

**ESMA**

CS 60747 - Rue de Grenelle  
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Milan, 8 February 2021

**Consultation: Guidelines on marketing communications under the Regulation on cross-border distribution of funds**

ANASF, the national Association representing financial advisors authorised to offer investment services outside the premises of financial intermediaries (*consulenti finanziari abilitati all'offerta fuori sede*), would like to express a few considerations regarding the subject of the consultation paper.

**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.**

*We think that it is absolutely correct to apply the same rules concerning marketing communications laid down in art. 44 by the MiFID II Delegated Regulation, in order to have an effective harmonisation of rules and the same clarity and transparency for final clients. We do not see any shortcoming in the proposal.*

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

*Yes, we think that the choice of a totalizing approach for the definition of what can be considered a marketing communication for different types of products is appropriate.*

**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 If yes, please specify whether any element should be added to, or withdrawn from, this list, as set out in the Section 1 of Annex IV below.**

*The proposed list is exhaustive and useful to identify with practical examples which marketing communication can be considered as such.*

*It would be appropriate to underline in a clear way the non-exhaustivity of the proposed list.*

**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.**

*Yes, of course, especially considering that on-line communication is the most widespread and thus deserves to be regulated with more attention.*

**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.**

*Yes, especially the fact that all the pre-contractual documentation necessary for the provision of investment services is very different in form and goals from marketing communications must be made clear for the final client.*

**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?**

*We strongly agree, a short disclaimer is a satisfying communication for us. We think that it is necessary that such disclaimer makes an explicit mention to the fund's regulatory and contractual documentation, like as an example the prospect and the KID, in a way that makes clear the fact that marketing communications are different from mandatory disclosures for the client.*

**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.**

*We agree on the fact that risks as well as benefits should be highlighted, preventing from giving prevalence of any sort to benefits relative to risks, as an example by using bigger or different fonts that gives more prominence to benefits.*

**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).**

*Yes, we think that it is proper to set univocal criteria for all forms of communication, regardless of the used channel.*

**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?**

*We think that marketing communications can diverge depending on the clients' type to which they're intended, preferring a more simple and detailed communication for retail clients and a more technical one for professional clients, as far as clients' protection is maintained.*

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

*If marketing communications refer to information included in pre-contractual informative documents like indices, simulations of benefits, costs, past or predicted future performances, communications must be compliant with what is contained in the fund's official documents, so that the client can find there the same information. It is also necessary to pay attention in particular to the form and the substance of marketing communication so that it is not considered by the client, on the basis of the specific information contained therein, an official document of the 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?**

*We think that it is not necessary to define a minimum content for the information that has to be included in the marketing communication since this choice depends on the dimension and the format of the communication. Of course, marketing communication doesn't have to include all the necessary information to make an investment choice, since this is the aim of the fund's prospect and the pre-contractual informative documents.*

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

*As we say in the answer to question 7, we think that advertising communication should contain information on the benefits and the risks, not giving too much relevance to the first relative to the latter. The client must perceive that this information has the same relevance.*

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

*Yes, we think that the proposed presentation of costs is correct. If information about costs linked to the investment in the promoted fund is given, such information has to allow investors to understand the overall impact of costs on the total investment and its expected returns, while not being the only essential element of the quality of the product presented.*

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

*We agree on the fact that information on past returns has to be correctly represented to clients and particularly accurate, with a clear indication of the reference period and the source. We agree as well on the fact that the disclaimer for potential clients shouldn't emphasize in particular information on past performances, since the same information cannot be considered as such reliable indicators of the fund's future performances.*

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

*It is surely relevant that marketing communication specifies clearly if the fund fulfils sustainability criteria from an ESG point of view. As stated by the Authority, we need to pay attention in particular to this kind of communication so that this does not become a vehicle for greenwashing, marketing a financial product that is referred as compliant with sustainability criteria without having effective sustainability features.*

ANASF, in thanking you for your attention, is at your disposal for any queries you may have.

Best Regards,



Luigi Conte  
ANASF President