



European Securities and
Markets Authority

Consultation Paper

**Guidelines on marketing communications 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 III. 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 **8 February 2021**.

All contributions should be submitted online at 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 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 EuVECAs, as well as (iii) institutional and retail investors (and associations of such investors) investing in alternative investment funds, UCITS, EuSEFs and EuVECAs.

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1 Executive Summary

Reasons for publication

Regulation (EU) 2019/1156 of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings (the “Regulation”) specifies that AIFMs, EuVECA managers, EuSEF managers and UCITS management companies shall ensure that marketing communications addressed to investors are identifiable as such and describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading.

The Regulation provides that ESMA shall develop guidelines on the application of these requirements for marketing communications, taking into account the on-line aspects of such marketing communications.

This consultation paper (“CP”) represents the first step in the development of these guidelines and sets out proposals on which ESMA is seeking the views of external stakeholders, as further explained in the following sections.

Contents

Section 2 explains the background to our proposals. Sections 3 to 6 give detailed explanations on the content of the proposals and seek stakeholders’ input through specific questions.

Annex I contains the legislative mandate set out in the Regulation to develop the Guidelines.

Annex II sets out the cost-benefit analysis related to the draft guidelines.

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

Annex IV contains the full text of the draft guidelines.

Next Steps

ESMA will consider the feedback it received to this consultation and expects to issue the final guidelines by 2 August 2021.

2 Background

1. Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings (the “Regulation”) was published in the Official Journal on 12 July 2019 and most of its provisions entered into force on 1st August 2019¹. The Regulation, along with the directive on cross-border distribution of collective investment undertakings², aims at facilitating the cross-border marketing of UCITS and AIFs, including EuVECAs and EuSEFs (referred to collectively as “funds” in this document), throughout the EU by removing existing barriers and enhancing the protection of investors.
2. In order to achieve this goal, the Regulation contains various tasks ascribed to ESMA, in particular to develop three sets of implementing technical standards setting-out standard forms, templates and procedures for the publication of information by competent authorities on their websites and for the notifications by competent authorities to ESMA in relation to national marketing requirements, regulatory fees and charges, and funds distributed on a cross-border basis³.
3. In addition, Article 4(6) of the Regulation requires ESMA to issue guidelines by 2 August 2021⁴, and thereafter update those guidelines periodically, on the application of the requirements for marketing communications referred to in Article 4(1) of the Regulation (the “Guidelines”). According to Article 4(1), AIFMs, EuVECA managers, EuSEF managers and UCITS management companies (referred to collectively as “fund managers”) shall ensure that all marketing communications addressed to investors are identifiable as such, that they describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading. Each of these requirements are detailed in separate sections of the Guidelines.
4. According to Article 4(6) of the Regulation, these Guidelines shall take into account the on-line aspects of marketing communications. As this is a general requirement that can apply to all aspects of marketing communications, ESMA is of the view that it should not be detailed in a separate section of the Guidelines, but rather treated as an aspect of all other requirements mentioned in Article 4(1) of the Regulation.
5. Against this background, the following sections summarise ESMA’s proposals in relation to the Guidelines, regarding their scope (section 3), the requirements relating to the identification of marketing communications as such (section 4), the description of risks and

¹ [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.](#)

² [Directive \(EU\) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings](#)

³ ESMA published a [consultation paper on draft implementing technical standards](#), and expects to publish a final report by 2 February 2021.

⁴ This date also corresponds to the date of entry into force of the provisions of Article 4(1) to 4(5) relating to the requirements for marketing communications, as per Article 19, sub-paragraph 3, of the Regulation.

rewards in an equally prominent manner (section 5) and the fair, clear and not-misleading characters of marketing communications (section 6).

3 Scope of the Guidelines

6. Since the scope of the Regulation is limited, by virtue of its Article 2, to fund managers, only these entities are subject to the Guidelines. Consequently, distributors, such as investment firms, are not subject to the Guidelines as such, although they may have to apply other rules governing the information issued to investors or potential investors, such as Article 44 of the Commission Delegated Regulation (EU) 2017/565⁵, which contains conditions for ensuring fair, clear and not misleading information to clients.
7. ESMA acknowledges that the distribution of funds is often carried out by distributors rather than directly by their fund managers, and that discrepancies between the requirements applicable to fund managers marketing the unit or shares of the funds that they manage and those applicable to distributors should be avoided, where possible. To this end, the requirements set out in the Guidelines have been designed to be substantially equivalent to those set out in Article 44 of the Commission Delegated Regulation (EU) 2017/565.
8. Notwithstanding the above, Article 4 of the Regulation specifies that fund managers are responsible for all marketing communications addressed to investors in relation to funds that they manage. Hence, they should be responsible for ensuring compliance of all marketing communications addressed to investors even when they are being addressed by distributors. This concerns, for example, situations where the authorised fund manager delegates the marketing function for the funds that it manages to a distributor. In such a situation, the fund manager should ensure that the relevant requirements for marketing communications are complied with by the distributor. In order to do so, it should contractually impose to the distributor(s) to comply with the applicable marketing requirements the manager is subject to.

Q1. In light of the fact that the Guidelines should apply to all marketing communications relating to investment funds and that distribution of funds is often carried out by distributors, the requirements set out in the Guidelines were inspired by those set out in Article 44 of the Commission Delegated Regulation (EU) 2017/565. Against this background, please specify whether:

- a) **You agree that the requirements set out in the Guidelines are in line with those set out in the provisions of Article 44 of the Commission Delegated Regulation (EU) 2017/565;**

⁵ [Commission Delegated Regulation \(EU\) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisation requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.](#)

- b) You see any gap between the guidance provided under the Guidelines proposed in this consultation paper and the rules applying under the provisions of the aforementioned Article. If so, please justify the reasons and specify which gaps you have identified, including if you consider that the guidance provided under the proposed Guidelines is more comprehensive than the rules applying under the provisions of the aforementioned Article; and**
- c) Any requirements of the proposed Guidelines should be further aligned with the provisions of the aforementioned Article.**

9. According to Article 4 of the Regulation, these Guidelines shall apply to “*all marketing communications addressed to investors*”. Therefore, it should be clearly determined what can constitute “marketing communications” pursuant to this provision, in order to determine the scope of the Guidelines.
10. These Guidelines should apply to all communications that have a marketing purpose. In this context, it may be useful to refer to how “Marketing” is defined by Article 4(1)(x) of the AIFMD⁶ 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*”.
11. In this context, the notion of “marketing communications” to which these Guidelines apply should encompass all communications, regardless of the medium used, which contain a direct or indirect offering or placement of units or shares of a fund to or with investors domiciled or with a registered office in the Union.
12. Against this background, it is proposed to specify, in the Scope section of the Guidelines, that they apply to all marketing communications for UCITS and AIFs, including EuVECA⁷, EuSEFs⁸, ELTIFs⁹ and Money Market Funds¹⁰, and to draw up a non-exhaustive list of the types of communications viewed as marketing communications, and therefore subject to these Guidelines. The purpose of this list is to ensure that all communications that have a marketing purpose, are subject to the Guidelines. In particular, to take into account the on-line aspects of marketing, the list introduces reference to messages broadcast on social media platforms, in order to ensure that these platforms are not used to target potential investors with messages that would otherwise not be subject to the same standards as traditional marketing communications.

⁶ [Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations \(EC\) No 1060/2009 and \(EU\) No 1095/2010.](#)

⁷ According to Article 3 of Regulation (EU) No 345/2013, EuVECAs are set-up as AIFs.

⁸ According to Article 3 of Regulation (EU) No 346/2013, EuSEFs are set-up as AIFs.

⁹ According to Article 1 of Regulation (EU) 2015/760, ELTIFs are set-up as AIFs.

¹⁰ According to Article 1 of Regulation (EU) 2017/1131, MMFs are set-up as UCITS or AIFs.

Q2. Do you agree with this all-encompassing approach as regards the definition of marketing communications?

Q3. Do you agree that a non-exhaustive list of marketing communications should be included in the Guidelines? If yes, please specify whether any element should be added to, or withdrawn from, this list, as set out in the Section 1 of Annex IV below.

Q4. Do you agree that the Guidelines appropriately take into account the on-line aspects of marketing communications? If not, please specify which aspects should be further detailed.

13. It is also proposed, for clarity purposes, to develop a negative list of all the types of communications that are not subject to the Guidelines. This should concern in particular the legal and regulatory documentation of the fund, such as the prospectus, fund rules or instruments of incorporation, KIID and KID (for funds subject to the obligation to draw up this document). This negative list could also clarify that other documents which are drawn up by the fund manager but do not have a marketing objective are not subject to the Guidelines, even when they are eventually handed down to investors or potential investors. This would help clarify that the qualification of a document as “marketing communication” depends on its substance rather than on its form.

Q5. Do you agree that the Guidelines should include a negative list of the documents that should not be considered as marketing communications? If not, please provide details on your views. If yes, please specify whether any element should be added to, or withdrawn from, this list, as set out in Section 1 of Annex IV below.

4 Guidelines on the identification as such of marketing communications

14. Article 4(1) of the Regulation provides that all marketing communications addressed to investors shall be identifiable as such. In ESMA’s view, the purpose of this requirement is to ensure that investors or potential investors can clearly identify that a communication aims at promoting investment in the shares or units of a fund and distinguish them from the legal and regulatory documentation of this fund, which provides more detailed information on the features of its units or shares.

15. The distinction between marketing communications and legal and regulatory documents may not always be clear, especially for retail investors. In addition, when provided in an on-line environment, marketing communications may not always appear as such. For example, the use of short messages on social media or the use of full webpages dedicated to promoting the investment in shares or units of an AIF or a UCITS may make it difficult to understand that the communication has a marketing objective.

16. To avoid all possible confusion between the legal documentation of a fund and marketing communications, ESMA is of the view that these communications should include a short disclaimer, which would make it clear that they have a marketing aim, and which would draw the attention of investors or potential investors to the fact that an investment decision should not be based only on this marketing communication. This disclaimer should also mention the existence of the legal and regulatory documents of the promoted fund, in particular the prospectus or the information documents referred to in Article 23(1) of the AIFMD, Article 13(1) of the EuVECA Regulation or Article 14(1) of the EuSEF Regulation, and of the KID or KIID, as to ensure that investors or potential investors are made aware of the existence of these documents. This disclaimer should be stated in a clear manner, which should be assessed in consideration of the type of marketing communication (e.g. for video presentations, the disclaimer should appear in a prominent manner in the video, a short warning at the end of the video would not be sufficient).
17. Additionally, Article 4(2) and 4(5) of the Regulation require that marketing communication disclose the existence of the fund's prospectus or KIID. In accordance with these provisions, marketing communications should clearly indicate where and how to obtain these documents.

Q6. Do you agree that a short disclaimer is the most appropriate format to identify marketing communications as such and that the disclaimer should mention the existence of the prospectus of the fund?

5 Guidelines on the description of risks and rewards in an equally prominent manner

18. According to Article 4(1) of the Regulation, UCITS management companies, AIFMs, EuVECA managers and EuSEF managers shall ensure that all marketing communications describe the risks and rewards of purchasing units or shares of an AIF or units or shares of a UCITS in an equally prominent manner. In ESMA's view, this requirement does not aim at addressing the content of the information on the risks and rewards of investing in the shares or units promoted in the marketing communication. It rather relates to the format of the description of risks and rewards and aims at allowing investors or potential investors to identify in a clear and easily understandable manner both the risks and the rewards of the promoted fund. This requirement should ultimately lead to a balanced disclosure of risks and rewards.
19. It should first be noted that the disclosure of risks and rewards in an equally prominent manner does not imply that this information is mandatory in all marketing communications. However, the following requirements should be applied for all marketing communications that include a reference to the risks or rewards of investing in the promoted fund.

20. This requirement implies that the marketing communication should refer to both the risks and the rewards in the same manner, by using the same font and size, and by placing each description along with the other in the communication. This could be done, for example, either in the form of a table or as a list. Marketing communications in which risks and rewards are not described with a similar format should be considered as not meeting the requirements set out in the Regulation. This would concern marketing communications where the rewards are described at the beginning while the risks are described at the end, marketing communications in which the rewards are described in the main body while the risks are described in a footnote, or marketing communications which contain only a description of the rewards and refer to another document containing the description of the risks.

Q7. Do you agree with the approach on the description of risks and rewards in an equally prominent manner? If you do not agree, please indicate your proposed approach to ensuring that all marketing communications describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner.

Q8. Please specify whether any specific requirements should be set out in the Guidelines for the description of risks and rewards in an equally prominent manner in marketing communications developed in other media than paper (e.g. audio, video or on-line marketing communications).

6 Guidelines on the fair, clear and not misleading character of marketing communications

21. Pursuant to Article 4(1) of the Regulation, fund managers shall ensure that “*all information included in marketing communications is fair, clear and not misleading*”. The purpose of these requirements is to ensure that the information contained in all marketing communications is balanced, understandable, not confusing to investors or potential investors, and is consistent with, and not contrary to, the legal and regulatory documentation of the promoted fund. However, the Guidelines do not aim at replacing existing national requirements on the information to be included in marketing communications (such as those relating to the fiscal treatment of the investment in the promoted fund) to the extent these are compatible with any existing harmonised EU rules (e.g. rules on disclosure of costs or performance in the KIID should not be contradicted or diminished by different national disclosure requirements on costs or performance in marketing communications).

22. To achieve this goal, ESMA proposes that the Guidelines include different sets of requirements to be taken into account when drawing up marketing communications. In particular, the Guidelines should set out some general requirements that all marketing communications, regardless of their format, outlook or content, should meet. Additionally, the Guidelines should include guidance on the presentation of some specific information, in

particular information on the risks and rewards of purchasing units or shares of a fund, the costs associated with the investment, the past and expected future performance, and the sustainability-related aspects of the investment.

6.1 General requirements

23. It is important that the Guidelines set out the main principles for the information contained in marketing communications to be considered as fair, clear and not misleading. In ESMA's view, this implies that the information is drawn-up in a manner suitable to the target investors or potential investors and is consistent with the information documents of the promoted fund.

24. The fair, clear and not misleading characters of the information should be assessed differently for marketing communications promoting funds open to retail investors and for marketing communications promoting funds open to professional investors only, as retail investors may need more explanation on the characteristics of a given fund or on the technical wording used in the marketing communication to make it understandable for them. On the contrary, marketing communications aimed at professional investors could contain, for example more technical language than marketing communications aimed at retail investors. While all marketing communications should abide by the same standards of being fair, clear and not misleading, and should in particular be identifiable as such, and describe risks and rewards in an equally prominent manner, the target audience could dictate how the information is written and presented.

Q9.What are your views on this approach? Do you agree that the fair, clear and not misleading character of the information may be assessed differently for marketing communications relating to funds open to retail investors and marketing communications relating to funds open to professional investors only?

25. All marketing communications should also be consistent with, and not contrary to, the legal and regulatory documents of the promoted funds, such as the prospectus, the fund rules or instruments of incorporation, the KIID or the KID. This requirement should imply that the information contained in a marketing communication does not differ from the same information disclosed in the aforementioned legal or regulatory documents and does not diminish or contradict it. In particular, in the event indicators, simulations or figures relating to risks and rewards, costs, past or expected future performance are mentioned in marketing communications, they should be the same indicators, simulations or figures as those referred to in the legal and regulatory documentation of the promoted fund.

26. While marketing communications may not always contain all the key information on the promoted fund, they should be stand-alone documents and should therefore refrain from making excessive cross reference to the legal and regulatory documents of the promoted fund mentioned in the previous paragraph.

Q10. Do you agree that marketing communications should use the same information as that included in the information documents of the promoted fund?

27. The fair, clear and not misleading character of the information contained in a marketing communication should be assessed in relation to any information describing the features of the promoted fund. However, this should not imply that marketing communications contain all the information necessary to make an investment decision, since this is the purpose of the fund's prospectus, information document mentioned in Article 23 of the AIFM, Article 13 of the EUVECA Regulation or Article 14 of the EuSEF Regulation, KID or KIID. The level of information contained in a marketing communication should be fit to the size and format of the marketing communication.
28. Against this background, all the information contained in a marketing communication should be presented in a fair, clear and not misleading manner. This concerns in particular any information on the fund's investment policy, the fund's underlying assets, any information on costs, risks and rewards, past and future performance, sustainability-related aspects of the investment, the use of leverage, and any information on whether the fund is passively or actively managed, or active but managed in reference to a benchmark index, or the reference to the name of the national competent authority.

Q11. What are your views on this approach? Do you agree that no minimum set information on the characteristics of the promoted investments should be required in marketing communications as this should depend on the size and format of the marketing communication?

6.2 Information on risks and rewards

29. In addition to its disclosure in an equally prominent manner, the information on risks and rewards included in a marketing communication should also be fair, clear and not misleading. This does not imply that all marketing communications should necessarily describe the risks and rewards of purchasing the shares or units of the promoted fund, since some communications, such as short messages broadcast on social media platforms, may contain only a short description of some characteristics of the promoted fund. However, when a marketing communication describes the risks and rewards of purchasing the promoted units or shares, some requirements should be met.
30. In particular, the information on rewards should always be accompanied by information on risks. The communication should not overemphasise the rewards or underemphasise the risks, but rather present both in a balanced manner. The information should be consistent with the risks and rewards described in the legal and regulatory documents of the promoted fund. Reference to rewards or risks not referred to in the information documents would not be viewed as consistent and should not be included in marketing communications.

Q12. What are your views on these requirements relating to the fair, clear and not misleading of the information on risks and rewards?

6.3 Information on costs

31. When providing information on costs, marketing communications should give a realistic picture of the costs borne directly or indirectly by investors and should encompass both one-off and ongoing costs. The aim of the disclosure of costs should be to enable investors or potential investors to understand the effects of costs on the amount and the net performance of their investment.
32. Any information on costs contained in marketing communications should not replace the same information contained in the legal and regulatory documents of the promoted fund. Hence, the purpose of the Guidelines should not be to regulate the level of details of the information on costs contained in marketing communications but should be limited to ensuring that it is fair, clear and not misleading.
33. Accordingly, when a marketing communication mentions the costs associated with the investment in the promoted fund, it should at least allow investors to understand the overall impact of costs on the amount of their investment and on the expected returns.
34. To ensure that the information is not misleading to investors or potential investors, costs which are represented in a different currency than the currency of the Member State in which the target investors are located should clearly disclose this information and mention the applicable currency conversion rate, as well as the effects that any currency conversion rate fluctuation may have on the costs.

Q13. Do you agree with this approach on the presentation of costs?

6.4 Information on past and expected future performance

35. The fair, clear and not misleading characters of the information contained in marketing communications should also apply to information on past and expected future performance when disclosed in marketing communications, as this information is key to influencing investors or potential investors to make a decision to invest in the promoted fund.
36. The information on past performance should give an accurate and fair representation of the situation of the promoted fund. Hence, it should not be the main information, and should be based on historical data. All information on past performance should be accompanied by the reference period and the source. Additionally, where no information on past performance is available, simulated past performance may be permitted only where it is based on comparable information.

37. As mentioned in paragraph 25 above, marketing communications should use the same indicators, simulations and figures as those included in the promoted fund's legal and regulatory documents. Hence, marketing communications promoting funds which draw up a KIID should display the past performance of the promoted fund over a period of 10 years, as foreseen in Article 15 of the KIID Regulation¹¹. However, some funds do not draw a KIID. For marketing communications related to these funds, it may be appropriate to impose the disclosure of past performance over a period of 5 years, since it is appropriate to follow requirements similar to those set out in Article 44 of the Commission Delegated Regulation (EU) 2017/565, which foresees that marketing communications issued by distributors should disclose past performance or simulated past performance over a period of 5 years. Additionally, some funds have to draw up a PRIIPs KID¹², which does not impose the disclosure of past performance. It may be appropriate for marketing communications promoting the investment in such funds to disclose a simulated past performance over a period of 5 years, as to ensure consistency with the requirements set out in the Commission Delegated Regulation (EU) 2017/565.
38. Since past performance or current circumstances are not reliable indicators of any future performance, marketing communications should include a disclaimer to insist on the fact that future performance cannot be predicted based on past performance, nor on the current situation.
39. As for expected future performance, marketing communications may include this information only provided that certain requirements are met. In particular, the estimation of the expected future performance should be based on reasonable assumptions supported by objective data and the expected future performance should be envisaged in the legal and regulatory documents of the fund and should not be mentioned only in marketing communications. It should clearly mention the timeframe of the disclosed expected future performance, and the communication should make it clear that any figure is only an objective.
40. To ensure that the information on expected future performance is fair, clear and not misleading, it should be disclosed for each fund and not on an aggregated basis when the marketing communication refers to a group of funds, and it should indicate that taxation may be applicable.
41. The reference period of expected future performance should also be clearly disclosed and should meet some requirements to ensure that it is fair, in particular be disclosed for a

¹¹ [Commission Regulation \(EU\) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.](#)

¹² This concerns AIFs which are open to retail investors, and which are not subject to draw up a UCITS KIID under national rules. However, it is to be noted that all AIFs marketed to retail investors should be included in the scope of the PRIIPs Regulation after 31 December 2021.

minimum of 12 months or its multiples. The impact of costs on expected future performance should be clearly set out.

Q14. Do you agree with this approach relating to the information on past and expected future performance?

6.5 Information on sustainability-related aspects

42. Finally, marketing communications may include some information on the sustainability-related aspects of the investments in the promoted fund. This is relevant in particular in the context of the implementation of sustainability considerations in the area of financial services and the growing interest of the public in financing sustainable activities in general.
43. In this context, Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector¹³ obliges certain financial market participants to disclose information on sustainability risks at entity level, and the principal adverse sustainability impacts at entity and product level. Furthermore, the sustainable product characteristics or objectives of products falling under Article 8 or Article 9 of Regulation (EU) 2019/2088 must be disclosed in the prospectus of a UCITS, the information documents referred to in Article 23(1) of the AIFMD, Article 13(1) of the EuVECA Regulation and Article 14(1) of the EuSEF Regulation.
44. While the inclusion of information on the sustainability aspects of the investment in a marketing communication relating to a fund should not be discouraged, the practice of “greenwashing”, which consists in gaining an unfair competitive advantage by marketing a financial product as environmentally friendly, when in fact basic environmental standards have not been met, should be avoided. In this regard, the extent of information in marketing communications on sustainable characteristics is important to determine whether a financial product should be considered to be promoting environmental or social characteristics under Article 8 of Regulation (EU) 2019/2088.
45. To ensure that the information on sustainability-related aspects of the promoted fund is fair, clear and not misleading, marketing communications should be based on the content of the prospectus of a UCITS or of the information document of an AIF, a EuSEF or a EuVECA. This would complement Article 13(1) of Regulation (EU) 2019/2088, which requires that marketing communications should not contradict the information disclosed under that Regulation.
46. The sustainability-related information of a marketing communication should be commensurate with the extent to which the investment strategy of the fund promotes environmental or social characteristics, or sustainable investment objectives. For example,

¹³ [Regulation \(EU\) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sectors.](#)



if the investment strategy of a fund is primarily pursuing financial performance, any sustainability-aspects of the investment in the promoted fund should not be the main information of a marketing communication.

47. In the future, ESMA will assess whether there is a need to update the Guidelines on the sustainability-related aspects of the investment which are included in marketing communications, in particular on the basis of the final requirements set out in the provisions of the Level 2 requirements under Regulation (EU) 2019/2088, including potential Implementing Technical Standards under Article 13(2) of that Regulation.

Q15. Do you agree with this approach relating to the information on the sustainability-related aspects of the investment in the promoted fund?



7 Annexes

7.1 Annex I: Legislative mandate to develop the Guidelines

These Guidelines relate to the provisions of the legislative framework on the cross-border distribution of funds, and in particular on the following provision of the Regulation.

Article 4 of the Regulation provides that:

“1. AIFMs, EuVECA managers, EuSEF managers and UCITS management companies shall ensure that all marketing communications addressed to investors are identifiable as such and describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading.

(...) 6. By 2 August 2021, ESMA shall issue guidelines, and thereafter update those guidelines periodically, on the application of the requirements for marketing communications referred to in paragraph 1, taking into account on-line aspects of such marketing communications.”

7.2 Annex II: Cost-benefit analysis

Technical options

The Regulation, together with Directive (EU) 2019/1160, aims at abolishing the barriers stemming from divergent regulatory and supervisory approaches concerning the cross-border distribution of funds. In this context, the Guidelines aim at setting common standards that marketing communications promoting UCITS and AIFs, including when these funds are set up as MMFs, EuSEFs or EuVECAs, in order to facilitate marketing of funds throughout EU Member States.

In this context, the following options were identified and analysed by ESMA to address the policy objectives of the Guidelines. In identifying the options set out below and choosing the preferred ones, ESMA was guided by the requirements set out in Article 4 the Regulation.

This CBA is qualitative in nature. Should relevant data be received through the consultation process, ESMA will take it into account when finalising its Guidelines and will include it in the CBA accompanying the final report.

1. Guidelines on the identification as such of marketing communications

Policy Objective	Under Article 4(1) of the Regulation, marketing communications should be identifiable as such.
Baseline scenario	The baseline scenario should be understood for this CBA as the lack of prescriptive standards allowing the identification as such of marketing communications, in particular compared to other legal and regulatory documents relating to a fund, such as the prospectus, the KIID or the KID. This situation allows fund managers to develop marketing communications which are presented in such a way that some investors may believe they constitute legal or regulatory information on the promoted fund, and make an investment decision based on this document only, although it may not contain all the relevant information on the promoted fund.
Technical proposal	In order to ensure that marketing communications are identifiable as such, the Guidelines require that: <ul style="list-style-type: none"> - Fund managers ensure that all references to the funds they manage in advertisements made by third parties are published only after their home competent authority has granted approval of the promoted fund and, if applicable, has notified that the promoted fund may be marketed;

	<p>- Marketing communications include a prominent disclaimer indicating that the document is only a marketing communication and should not be sufficient to take a decision to invest in the promoted fund.</p> <p>Marketing communications should avoid making excessive reference to legal or regulatory provisions.</p>
<p>Benefits</p>	<p>The requirements proposed in the Guidelines aim at ensuring that all marketing communications issued by fund managers in respect of the funds they manage can be identified as such by all investors or potential investors.</p> <p>ESMA considers that this will enhance investor protection by allowing a better comparability of investments in UCITS and AIFs, and inciting investors or potential investors to consult the promoted fund’s prospectus, KIID or KID. This should help investors base their investment decisions on the relevant information of the promoted fund, and not only on a marketing communication, which may not contain sufficient information on all aspects of the investment.</p> <p>Also, a lack of harmonisation in the identification as such of marketing communications may result in maintaining barriers to marketing, as Member States may maintain divergent standards on the identification of marketing communications, increasing the cost for fund managers and reducing investors’ understanding of the documents with which they are provided before making an investment in a fund.</p>
<p>Cost to regulators</p>	<p>The Guidelines may imply additional supervisory actions from NCAs to verify that fund managers have correctly met the requirements set out in these Guidelines when developing marketing communications.</p> <p>However, this is not expected to add significant costs to NCAs, as the verification of marketing communications can be made on an <i>ex ante</i> and voluntary basis pursuant to the powers conferred to NCAs by the Regulation. Hence, the supervision costs incurred for NCAs should not be seen as an obstacle for the implementation of the Guidelines.</p>
<p>Compliance costs</p>	<p>Additional costs to comply with the new requirements set out in the Guidelines are expected for fund managers. In particular, it</p>

	<p>is expected that these fund managers will have to review any existing template for marketing communications relating to UCITS and AIFs they manage in order to ensure that they are identifiable as marketing communications.</p> <p>However, it is expected that the costs of compliance with the Guidelines will be incurred only during a short period of time after the entry into force of these Guidelines. Indeed, the introduction of these requirements could have a beneficial effect in terms of standardising practices in developing marketing communications, in particular as consistent requirements will be applicable in all EU Member States, thus reducing the compliance costs over time.</p>
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2. Guidelines on the description of risks and rewards in an equally prominent manner

Policy Objective	Under Article 4(1) of the Regulation, marketing communications should disclose the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner
Baseline scenario	The baseline scenario should be understood for this CBA as the lack of prescriptive standards relating to the disclosure of risks and rewards of purchasing units or shares of an AIF or units of a UCITS in marketing communications promoting such investments. Under this scenario, fund managers may be inclined to develop marketing communications which overemphasize the rewards of investing in an AIF or a UCITS, or underemphasize the risks of such investment, or a combination of both. An unbalanced presentation of the risks and rewards of the investment is detrimental to investors and potential investors, who may base their investment decisions on insufficient or misleading information.
Technical proposal	<p>In order to ensure that the risks and rewards of purchasing units or shares of an AIF or units of a UCITS are disclosed in an equally prominent manner in marketing communications, the Guidelines require that:</p> <ul style="list-style-type: none"> - The description of any benefit is accurate and give a fair and prominent indication of any risks.

	<ul style="list-style-type: none"> - The equal prominence of the risks and rewards is assessed in relation to both the presentation and the format of their presentation in a marketing communication. - The font, size and position used to describe risks is the same as those used to describe the rewards. - Risks and rewards are both presented in the same document and are mentioned either at the same level or one immediately after the other.
<p>Benefits</p>	<p>The requirements proposed in the Guidelines aim at ensuring that all marketing communications issued by fund managers in respect of the funds they manage can be identified as such by all investors or potential investors.</p> <p>ESMA considers that this will enhance investor protection by inciting investors or potential investors to consult the promoted fund’s prospectus, KIID or KID. This should help investors base their investment decisions on the relevant information of the promoted fund, and not only on a marketing communication, which may not contain sufficient information on all aspects of the investment.</p> <p>Also, a lack of harmonisation in the identification as such of marketing communications may result in maintaining barriers to marketing, as Member States may maintain divergent standards on the identification of marketing communications, increasing the cost for fund managers and reducing investors’ understanding of the documents with which they are provided before making an investment in a fund.</p>
<p>Cost to regulators</p>	<p>As for the Guidelines on the identification as such of marketing communications, these Guidelines on the disclosure of risks and rewards in an equally prominent manner may imply additional supervisory actions from NCAs to verify that fund managers have correctly met the requirements set out in these Guidelines when developing marketing communications.</p> <p>However, this is not expected to add significant costs to NCAs, as the verification of marketing communications can be made on an <i>ex ante</i> and voluntary basis pursuant to the powers conferred to NCAs by the Regulation. Hence, the supervision costs</p>

	incurred for NCAs should not be seen as an obstacle for the implementation of the Guidelines.
Compliance costs	<p>As for the Guidelines on the identification as such of marketing communications, these Guidelines on the disclosure of risks and rewards in an equally prominent manner should incur additional costs for fund managers to comply with the new requirements set out in the Guidelines. In particular, it is expected that these fund managers will have to review any existing template for marketing communications relating to UCITS and AIFs they manage in order to ensure that they are identifiable as marketing communications.</p> <p>However, it is expected that the costs of compliance with the Guidelines will be incurred only during a short period of time after the entry into force of these Guidelines. Indeed, the introduction of these requirements could have a beneficial effect in terms of standardising practices in developing marketing communications, in particular as consistent requirements will be applicable in all EU Member States, thus reducing the compliance costs over time.</p>

3. Guidelines on the fair, clear and not misleading character of marketing communications

Policy Objective	Under Article 4(1) of the Regulation, the information included in marketing communications should be fair, clear and not misleading
Baseline scenario	The baseline scenario should be understood for this CBA as the lack of prescriptive standards relating to the characteristics of the information included in marketing communications. Under this scenario, marketing communications may contain information which is not sufficiently clear to investors and potential investors to make informed investment decisions.
Technical proposal	In order to ensure that the information included in marketing communications is fair, clear and not misleading, the Guidelines require that the information contained in marketing communications is presented in such a way that meet these requirements. In particular, the Guidelines require that:

- The marketing communication is presented in a way which is suitable to the target investors or potential investors;
- The information contained in marketing communications is consistent with the information contained in the legal and regulatory documents of the promoted fund, such as the prospectus, the KID or the KIID. This implies that any indicators, simulations or figures used in marketing communications should be the same as those included in such documents;
- Certain requirements are met for the description of the features of the investment: marketing communications should include sufficient information on the key features of the promoted fund, provide accurate details on the characteristics of the investment, avoid using certain terms that can be misleading to investors, or refrain from referring to the name of national competent authorities in such a way that could imply any endorsement or approval of the promoted fund;
- The information on risks and rewards is consistent with the same information contained in the promoted fund's prospectus, and is relevant to the situation of the promoted fund;
- The information on costs allow investors or potential investors to understand the overall impact of costs on the amount of their investment and on the expected returns and is represented in a pertinent currency;
- The information on past performance is consistent with the same information which is included in the promoted fund's legal and regulatory documents or may include simulated past performance in certain circumstances. It should also give sufficient information to reconcile the indications on past performance included in the marketing communication with the actual past performance of the promoted fund, and be presented in such a manner that it will not be the key element on which an investment decision is based;

	<ul style="list-style-type: none"> - The information on expected future performance should be based on reasonable assumptions supported by objective data and presented in a way making it clear that it is only an objective. - The information on the ESG-related aspects of the investment is consistent with the information included in the legal and regulatory documents of the promoted fund, should not overemphasize the extent to which the investment strategy of the product integrates sustainability-related characteristics or objectives, and should clarify that the decision to invest in the promoted fund should also take into account the other characteristics or objectives of the promoted fund.
<p>Benefits</p>	<p>ESMA considers that the lack of harmonisation of the standards that the information contained in marketing communications related to UCITS and AIFs throughout Member States constitutes a barrier to the development of cross-border marketing.</p> <p>Hence, the requirements set in the Guidelines aim at fostering investment in products available in all EU Member States by setting high quality standards for all marketing communications issued by fund managers, which should enhance the protection of investors and ensure their confidence in the quality of the information contained in marketing communications.</p> <p>The Guidelines also aims at encouraging cross-border marketing by setting high-quality standards for marketing communications, which are consistent in all EU Member States.</p>
<p>Costs to regulators</p>	<p>As for the Guidelines on the identification as such of marketing communications and on the disclosure of risks and rewards in an equally prominent manner, these Guidelines on the fair, clear and not misleading character of the information included in marketing communications may imply additional supervisory actions from NCAs to verify that fund managers have correctly met the requirements set out in these Guidelines when developing marketing communications.</p> <p>However, this is not expected to add significant costs to NCAs, as the verification of marketing communications can be made on an <i>ex ante</i> and voluntary basis pursuant to the powers conferred</p>

	to NCAs by the Regulation. Hence, the supervision costs incurred for NCAs should not be seen as an obstacle for the implementation of the Guidelines.
Compliance costs	<p>As for the Guidelines on the identification as such of marketing communications and on the disclosure of risks and rewards in an equally prominent manner, these Guidelines on the fair, clear and not misleading character of the information included in marketing communications should incur additional costs for fund managers to comply with the new requirements set out in the Guidelines. In particular, it is expected that these fund managers will have to review any existing template for marketing communications relating to UCITS and AIFs they manage, and verify that all categories of information included in such marketing communications comply with the specific requirements set out in the Guidelines, in order to ensure that they are identifiable as marketing communications.</p> <p>However, it is expected that the costs of compliance with the Guidelines will be incurred only during a short period of time after the entry into force of these Guidelines. Indeed, the introduction of these requirements could have a beneficial effect in terms of standardising practices in developing marketing communications, in particular as consistent requirements will be applicable in all EU Member States, thus reducing the compliance costs over time.</p>

4. Conclusions

In light of what has been illustrated above, ESMA believes that the overall supervisory and compliance costs associated with the implementation of the Guidelines are fully justified by the objectives described above and will be largely compensated by the benefits for market participants. In particular, it is expected that the Guidelines will enhance the clarity of the information addressed to investors and potential investors in relation to investments in UCITS and AIFs and will encourage such investments. It is also expected that the Guidelines will reduce the existing barriers for cross-border marketing which are faced by fund managers, by developing a harmonised regulatory framework relating to the content of marketing communications in all EU Member States.

ESMA is also of the view that the costs incurred for NCAs due to the implementation of the Guidelines are limited, necessary and ensue directly from their new power to carry out *ex ante* verifications of marketing communications.



Q16. What is the anticipated impact from the introduction of the proposed Guidelines? Do you expect that the currently used practices and models of marketing communications would need to be changed?

Q17. What additional costs and benefits would compliance with the proposed Guidelines bring to the stakeholder(s) you represent? Please provide quantitative figures, where available.

7.3 Annex III: Summary of questions

Q1. In light of the fact that the Guidelines should apply to all marketing communications relating to investment funds and that distribution of funds is often carried out by distributors, the requirements set out in the Guidelines were inspired by those set out in Article 44 of the Commission Delegated Regulation (EU) 2017/565. Against this background, please specify whether:

- a) You agree that the requirements set out in the Guidelines are in line with those set out in the provisions of Article 44 of the Commission Delegated Regulation (EU) 2017/565;**
- b) You see any gap between the guidance provided under the Guidelines proposed in this consultation paper and the rules applying under the provisions of the aforementioned Article. If so, please justify the reasons and specify which gaps you have identified, including if you consider that the guidance provided under the proposed Guidelines is more comprehensive than the rules applying under the provisions of the aforementioned Article; and**
- c) Any requirements of the proposed Guidelines should be further aligned with the provisions of the aforementioned Article.**

Q2. Do you agree with this all-encompassing approach as regards the definition of marketing communications?

Q3. Do you agree that a non-exhaustive list of marketing communications should be included in the Guidelines? If yes, please specify whether any element should be added to, or withdrawn from, this list, as set out in the Section 1 of Annex IV below.

Q4. Do you agree that the Guidelines appropriately take into account the on-line aspects of marketing communications? If not, please specify which aspects should be further detailed.

Q5. Do you agree that the Guidelines should include a negative list of the documents that should not be considered as marketing communications? If not, please provide details on your views. If yes, please specify whether any element should be added to, or withdrawn from, this list, as set out in Section 1 of Annex IV below.

Q6. Do you agree that a short disclaimer is the most appropriate format to identify marketing communications as such and that the disclaimer should mention the existence of the prospectus of the fund?

- Q7. Do you agree with the approach on the description of risks and rewards in an equally prominent manner? If you do not agree, please indicate your proposed approach to ensuring that all marketing communications describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner.**
- Q8. Please specify whether any specific requirements should be set out in the Guidelines for the description of risks and rewards in an equally prominent manner in marketing communications developed in other media than paper (e.g. audio, video or on-line marketing communications).**
- Q9. What are your views on this approach? Do you agree that the fair, clear and not misleading character of the information may be assessed differently for marketing communications relating to funds open to retail investors and marketing communications relating to funds open to professional investors only?**
- Q10. Do you agree that marketing communications should use the same information as that included in the information documents of the promoted fund?**
- Q11. What are your views on this approach? Do you agree that no minimum set information on the characteristics of the promoted investments should be required in marketing communications as this should depend on the size and format of the marketing communication?**
- Q12. What are your views on these requirements relating to the fair, clear and not misleading of the information on risks and rewards?**
- Q13. Do you agree with this approach on the presentation of costs?**
- Q14. Do you agree with this approach relating to the information on past and expected future performance?**
- Q15. Do you agree with this approach relating to the information on the sustainability-related aspects of the investment in the promoted fund?**
- Q16. What is the anticipated impact from the introduction of the proposed Guidelines? Do you expect that the currently used practices and models of marketing communications would need to be changed?**
- Q17. What additional costs and benefits would compliance with the proposed Guidelines bring to the stakeholder(s) you represent? Please provide quantitative figures, where available.**



7.4 Annex IV: Draft Guidelines

1 Scope

Who?

These guidelines apply to UCITS management companies, including any UCITS which has not designated a UCITS management company, Alternative Investment Fund Managers, EuVECA managers and EuSEF managers. The aforementioned entities should be responsible to ensure that all marketing communications addressed to investors comply with the requirements set out below regardless of the issuer of these marketing communications and/or who distributes the units or share of the relevant AIF or units of the relevant UCITS.

What?

The Guidelines should apply to all marketing communications addressed to investors for UCITS and AIFs, including when they are set up as EuVECA, EuSEFs, ELTIFs and MMFs. Examples of documents that may be considered as marketing communications include, *inter alia*:

- a) All messages advertising for a UCITS or an AIF, regardless of the medium, including paper printed documents or information made available in electronic format, press articles, press releases, interviews, advertisements, documents made available on the internet, as well as webpages, video presentations, live presentations, radio messages or factsheets.
- b) Messages broadcast on any social media platform, when such messages refer to any characteristics of a UCITS or an AIF, including the name of the UCITS or the AIF. For the purpose of these guidelines, the term “social media” should be understood as any technologies which enable social interaction and the creation of collaborative content online, such as blogs and social networks (Twitter, LinkedIn, Facebook, etc.) or discussion forums, accessible by any means (in particular electronic means, via a computer or mobile applications for example).
- c) Marketing material addressed individually to investors or potential investors, as well as documents or presentations made available by a UCITS management company, an AIFM, a EuVECA manager or a EuSEF manager to the public on its website or in any other places (fund manager’s registered office, distributor’s office, etc.).
- d) Communications advertising a UCITS or an AIF addressed to investors or potential investors located both in the home Member State of the fund manager or in a host Member State.

- e) Communications describing the characteristics of a UCITS or an AIF, which are handed down to distributors by a UCITS management company, an AIFM, a EuVECA manager or a EuSEF manager, which are eventually addressed to investors or potential investors, even if such communications were not meant to be handed down to investors or potential investors.
- f) Communications by a third party and used by a UCITS management company, an AIFM, a EuVECA manager, or a EuSEF manager for marketing purposes.

Examples of communications that should not be considered as marketing communications include, *inter alia*:

- a) Legal and regulatory documents of a fund, such as the prospectus or the information which is to be disclosed to investors in accordance with Article 23 of Directive 2011/61/EU, Article 13 of Regulation (EU) No 345/2013 or Article 14 of Regulation (EU) No 346/2013, the KIID and/or KID, the annual and half-yearly reports of a UCITS or an AIF, the Memorandum & Articles of Association, By-Laws, Trust Deed or similar documents required to legally establish a fund.
- b) Corporate communications broadcast by the fund manager describing its activities or some recent market developments and which do not refer to a specific UCITS or AIF or a group of UCITS or AIFs, unless the activities of the fund managers are limited to one fund or a small number of funds which are implicitly identified in such corporate communication.
- c) Short messages broadcast on-line, in particular on social media platforms such as Facebook or Twitter, which only include a link to a webpage where a marketing communication is available, but which do not contain any information on a specific AIF, UCITS or group of AIFs or UCITS.

When?

These guidelines apply from whichever is the latest between 2 August 2021 and the date of their publication.

2 Purpose

1. As specified in Article 4(6) of the Regulation¹⁴, the purpose of these guidelines is to specify the application of the requirements for marketing communications set out in Article 4(1) of the Regulation. In particular they establish common principles on the

¹⁴ [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.](#)

identification as such of marketing communications, on the description of risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and on the fair, clear and not-misleading character of marketing communications, taking into account on-line aspects of such marketing communications. However, the Guidelines do not intend to replace existing national requirements on the information to be included in marketing communications (such as those relating to the fiscal treatment of the investment in the promoted fund) to the extent these are compatible with any existing harmonised EU rules (e.g. rules on disclosure of costs or performance in the KIID should not be contradicted or diminished by different national disclosure requirements on costs or performance in marketing communications).

2. In accordance with Article 4(6) of the Regulation, these guidelines will be updated periodically.

3 Compliance and reporting obligations

3.1 Status of the guidelines

3. This document contains guidelines issued under Article 16 of the ESMA Regulation¹⁵. In accordance with Article 16(3) of the ESMA Regulation national competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.

3.2 Reporting requirements

4. Competent authorities to which these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, with reasons for non-compliance, within two months of the date of publication by ESMA. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website.

4 Guidelines on the identification as such of marketing communications

5. A UCITS management company, an AIFM, a EuSEF manager or a EuVECA manager should ensure that any reference to a UCITS or an AIF it manages in a press article, advertisement or press release on the internet or on any other medium is published only after its home national competent authority has granted approval of the promoted

¹⁵ [Regulation \(EU\) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority \(European Securities and Markets Authority\).](#)

fund and, if applicable, it has received notification that it may market the promoted fund in any host Member State targeted by that marketing communication.

6. The requirement for marketing communications to be identifiable as such should imply that all marketing communications include sufficient information to make it clear that the communication has a purely marketing purpose, is not a contractually binding document or an information document required by any legislative provision, and is not sufficient to take an investment decision. In this context, a marketing communication should be deemed to be identified as such when it includes a prominent disclosure of the terms “*marketing communication*” such that any person looking at it, or listening to it, can identify it as a marketing communication. Additionally, marketing communications should include a disclaimer such as the following:

“This is a marketing communication. This is not a contractually binding document. Please refer to the [prospectus of the [UCITS/ AIF/EuSEF/EuVECA]/Information document of the [AIF/EuSEF/EuVECA] and to the [KIID/KID](delete as applicable)] and do not base any final investment decision on this communication alone.”

7. The disclaimer should be clearly displayed in the marketing communication. Clarity should be assessed in consideration of the type of communication: in case of a video presentation, the disclaimer should be embedded in the video and displaying the disclaimer just at the end of the video should not be considered appropriate.
8. A marketing communication should not be considered identifiable as such when it contains excessive cross reference to legal or regulatory provisions unless this is appropriate (e.g. reference to the provisions of a domestic law setting governing the functioning of the specific type of AIF to which the communication relates).

5 Guidelines on the description of risks and rewards in an equally prominent manner

9. Including information on risks and rewards in marketing communications is not mandatory. However, when a marketing communication includes such information on risks and rewards, the following requirements should be met.
10. Marketing communications that reference any potential benefit of purchasing units or shares of an AIF or units of a UCITS should be accurate and always give a fair and prominent indication of any risks. This equally prominent disclosure of risks and rewards should be assessed in relation to both the presentation and the format of these descriptions.
11. When disclosing risks and rewards information, the font, size and position used to describe the rewards should be the same as those used to describe the risks. Information on risks should not be disclosed in a footnote or in small characters within the main body of the communication. Presenting risks and rewards in the form of a two-column table or summarised in a list clearly differentiating the risks and the rewards on

a single page is a good example of how risks and rewards can be presented in an equally prominent manner.

12. Marketing communications should not refer to the rewards without referring to the risks. In particular, a marketing communication should not describe only the rewards and refer to another document for the description of the risks.
13. Both the risks and rewards should be mentioned either at the same level or one immediately after the other.

6 Guidelines on the fair, clear and not misleading character of marketing communications

6.1 General requirements

Suitability of the marketing communication to the target investors or potential investors

14. All marketing communications, regardless of the target investors, should contain fair, clear and not misleading information. However, the level of information and the way that the information is presented may be adapted to whether investment in the promoted fund is open to retail investors (i.e. UCITS or retail AIFs), or to professional investors only (i.e. non-retail AIFs). In particular, marketing communications promoting funds open to retail investors should refrain from using technical wording, provide an explanation of the terminology used, be easy to read and, where relevant, provide adequate explanation on the complexity of the fund and the risks arising from investment to assist investors' understanding of the characteristics of the promoted fund.
15. When promoting a fund open to retail investors or potential retail investors, marketing communications should be considered clear for the target audience of the promoted fund if they are written in the official language(s), or one of the official languages, of the Member State in which they are provided. However, when promoting a fund open to professional investors only, marketing communications may be considered clear for the target audience of the promoted fund if they are written in a language customary in the sphere of international finance. Additionally, the information should be seen as not misleading when it is consistently presented in the same language throughout all marketing communications that are provided to each investor or potential investor, unless the investor or potential investor has agreed to receive information in more than one language.

Consistency with other documents

16. The information presented in the marketing communication should be consistent with the legal and regulatory documents of the promoted fund, as applicable, in particular:

- a) The prospectus or the information to be disclosed to investors in accordance with Article 23 of Directive 2011/61/EU, Article 13 of Regulation (EU) No 345/2013 or Article 14 of Regulation (EU) No 346/2013,
 - b) The legal documentation of the fund, in particular the Memorandum & Articles of Association, By-Laws, Trust Deed or similar documents required to legally establish a fund,
 - c) The KID or KIID,
 - d) The information disclosed on the websites of UCITS management companies, AIFMs, EuVECA managers and EuSEF managers under Regulation (EU) 2019/2088, and
 - e) The annual and half-yearly reports.
17. This requirement is applicable to, inter alia, the disclosure of the investment policy, recommended holding period, risks and rewards, costs, past and expected future performance, and sustainability-related aspects of the investment.
18. Consistency between the marketing communication and the information documents does not mean that all relevant information which is necessary to make an investment decision should be embedded in the marketing communication. However, the wording or the presentation used in the marketing communication should not be inconsistent with, add to, diminish or contradict any information mentioned in the legal or regulatory documents of the promoted fund.
19. Where indicators, simulations or figures relating to risks and rewards, costs, or past and expected future performance returns are mentioned or disclosed in marketing communications, they should be the same indicators, simulations or figures as those used in the information documents of the fund.

Description of the features of the investment

20. When a marketing communication describes some features of the promoted investment, the following requirements should be met.
21. The information on the features of the investment should be kept up to date.
22. The amount of information included in a marketing communication should be proportionate to the size and format of the communication. For example, when the marketing communication is a paper-printed or in electronic format, the font and font size should be such that the information is easily readable; if audio or video is used, the speed of speaking and volume of sound should make the information understandable and clearly audible.
23. When marketing communications describe some features of the investment, they should contain sufficient information to understand the key elements of those features

and should not make excessive cross-reference to the legal and regulatory documents of the promoted fund.

24. When providing details on the characteristics of the promoted fund, the communication should describe in an accurate manner the features of the investment which is promoted. Accordingly, the communication should:
 - a) Make it clear that the investment which is promoted concerns the acquisition of units or shares in a fund, and not in a given underlying asset such as building or shares of a company, as these are only the underlying assets owned by the fund.
 - b) Include at least a short description of the investment policy of the fund and an explanation on the types of assets into which the fund may invest.
25. When the communication relates to the use of leverage, regardless of how the leverage is gained, it should include an explanation on the impact of this characteristic, concerning the risk of potential increased losses or returns.
26. When marketing communications describe the investment policy of the promoted fund, in order to assist investors' understanding, the following is recommended practice:
 - a) In the case of index-tracking funds, the words "passive" or "passively managed" should be included in addition to the words "index-tracking";
 - b) When the promoted fund is actively managed, explicitly using the terms "active" or "actively managed";
 - c) Active funds which are managed in reference to an index should provide additional disclosure on the use of the benchmark index and indicate the degree of freedom from the benchmark;
 - d) Active funds which are not managed in reference to any benchmark index should also make this clear to investors.
27. The information contained in marketing communications should be presented in a way that is likely to be understood by the average member of the group of investors to whom it is directed, or by whom it is likely to be received. When the marketing communication promotes a fund open to retail investors, it should provide additional wording to ensure that the meaning of all terms describing the investment are clear.
28. Marketing communications should refrain from referring to the name of the national competent authority in a manner that would imply any endorsement or approval of the units or shares which are promoted in the communication by the authority. In particular, a visa or marketing authorisation granted by a national competent authority may be referred to in a marketing communication, but it should not be used as a sales argument.
29. In the case of short marketing communications, such as messages on social media, the marketing communication should be as neutral as possible, also it should indicate

where more detailed information is available, in particular by using a link to the relevant webpage where the information documents of the fund are available.

30. All statements embedded in the marketing communication should be adequately justified based on objective and verifiable sources, which should be quoted. In addition, the communication should refrain from using overoptimistic wording, such as “the best fund” or “the best manager”, wording that would diminish the risks, such as “safe investment” or “effortless returns”, or wording that may imply high returns, such as “high yield”, without clearly explaining that such high returns may not be reached and that there is a risk of losing all or part of the investment.
31. Comparison of the promoted fund with other funds should be limited to funds characterised by a similar investment policy and a similar risks and rewards profile based on the summary risk indicator of the KID or the synthetic risk and reward indicator of the KIID, unless the marketing documents contain a pertinent explanation on the difference of the funds.
32. Any reference to external documents, such as an independent analysis published by a third-party, should mention at least the source of the information and the period to which the information contained in the external document relates.

6.2 Information on risks and rewards

33. In addition to the requirements set out in section 5 above relating to the description of risks and rewards in an equally prominent manner, the following requirements should be met by marketing communications when they include information on such risks and rewards.
34. The disclosure of the risk profile of the promoted fund in a marketing communication should refer to the same risk classification as that included in the KID or the KIID.
35. Marketing communications that mention the risks and rewards of purchasing the units or shares of the promoted fund should refer at least to the material risks mentioned in the KID, the KIID, the prospectus, or the information referred to in Article 23 of Directive 2011/61/EU, Article 13 of Regulation (EU) No 345/2013 or Article 14 of Regulation (EU) No 346/2013. These marketing communications should also mention where complete information on the risks can be found in a clear and prominent manner.
36. The representation of a ranking in a marketing communication may be based only on a representative sample of similar funds in term of investment policy and risk/rewards profile. The ranking’s representation should also include the reference to the relevant period (at least 12 months or its multiple) and the funds’ risk classification.
37. In case of AIFs open to retail investors, the marketing communication should clearly mention the illiquid nature of the investment where this is the case and inform investors that they should invest in the fund only a small proportion of their overall investment portfolio.

38. For funds recently set up and for which no past performance records are available, the reward profile may be represented only by reference to the benchmark's past performance or to the objective return, when a benchmark or objective return are envisaged in the legal and regulatory documents of the promoted fund.

6.3 Information on costs

39. When referring to the costs associated with purchasing units or shares of an AIF or units of a UCITS, marketing communications should include explanation to allow investors to understand the overall impact of costs on the amount of their investment and on the expected returns.
40. Where any part of the total costs is to be paid in, or represents an amount of, a currency other than that of the Member State in which the target investors are residents, the marketing communication should provide an indication of the currency involved, the applicable currency conversion rates and costs, and the arrangements for payment or other performance.

6.4 Information on past performance and expected future performance

Information on past performance

41. In accordance with paragraph 20 above, when a marketing communication refers to the past performance of the promoted fund, this information should be consistent with the past performance included in the prospectus, in the information to be disclosed to investors in accordance with Article 23 of Directive 2011/61/EU, Article 13 of Regulation (EU) No 345/2013 or Article 14 of Regulation (EU) No 346/2013, in the KID or in the KIID. In particular, when the performance is measured against a benchmark index in the prospectus, the information to be disclosed to investors in accordance with Article 23 of Directive 2011/61/EU, Article 13 of Regulation (EU) No 345/2013 or Article 14 of Regulation (EU) No 346/2013, the KID or the KIID, the same benchmark index should serve as a reference in the marketing communication.
42. Information on past performance should not be the main information of the marketing communication. It should be based on historical data. It should mention the reference period chosen for measuring the performance and the source of the data in a clear manner. As an example, disclosing the reference period and the source in a footnote should not be deemed as disclosed in a clear manner.
43. Any change that affected significantly the past performance of the promoted fund, such as a change of the fund manager, should be prominently disclosed.
44. When displaying cumulative performance, the communication should also display the performance of the fund on a yearly basis for the considered period. To be displayed

in a fair and not misleading manner, the cumulative performance could be presented, for example, in the form of a graph.

45. When information on past performance is presented, this information should be preceded by the following statement:

“Past performance does not predict future returns”.

46. If the information on past performance relies on figures denominated in a currency other than that of the Member State in which the target investors are residents, the currency is clearly stated, together with a prominent warning indicating that returns may increase or decrease as a result of currency fluctuations.

47. When no information on the past performance of the promoted fund is available, in particular when it has been recently set up, marketing communications should avoid disclosing a simulated past performance based on non-pertinent information. Hence, disclosing simulated past performance should be limited to marketing communications relating to:

- a) A new share class of an existing fund or investment compartments, where the performance can be simulated on the basis of the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the fund; and
- b) A feeder fund whose performance can be simulated by taking the performance of its master, provided that the feeder’s strategy and objectives do not allow it to hold assets other than units of the master and ancillary liquid assets, or that the feeder’s characteristics do not differ materially from those of the master.

48. Simulated past performance should be disclosed for the preceding 10 years for funds establishing a KIID, or for the preceding 5 years for other funds, or the whole period for which the relevant funds have been offered if less than five years. In every case that simulated past performance information should be based on complete 12-months periods.

49. Information on simulated past performance should satisfy, *mutatis mutandis*, the requirements set out in paragraphs 41 to 46 above.

Information on expected future performance

50. When a marketing communication refers to the expected future performance and to the reward profile of the promoted fund, the following requirements should apply.

51. Expected future performance should be based on reasonable assumptions supported by objective data.

52. Expected future performance may be disclosed only per fund and no aggregate figures should be allowed.

53. Expected future performance should be disclosed on a time horizon which is consistent with the recommended investment horizon of the fund.
54. When information on expected future performance based on past performance and/or current conditions is presented, this information should be preceded by the following statement:

“The scenarios presented are an estimate of future performance based on evidence from the past on how the value of this investment varies, and/or current market conditions and are not an exact indicator. What you will get will vary depending on how the market performs and how long you keep the investment/product.”
55. Marketing communications should also include at least a disclaimer according to which future performance is subject to taxation which depends on the personal situation of each investor and which may change in the future.
56. The information on expected future performance should include a statement according to which investment may lead to a financial loss if no guarantee on the capital is in place.
57. If the information concerns an ETF, marketing communications should indicate the regulated markets where the fund is traded, and if any figures on expected future performance is mentioned in the marketing communication, they should be based on the fund’s NAV.

6.5 Information on sustainability-related aspects

58. When a marketing communication refers to the sustainable-related aspects of the investment in the promoted fund, the information should be consistent with the information included in the legal and regulatory documents of the promoted fund. A link to the website where information on sustainable-related aspects are provided pursuant to Regulation (EU) 2019/2088 in relation to the promoted fund may be included in the marketing communication.
59. Information on the sustainability-related aspects of the promoted fund should not outweigh the extent to which the investment strategy of the product integrates sustainability-related characteristics or objectives.
60. When they refer to the sustainability-related aspects of the promoted fund, marketing communications should indicate that the decision to invest in the promoted fund should also take into account all the characteristics or objectives of the promoted fund as described in its prospectus, or in the information which is to be disclosed to investors in accordance with Article 23 of Directive 2011/61/EU, Article 13 of Regulation (EU) No 345/2013, Article 14 of Regulation (EU) No 346/2013 where applicable.