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| Response Form to the Consultation Paper |
| Draft technical standards on the notifications for cross-border marketing and cross-border management of AIFs and UCITS |

Responding to this paper

ESMA invites comments on all matters in the Consultation Paper (CP) on draft technical standards on the notification for cross-border marketing and cross-border management of AIFs and UCITS and in particular on the specific questions summarised in Annex III of this CP. Comments are most helpful if they:

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

ESMA will consider all comments received by **9 September 2022.**

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

**Instructions**

In order to facilitate analysis of responses to the CP, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions of the CP in the present response form.

Please do not remove tags of the type <ESMA\_QUESTION\_NOTIF\_1>. Your response to each question has to be framed by the two tags corresponding to the question.

1. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
2. When you have drafted your response, name your response form according to the following convention: ESMA\_ NOTIF\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_ NOTIF\_ABCD\_RESPONSEFORM.
3. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation Paper on the draft technical standards on the notifications for cross-border marketing and cross-border management of AIFs and UCITS”).

**Publication of responses**

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

**Data protection**

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

**Who should read this paper?**

All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest for alternative investment fund managers, internally managed AIFs, UCITS, management companies, internally managed UCITS, and their trade associations, as well as professional and retail investors investing into UCITS and AIFs and their associations..

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | European Fund and Asset Management Association (EFAMA) |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Belgium |

*Please make your introductory comments below, if any:*

<ESMA\_QUESTION\_NOTIF\_0>

EFAMA welcomes the opportunity to provide high-level feedback on ESMA's draft technical standards for cross-border marketing and management of AIFs and UCITS, intended to further harmonise the related notification documentation. Common notification practices would facilitate cross-border product distribution and ensure the uniformity of applicable terms. Nonetheless, we suggest that any action should aim to further simplify and streamline the notification processes, while avoiding unnecessary reporting efforts and duplication.

Further to this brief preamble, we make the following few considerations:

1. With regards to the draft regulatory technical standards (RTS) on the information to be notified by managers to carry out their activities in a host Member State, EFAMA welcomes ESMA’s efforts to clarify the notification information for both management companies and AIFMs under the UCITS and AIFMD. While we agree with the fact that management companies should provide competent authorities of the UCITS home Member States with a list of meaningful information, we find that certain requirements under Article 3 of the draft RTS “Information to be provided under Article 20(1) of Directive 2009/65/EC” – such as the requirement to provide copies of delegation agreements, as well as the name, address and contact details of the delegate – seem to go beyond the requirements of Article 20(1) of UCITS Directive[[1]](#footnote-2).
2. Concerning the implementing technical standards (ITS) on form and content of notification letters, we appreciate the approach adopted by ESMA as it aims at ensuring that notifications for the cross-border marketing and the cross-border management of UCITS and AIFs are made in a consistent manner. However, we note that the template notification letters suggested by ESMA might be cumbersome and difficult to comply with as they require detailed information that might be confidential, or not be readily available, especially in the case of third-party management companies. More precisely, we have identified the following issues:

* Maintaining a list of third-party distributors, as well as a list of websites through which funds are marketed, in a host jurisdiction would be cumbersome and would require frequent updates of the notification documentation every time a fund is marketed through a new distributor (including when the fund is distributed by an independent intermediary without a prior distribution agreement with the concerned management company);
* Providing a short description of the marketing strategy would also require frequent updates of the notification documentation. Marketing strategies evolve and are regularly updated by management companies depending on a number of parameters such as market conditions, strategy of the distributor, etc.;
* Since UCITS, and AIFs to a lesser extent, are open-ended funds, the requirement to indicate an expected duration or the minimum and maximum capital raising target upon notification appears quite odd.

1. ESMA should in addition strive to harmonise the means of submission of these passporting notifications. While some national competent authorities may have an electronic portal to enter and upload passporting notifications, other authorities require management companies to provide the notification letters under a specific format with attachments in zip files. An EU-wide platform that would allow management companies to direct their passporting notifications to the relevant national competent authorities would be helpful in this regard and may simplify the notification process, especially for funds that are marketed in several jurisdictions.

Finally, the technical standards being considered should not apply retroactively to existing passporting notifications. Once these technical standards enter into force, management companies should not be required to re-submit their existing passporting notifications under the new format. This should nevertheless occur when there are material changes to the underlying distribution arrangements, where the concerned management companies should use the new templates to update their existing notification documentation. This approach would ensure a proportional and incremental implementation of the technical standards currently under consideration.

Attached, please find a copy of our high-level response for your references.

<ESMA\_QUESTION\_NOTIF\_0>

Questions

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.

<ESMA\_QUESTION\_NOTIF\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_NOTIF\_1>

1. : 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?

<ESMA\_QUESTION\_NOTIF\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_NOTIF\_2>

1. : 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.

<ESMA\_QUESTION\_NOTIF\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_NOTIF\_3>

1. : 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?

<ESMA\_QUESTION\_NOTIF\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_NOTIF\_4>

1. : 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.

<ESMA\_QUESTION\_NOTIF\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_NOTIF\_5>

1. : 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.

<ESMA\_QUESTION\_NOTIF\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_NOTIF\_6>

1. : 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.

<ESMA\_QUESTION\_NOTIF\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_NOTIF\_7>

1. : 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?

<ESMA\_QUESTION\_NOTIF\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_NOTIF\_8>

1. : 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.

<ESMA\_QUESTION\_NOTIF\_9>

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<ESMA\_QUESTION\_NOTIF\_9>

1. : 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.

<ESMA\_QUESTION\_NOTIF\_10>

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<ESMA\_QUESTION\_NOTIF\_10>

1. : 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?

<ESMA\_QUESTION\_NOTIF\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_NOTIF\_11>

1. : 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.

<ESMA\_QUESTION\_NOTIF\_12>

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<ESMA\_QUESTION\_NOTIF\_12>

1. : 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.

<ESMA\_QUESTION\_NOTIF\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_NOTIF\_13>

1. : 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?

<ESMA\_QUESTION\_NOTIF\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_NOTIF\_14>

1. : 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.

<ESMA\_QUESTION\_NOTIF\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_NOTIF\_15>

1. Accordingly, “A management company which applies to manage a UCITS established in another Member State shall provide the competent authorities of the UCITS home Member State with the following documentation: (a) the written agreement with the depositary referred to in Articles 23 and 33; and (b) information on delegation arrangements regarding functions of investment management and administration referred to in Annex II.” [↑](#footnote-ref-2)