu/wp-content/uploads/cssf/20_764eng.pdf
MT	Malta	Malta Financial Services Authority (MFSA)	Yes	<p>The Guidelines have been reflected in the following Rulebooks:</p> <ul style="list-style-type: none"> - Introduction of new sub-section 6.3 and new section 27 to Part BII of the Investment Services Rules for Retail Collective Investment Schemes (“the UCITS Rules”); - Introduction of new Section 9 to Part B of the Investment Services Rules for Alternative Investment Funds (“the AIF Rules”); - Introduction of new section 7 to Appendix 4 to Part B of AIFs Rules; - Introducing new SLC 1.24 to Part BII of the Investment Services Rules for

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				Investment Services Providers (“ the UCITS Manco Rules ”); and - Introducing new SLC 10.19 to Part BIII of the Investment Services Rules for Investment Services Providers (“ the AIFM Rules ”).
NL	Netherlands	Netherlands Authority for the Financial Markets (AFM)	Yes	https://www.afm.nl/nl/-/nl/professionals/nieuws/2020/december/e-sma-richtsnoeren-prestatievergoedingen
PL	Poland	Komisja Nadzoru Finansowego (KNF)	Yes	The KNF’s activity is compliant with the guidelines. The KNF has been systemically implementing a relevant methodology to all administrative proceedings encompassing performance fees. All the applications received at the KNF are verified against the Guidelines and in case of any irregularities, applicants are required to provide explanations. We also note that in the KNF’s letter to all fund management companies sent on 11 th January 2021, the KNF invited the entities to include the Guidelines already at the stage of preparing or revising their statutes. The KNF has also expressed an expectation that any new conclusions

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		<p>regarding performance fees will take into account the requirements included in the Guidelines with respect to: performance fee calculation method; consistency between performance fee model and the fund's investments objectives, strategy and policy; frequency for the crystallisation; negative performance (loss) recovery; disclosure of the performance fee model. Moreover the KNF has indicated with respect to those investment fund management companies in whose statutes performance fees are already included, that a verification of the performance fee calculation should be performed by these companies. Should a modification of a company's statute be required as a result of such verification, the KNF has requested that such companies apply for a change of statute in such an advance as to make sure their new statutes are adapted to the Guidelines by January 1st 2022. Taken all the above into account, there is no necessity to implement the Guidelines via the provisions of national law. It is sufficient to include the guidelines</p>

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				supervisory practices of the KNF.
PT	Portugal	Comissão do Mercado de Valores Mobiliários (CMVM)	Yes	esma34-39-992 guidelines on performance fees pt. pdf (cmvm.pt)
RO	Romania	Romanian Financial Supervisory Authority (ASF)	Yes	The rule was published in the Romanian Official Journal - Part I, No. 346/05.04.2021 and can be accessed at the following link: https://asfromania.ro/uploads/articole/attachments/606c697314910183146256.pdf
SK	Slovakia	National Bank of Slovakia (NBS)	Yes	Supervised entities were notified of the fact that the NBS expect them to comply with these guidelines.
SI	Slovenia	Securities Market Agency (SMA)	Yes	Guidelines are implemented in Slovenian legislation with Decision on the application of Guidelines on performance fees in UCITS and certain types of AIFs (Official Journal of the Republic of Slovenia, No. 200/20). https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-3638/sklep-o-uporabi-smemic-o-provizijah-za-uspesnost-pri-upravljanju-knpvp-in-nekaterih-vrst-ais
SE	Sweden	Finansinspektionen (FI)	No	Finansinspektionen does not comply and

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				does not intend to comply with the guideline in respect of open-ended AIFs which are allowed to be marketed to retail investors on the basis of the funds being admitted to trading on a regulated market. AIFs admitted to trading on a regulated market are, after authorisation by Finansinspektionen, allowed to be marketed to retail investors. The Swedish regulation does not provide specific rules on the fee structure of such funds. Finansinspektionen is therefore unable to comply with the guideline in respect of these funds.
EEA EFTA States **				
IS	Iceland	Central Bank of Iceland	Yes	
LI	Liechtenstein	Finanzmarktaufsicht (FMA)	Yes	
NO	Norway	Finanstilsynet	Yes	https://www.finanstilsynet.no/nyhetsarkiv/nyheter/2021/retningslinjer-om-resultatbaserte-honorarer-i-ucits-og-enkelte-alternative-investeringsfond/

* Please note that, in the interest of transparency, if a competent authority continues to intend to comply after the application date, it will be considered “non-compliant” unless (A) the Guidelines relate to a type of institution or instruments which do not currently exist in the jurisdiction concerned; or (B) legislative or regulatory proceedings have been initiated to bring

any national measures necessary to comply with the Guidelines in force in the jurisdiction concerned.

** The competent authorities of the EEA States other than the Member States of the European Union are required to notify their compliance with ESMA's guidelines or recommendations relating to a legal act that has been incorporated in the EEA Agreement. This compliance table reports on guidelines relating to the AIFMD [Directive 2011/61/EU] and the UCITS Directive [Directive 2009/65/EC], which have been incorporated in the EEA Agreement.

Notes

Article 16(3) of Regulation (EU) No 1095/2010 (the ESMA Regulation) requires national competent authorities to inform us whether they comply or intend to comply with each Guideline or recommendation we issue. If a competent authority does not comply or does not intend to comply it must inform us of the reasons. We decide on a case by case basis whether to publish reasons.

ESMA endeavours to ensure the accuracy of this document, however, the information is provided by the competent authorities and, as such, ESMA cannot accept responsibility for its content or any reliance placed on it.

For further information on the current position of any competent authority, please contact that competent authority. Contact details can be obtained from our website (www.esma.europa.eu).