

BVI¹'s response to the consultation on the Draft technical standards on the notifications for cross-border marketing and cross-border management of AIFs and UCITS

Please make your introductory comments below, if any:

We welcome the creation of standard forms for the transmission of the relevant information in principle. However, ESMA goes beyond the existing practice and the requirements of the UCITS and AIFM Directives without need. The principle of the respective responsibilities of the national competent authorities of the member states should be observed. Detailed information that is only relevant for the supervisory tasks of the home authority should not need to be submitted to the authority of the host member state.

Questions

Question 1: Do you agree with the content of the provisions of the first chapter of the draft RTS as regards the information to be notified in relation to the provisions of activities in a host Member State by a management company? If not, please justify your position and make proposals of amendments.

No, we do not agree. Chapter 1 requires information that is only in the responsibility of the home NCA of the management company. Art. 20 (1) UCITS Directive stipulates that management companies shall submit documents to the home NCA, e.g. on delegation agreements. This includes information on investment management and administration in accordance with Annex II of the UCITS Directive. However, according to Annex II, Part 2, of the Draft RTS the details are now to be deepened. In addition to the name of the person or company to which the outsourcing takes place, information on contact persons and reporting lines should now be provided. According to Article 19 UCITS Directive, the home state NCA is responsible for the organisational set-up of the management company, including delegation agreements. The EU distribution passport is deliberately designed to leave the responsibility with the home NCA and only provide the host member state NCA with the information necessary for performing its specific duties. Information on contact persons and reporting lines is therefore not necessary and Annex II, Part II should be adapted accordingly.

¹ BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset Managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 116 members manage assets of some EUR 4 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 28%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.



Question 2: Do you agree with the content of the provisions of the second chapter of the draft RTS as regards the information to be notified in relation to the provisions of activities in a host Member State by an AIFM? If not, please justify your position and make proposals of amendments?

Again, we do not agree. Chapter 2 requires information that is only relevant for the supervisory functions of the home NCA of the management company, e.g. on delegation agreements. According to Article 19 UCITS Directive, the home state NCA is responsible for the organisational set-up of the management company, including delegation agreements.

Question 3: Do you agree with the template notification letter set out in Annex I of the draft ITS? If not, please specify the items for which you foresee a different approach and make alternative proposal.

We by and large agree with the structure of the template notification letter, but please see our response to question 4.

As part of this notification proposal, we do hope, however, that also consideration is given to harmonising the notification procedure currently in place across the EU. Some Member States may have an electronic portal to enter and upload information, others require specific forms and zip files. An EU-wide tool that points to the respective NCA concerned would help in this regard and might simplify the information exchange, especially if the same information may be used for different distribution countries.

Question 4: As indicated in Section 1 of Part 3 of the template notification letter set out in Annex I of the draft ITS, management companies would be required to provide information on the “envisaged marketing strategy in the host Member State in relation to each fund the marketing of which is intended”. What type of information could you provide in this context, including any type of indicator or supporting document?

However, the information required regarding the marketing structure in the host state according to Part 3 of the template is very far reaching, in particular with respect to marketing arrangements via local regulated (MiFID II) firms. In many cases notified funds will be available for investment but not necessarily actively marketed by the distributor. Further, given the nominee structure/global certificate, products might be available for investment without a dedicated distribution agreement and knowledge of the manufacturer. Also, funds might be listed by broker/dealers without knowledge and/or consent of the manufacturer. Notification should be limited to cases where distribution partners demand and promote certain products. So the notification should be rather a one-off at fund set-up and registration for a respective countries than a continuous update. Cannot be done for each distributor.

It is unclear why UCITS shall refer to the websites of the NCAs if this information can all be accessed on the ESMA website.

In any case, a field would have to be added to the checkbox options if it is not (yet) clear who will distribute the fund.



Question 5: Would you be able to provide information on the envisaged marketing targets in the host Member State, in particular as regards the minimum and maximum capital raising target, the expected duration of the marketing and the revenues treatment? If not, please explain why this information would not be available when notifying the intention to market a given UCITS.

No, management companies would not be able to give this information in general.

UCITS are open-ended funds and have an unlimited term. It may therefore not be possible to anticipate the scope and intended period of distribution. This also depends to a large extent on actual sales in the individual markets.

Furthermore, we would like to point out that appropriateness and suitability aspects have to be considered within the distribution process and rightly determine any distribution ambitions. Consequently, Management Companies may not set any distribution targets for distributors and/or have – linked to this – any specific incentives in place for promotion of funds. Further, please note that certain regulations also prohibit these kind of incentive models at distributor level (e.g. in Germany BT9 [MaComp - Mindestanforderungen an die Compliance-Funktion und die weiteren Verhaltens-, Organisations- und Transparenzpflichten für Wertpapierdienstleistungsunternehmen](#)). Against this background we would not have any specific information to share on the mentioned items.

Question 6: Do you agree with the template notification letter set out in Annex II of the draft ITS? If not, please specify the items for which you foresee a different approach and make alternative proposals.

We would like to point out that with the finalisation of AIFMD and UCITS review and the expected amendments to reporting obligations, especially on delegation, we fear a duplication of efforts to comply with the reporting requirements stemming from this regulatory proposal as well as the upcoming one. Consequently, we would urge to delay amendments to the notification requirements for UCITS and AIFM as outlined in Annex II and V.

Question 7: Do you agree with the template notification letter set out in Annex III of the draft ITS? If not, please specify the items for which you foresee a different approach and make alternative proposals.

Please see our responses to questions 3 and 4.



Question 8: As indicated in Section 1 of Part 3 of the template notification letter set out in Annex III of the draft ITS, AIFMs are required to provide information on the “envisaged marketing strategy in the home Member State in relation to each AIF the marketing of which is intended”. What type of information could provide in this context, including any type of indicator or supporting document?

Please see our response to question 4.

Part 3, section 2: The indication of other information required by the competent authorities of the home Member State in accordance with Article 5 (1) of Regulation 2019/1156 also makes no sense in our view, as this information is (must be) published by the home competent authority itself. A disclosure by the management company is superfluous.

Question 9: Please provide feedback on whether information on the envisaged marketing of AIFs in the home Member State of the AIFM would be available, in particular as regards the minimum and maximum capital raising target, the expected duration of the marketing and the revenues treatment? If not, please explain why this information would not be available when notifying the intention to market a given AIF.

Please see our response to question 5.

Question 10: Do you agree with the template notification letter set out in Annex IV of the draft ITS? If not, please specify the items for which you foresee a different approach and make alternative proposals.

Please see our responses to questions 3 and 4.

Question 11: As indicated in Section 1 of Part 3 of the template notification letter set out in Annex IV of the draft ITS, AIFMs are required to provide information on the “envisaged marketing strategy in the host Member State in relation to each AIF the marketing of which is intended”. What type of information could you provide in this context, including any type of indicator or supporting document?

Please see our response to question 4.

Question 12: Please provide feedback on whether information on the envisaged marketing of AIFs in the host Member State would be available, in particular as regards the minimum and maximum capital raising target, the expected duration of the marketing and the revenues treatment? If not, please explain why this information would not be available when notifying the intention to market a given AIF.

Please see our response to question 5.



Question 13: Do you agree with the template notification letter set out in Annex V of the draft ITS? If not, please specify the items for which you foresee a different approach and make alternative proposals.

Please see our responses to questions 3 and 4.

Question 14: What is the anticipated impact from the introduction of the proposed ITS and RTS? Do you expect that the currently used practices, in particular as regards the content of the information provided to NCAs and the models used to notify cross-border marketing or the provision of activities in a host Member State, would need to be changed?

Please see our response to question 1. Part 2 of Annex II should be adapted.

Question 15: What would be the additional costs and benefits of the proposed ITS and RTS? Please provide quantitative figures, where available, in particular in relation to costs of compliance.

N/A