

Cross-Border Distribution of Alternative Investment Funds (“AIFs”) New Regulatory Framework – Practical Guide

15 JULY 2021



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Chapter 1: New Regulatory Framework



Setting the Scene (1/2)

Objectives

The purpose of this Practical Guide is to:

- address key practical questions arising out of the new regulatory framework, taking into account the significant cross-border element of investment funds distribution within the EU; and
- provide an update on the current status of the local transposition and local regulatory interpretation of the CMD and the CMR in major EU marketing hubs and/or AIFM domicile countries.

To achieve this, the DLA Piper Luxembourg team, capitalizing on DLA Piper's strong global network, completed a cross-jurisdictional exercise among the following jurisdictions:

- **Denmark**
- **Finland**
- **France**
- **Germany**
- **Ireland**
- **Italy**
- **Luxembourg**
- **Poland**
- **Spain**
- **Sweden**
- **The Netherlands**
- **United Kingdom.**





Setting the Scene (2/2)

Level 1 measures

On 12 March 2018, the European Commission (“**EC**”) proposed a new legislative framework to foster the cross-border distribution of investment funds across the European Union (“**EU**”) i.e.:

- **Directive 2019/1160** of the European Parliament and of the Council of 20 June 2019, amending Directive 2011/61/EU (the “**AIFMD**”) with regard to the cross-border distribution of collective investment undertakings (the “**CMD**”); and
- Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulation (EU) 345/2013 on European venture capital funds (“**EuVECA Regulation**”); Regulation (EU) 346/2013 on European social entrepreneurship funds (“**EuSEF Regulation**”); and Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (“**PRIIPs Regulation**”) (the “**CMR**”).
- Both the CMD and the CMR entered into force on 1 August 2019 save for certain provisions of the CMR which shall apply from 2 August 2021 (cf. pages 8-10 of this guide for more details on the date of entry into force of Level 1 measures and certain Articles of the CMR in particular).

The CMD and the CMR are available via the following links:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1160&from=EN>,
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1156&from=EN>

Level 2 measures

Commission Delegated Regulation (EU) 2021/955 of 27 May 2021 on laying down implementing technical standards on the application of the CMR entered into force on 5 July 2021 save for Arts. 1, 3(1) and 5 (see also timeline on p. 11) (the “**ITS**”).

The ITS is available via the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0955&from=EN>.

Level 3 measures

Final report of the ESMA Guidelines on marketing communications published on 27 May 2021, to enter into force within six months following the publication of the final report (see also timeline on p. 11) (the “**ESMA Guidelines**”).

The final report on the ESMA Guidelines is available via the following link: [https://www.esma.europa.eu/sites/default/files/library/esma34-45-1244 - final report on the guidelines on marketing communications.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34-45-1244_-_final_report_on_the_guidelines_on_marketing_communications.pdf).



Cross-Border Marketing Directive – Key Changes (1/2)

Applicable from 2 August 2021

New harmonised regime on “pre-marketing” (art. 2 CMD, inserting new art. 30a(2) into AIFMD):

- **EU-wide definition of “pre-marketing”** (art. 2 CMD, amending art. 4(1) of the AIFMD), i.e., *“provision of information or communication, direct or indirect, on investment strategies or investment ideas by an EU AIFM or on its behalf, to potential professional investors domiciled or with a registered office in the Union in order to test their interest in an AIF or a compartment which is not yet established, or which is established, but not yet notified for marketing in accordance with Article 31 or 32, in that Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF or compartment”*.
- **Harmonised conditions and disclaimers for pre-marketing**, i.e., any pre-marketing must **not**:
 - be sufficient to allow investors to commit/subscribe for shares;
 - amount to subscription forms whether in draft or final form;
 - amount to constitutional documents, a prospectus or offering documents of a not-yet-established AIF in a final form;
 - constitute an offer or an invitation to subscribe to units or shares of an AIF; and
 - be relied upon because it is incomplete and may be subject to change.
- Pre-marketing must be **adequately documented**.
- **18-month marketing presumption**: any subscription by professional investors, within 18 months of the EU AIFM having begun pre-marketing, to units or shares of an AIF referred to in the information provided in the context of pre-marketing, or of an AIF established as a result of the pre-marketing, shall be considered to be the result of marketing and shall be subject to the applicable notification procedures.

Pre-marketing notification procedure (art. 2 CMD, inserting new art. 30a(2) into AIFMD):

- An EU AIFM is **not required to proceed to an ex ante notification** to the national competent authority (“**NCA**”) of its home MS but **may start pre-marketing at anytime**.
- Nonetheless, an EU AIFM required to **send an informal letter** to the national competent authority (“**NCA**”) of its home MS **within two weeks after having started pre-marketing**, which must include a brief description of any pre-marketing activities as well as information on where and for which periods the pre-marketing has taken/is taking place.



Cross-Border Marketing Directive – Key Changes (2/2)

Applicable from 2 August 2021

Third-party distributors/placement agents (art. 2 CMD, inserting new art. 30a(3) into AIFMD):

A third party shall only engage in pre-marketing on behalf of an authorised EU AIFM where it is authorised as an investment firm in accordance with Directive 2014/65/EU (“**MiFID II**”), as a credit institution in accordance with Directive 2013/36/EU (“**CRD**”), or as a management company for undertakings of collective investment in accordance with Directive 2009/65/EC (“**UCITS Directive**”), as an alternative investment fund manager in accordance with AIFMD, or acts as a tied agent in accordance with Directive 2014/65/EU.

Such third party shall be subject to the same conditions (cf. pages 20-21) as an EU AIFM subject to new art. 30a(1) of the AIFMD.

Cessation of marketing (art. 2 CMD, inserting new art. 32a into AIFMD):

Marketing de-notification – conditions & procedure:

An EU AIFM still has the option to de-notify marketing of AIFs. The relevant rules on the marketing de-notification have been now harmonized. An EU AIFM may de-notify arrangements made for marketing as regards units or shares of some or all of its AIFs in a MS in respect of which it has made a marketing notification per Art. 32 AIFMD, **by submitting a notification to the NCA of its home MS**, who shall, no later within 15 working days of receipt of a complete notification, transmit the notification to the NCA(s) of the MS identified in the de-notification, **subject to the following cumulative conditions:**

- except in the case of closed-ended AIFs, a blanket offer is made to repurchase or redeem, free of any charges or deductions, all such AIF units or shares held by investors in the MS identified in the de-notification, is publicly available for at least 30 working days, and is addressed, directly or through financial intermediaries, individually to all investors in that MS whose identity is known;
- the intention to terminate arrangements made for marketing units or shares of some or all of its AIFs in that MS is made public by means of a publicly available medium, including by electronic means, which is customary for marketing AIFs and suitable for a typical AIF investor; and
- any contractual arrangements with financial intermediaries or delegates are modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the units or shares identified in the notification.

36-month restriction of pre-marketing of successor funds following de-notification of marketing by an AIFM in the MS identified in the de-notification.

Facilities to retail investors (art. 2 CMD, inserting new art. 43a into AIFMD):

In case an EU AIFM intends to market units/shares of an AIF to retail investors in accordance with art. 43 AIFMD, it must make available a set of facilities to retail investors (e.g. provide investors with information on how subscription, payment, repurchase and redemption orders can be made and how repurchase and redemption proceeds are paid, etc.).



Cross-Border Marketing Regulation – Key Changes (1/3)	
CMR provision	Date of entry into force
<p>New requirements on marketing communications (art. 4 CMR):</p> <ul style="list-style-type: none">• be identifiable as such;• describe the risks & rewards of purchasing units/shares in an AIF in an equally prominent manner;• “fair”, “clear” & “non-misleading” information; and• marketing communications comprising an invitation to purchase units or shares of an AIF that contain specific information about an AIF do not contradict the information which is to be disclosed to the investors in accordance with art. 23 AIFMD. <p>Art. 4(6) CMR empowers the ESMA to issue guidelines on marketing communication per art. 4 CMR – see link to final report of the ESMA Guidelines: https://www.esma.europa.eu/sites/default/files/library/esma34-45-1244 - final report on the guidelines on marketing communications.pdf.</p> <p>Key takeaways from the final report of ESMA Guidelines:</p> <ul style="list-style-type: none">• A list of specific examples of marketing communications is provided, taking into account the online nature of such communications.• Specific disclaimers must be included in marketing communications.• Specific requirements on the presentation of risks and rewards in an equally prominent manner are introduced.• Specific guidelines on the “fair/clear/non-misleading” requirement are introduced (e.g. language used, consistency with information included in other fund documentation, amount of information to be included in marketing communications, requirements for future and past performance presentation (including special disclaimers, and presentation of costs, information on sustainability-related aspects, etc.)).	<p>Art. 4 CMR: 2 August 2021</p> <p>Final report of ESMA Guidelines: The final ESMA Guidelines were expected to enter into force from 2 August 2021 (i.e. when Art. 4 CMR comes into effect). On 27 May 2021, the final report on the ESMA Guidelines was published. The ESMA Guidelines will be translated into the official languages of the EU and published on ESMA’s website. The guidelines will apply six months after the date of the publication of such translations.</p>



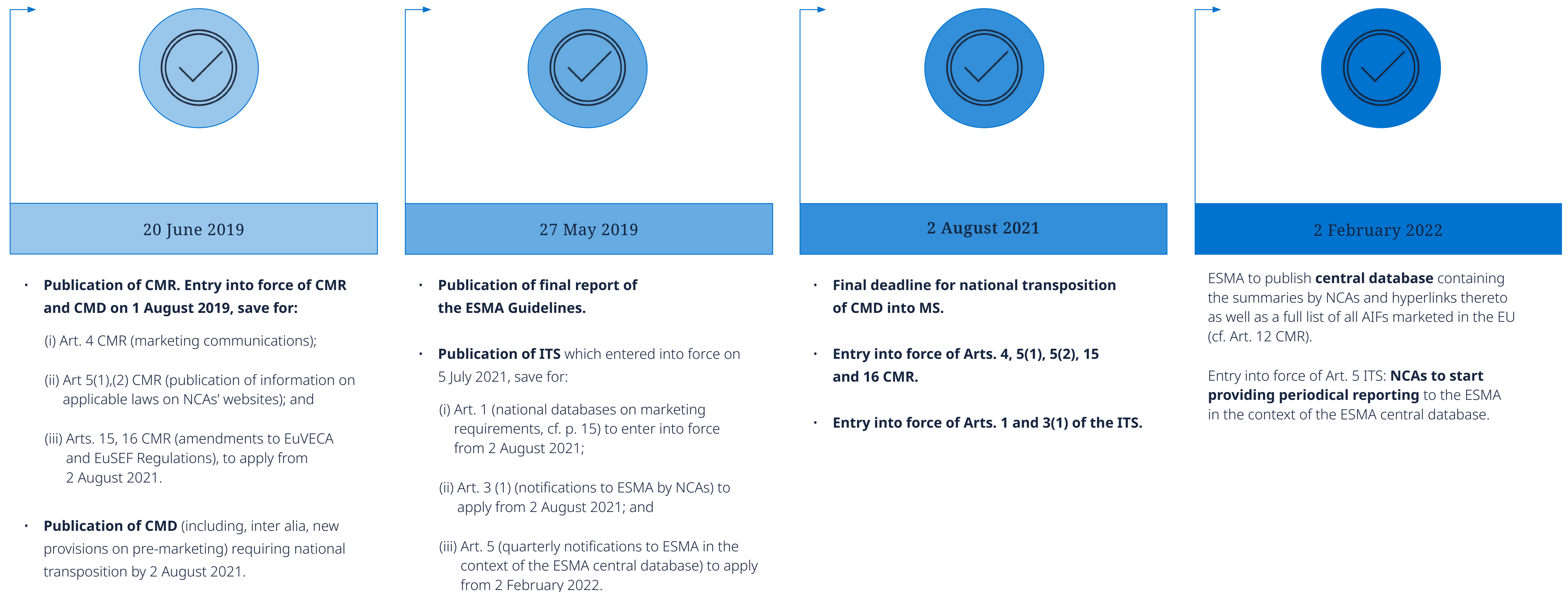
Cross-Border Marketing Regulation – Key Changes (2/3)	
CMR provision	Date of entry into force
<p>NCA's to publish and maintain on their websites up-to-date and complete information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs, and the summaries thereof, in, as a minimum, a language customary in the sphere of international finance and communicate hyperlinks to the ESMA (art. 5(1) CMR).</p> <p>NCA's to notify the ESMA on the summaries mentioned above (art. 5(2) CMR).</p>	2 August 2021
ESMA to publish and maintain on its website a central database containing the summaries published by NCA's (art. 6 CMR).	By 2 February 2022
Ex-ante verification of marketing communications for AIFs marketed to retail investors may be requested at the discretion of NCA's (Art. 7 CMR).	Applicable since 1 August 2019
Where fees or charges are levied by NCA's for carrying out their duties in relation to the cross-border activities of AIFMs, EuVECA managers, EuSEF managers, such fees or charges shall be consistent with the overall cost relating to the performance of the functions of the competent authority (art. 9 CMR).	Applicable since 1 August 2019



Cross-Border Marketing Regulation – Key Changes (3/3)	
CMR provision	Date of entry into force
NCA's to publish and maintain up-to-date information on their websites listing the fees or charges levied by competent authorities for carrying out their duties in relation to the cross-border activities of AIFMs, EuVECA managers, EuSEF managers, where applicable, the calculation methodologies for those fees or charges, in, as a minimum, a language customary in the sphere of international finance (art. 10 CMR)	Applicable since 1 August 2019
ESMA to develop draft implementing technical standards to determine the standard forms, templates and procedures for the publications and notifications of fees and charges by NCAs (art. 10 CMR).	Already available and adopted by EC on 27 May 2021 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R0955)
ESMA to publish on its website hyperlinks to the websites of NCAs regarding fees and charges (art. 11 CMR)	By 2 February 2022
ESMA to publish on its website a central database on cross-border marketing of AIFs publicly accessible in a language customary in the sphere of international finance, listing all AIFs that are marketed in a MS other than the home MS of their AIFM, EuSEF manager or EuVECA manager, and the MS in which they are marketed (art. 12 CMR).	By 2 February 2022
Amendments to Regulation (EU) 345/2013 on EuVECA and Regulation (EU) 346/2013 EuSEF, aligning such Regulations with the pre-marketing rules introduced by the CMD for AIFs (art. 15 & 16 CMR).	2 August 2021



Timeline





Pre-Marketing vs. Marketing: What Can I Do?	
Pre-Marketing Phase	Marketing Phase
Roadshows	Draft or final subscription documents
Discussions on investment strategies or investment ideas with select existing investors in existing funds or potential investors to test their appetite for making new investments into other funds but without securing a commitment to subscribe and without amounting to an offer or placement to the investor to invest	Final offering documents
Generic materials which refer to investment strategy/characteristics of a fund without naming the fund	Final Articles of Association/LPA/ManRegs
Pitchbook/presentation/term sheet/teaser documents (whether in draft or final form)	
Draft offering documents (AIF which is not yet established)	
Draft Articles of Association/LPA/ManRegs (AIF which is not yet established)	
Negotiation of draft offering documents and Articles of Association/LPA/ManRegs: to be assessed on a case-by-case and country-by-country basis	



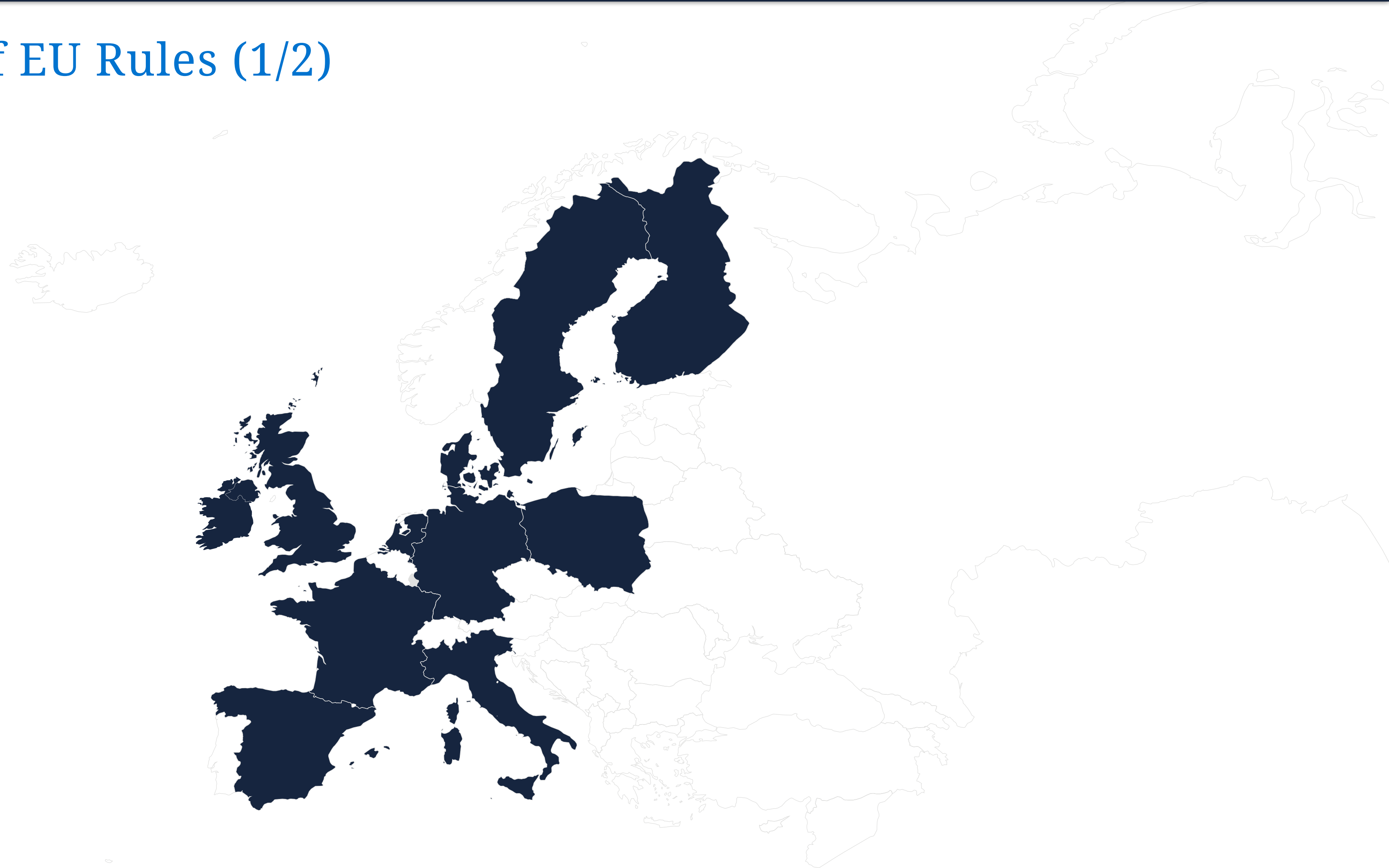
Chapter 2: Cross-Jurisdictional Q&A





Local Transposition of EU Rules (1/2)

Roll over a location to find out more





Local Transposition of EU Rules (2/2)

Have NCAs provided any guidance as to the scope of the new marketing rules to be introduced in local legislation?

Denmark

The Danish bill shall not apply to non-EU AIFMs marketing (EU and non-EU) AIFs in Denmark.

Finland

As per the draft proposal of the Finnish government:

- pre-marketing of EU AIFs by EU AIFMs established in Finland would be allowed for both professional clients and non-professional clients;
- the pre-marketing provisions would apply to both licensed and registered AIFMs; and
- pre-marketing of EU AIFs by non-EU AIFMs would only be allowed with regards to professional clients in Finland.

Provisions regarding pre-marketing of non-EU AIFs managed by EU/Finnish AIFMs are expected to be added to the relevant Finish law, however, there has been no definitive guidance in this respect yet.

France

French law shall not be applicable to non-EU AIFMs marketing (EU and non-EU) AIFs in France.

Germany

The pre-marketing regime will also apply to semi-professional investors. This is in line with the German concept to partially extend products available for professional investors to a certain group of investors which would qualify as retail investors pursuant to Article 4 para. 1 lit. (aj) AIFMD.

While Art. 4 para. 2 and para. 3 CMR applies to UCITS only, Section 302 para. 1, 2 and 3 KAGB pursuant to FoStoG expands these requirements to the marketing of AIFs to retail investors.

Pre-marketing regime will also apply to non-EU AIFMs for marketing of (EU and non-EU) AIFs.

Ireland

No clarification on scope/gold-plating at this stage.

Italy

No clarification on scope/gold-plating at this stage.

Luxembourg

The bill applies to EU AIFMs. The parliamentary acts to the bill indicates that similar rules should apply to non-EU AIFMs. However, there has been no further guidance in this respect.

Poland

No clarification on scope/gold-plating at this stage.

Spain

No clarification on scope/gold-plating at this stage.

Sweden

According to the Swedish pre-draft bill, the pre-marketing regime is proposed to apply also to non-EU AIFMs who have previously obtained authorisation to market one or more (EU and non-EU) AIFs in Sweden.

The Netherlands

Although no formal clarification has been provided by the AFM yet, the draft implementing act of the CMD appears to suggest that the new pre-marketing regime shall be available to Dutch AIFMs only and towards professional investors.

United Kingdom

The United Kingdom has not transposed CMD into UK law following the end of the Brexit transitional period on 31 December 2020.



The Concept of “Pre-Marketing” Across the EU (1/2)

How has the concept of “pre-marketing” been interpreted across the EU?

Most MS will now formally introduce the concept of “pre-marketing” (e.g. Denmark, Germany and Finland), while for those countries where the NCA had already recognised pre-marketing before the entry into force of the CMD (e.g. France), the relevant concept is expected to be updated to reflect the provisions of the CMD.

Country specific observations

Denmark

The Danish draft bill essentially mirrors the provisions of the CMD, however stipulates that a pre-marketing may not constitute “an offer in reality”.

Finland

The Finnish NCA has not provided for a special list of examples of “pre-marketing”. The draft proposal of the Finnish government states that *“by definition, pre-marketing would be required to be linked to a specific AIF. Therefore, there is no reason to consider as “pre-marketing” an activity in which an AIFM merely presents its own expertise without any link to the AIFs investment strategy or idea.”* However, the information provided to investors should not be so accurate that investors could commit to acquiring units in an AIF.

France

Current AMF rules confirm that “pre-marketing” must not involve the delivery of a subscription form and/or document presenting definitive information about the characteristics of an AIF, allowing investors to subscribe, or undertake to subscribe, for units or shares of the AIF.

Germany

So far (i.e. prior to the entry into force of the CMD), Germany did not provide for a pre-marketing regime as such. Consequently, an activity has either been “marketing” or not. The BaFin’s FAQ on the distribution and acquisition of investment funds under the KAGB (*Häufige Fragen zum Vertrieb und Erwerb von Investmentvermögen nach dem KAGB*) last modified in 2018 contained examples to determine which activity would qualify as “marketing” and which would not. According to such FAQ, sample investment terms and prospectuses would not qualify as “marketing material” as long as they are in draft form and show gaps that are still to be negotiated. One may therefore assume that this would enter into the definition of “pre-marketing” under the new regime transposing the CMD into German law.

Ireland

No local specifications/regulatory guidance as to what constitutes “pre-marketing” as of to date.

Italy

No local specifications/regulatory guidance as to what constitutes “pre-marketing” as of to date.

Luxembourg

No local specifications/regulatory guidance as to what constitutes “pre-marketing” as of to date.

Poland

According to the published draft bill amending the Polish Investment Funds Act, “pre-marketing” materials cannot contain draft subscription documents. Draft prospectuses and constitutional documents would not qualify as “marketing material” and as a consequence could constitute “pre-marketing material” as long as they are in draft form and include a disclaimer stating explicitly that they do not constitute an offering or proposal to acquire interest in an AIF and the information contained therein cannot constitute basis for making an investment decision, as they are incomplete and subject to changes.

Spain

No local specifications/regulatory guidance as to what constitutes “pre-marketing” as of to date.

Sweden

No local specifications/regulatory guidance as to what constitutes “pre-marketing” as of to date.

The Netherlands

No local specifications/regulatory guidance as to what constitutes “pre-marketing” as of to date.



The Concept of “Pre-Marketing” in the UK (2/2)

How has the concept of “pre-marketing” been interpreted in the United Kingdom?

The United Kingdom has chosen not to implement the CMD into UK law following the end of the Brexit transitional period on 31 December 2020. In the FCA's view, an “offering” or “placement” takes place for the purposes of the UK AIFM rules when a person seeks to raise capital by making a unit of share of an AIF available for purchase by a potential investor. Therefore, according to the FCA, documentation must be in “materially final form” to qualify as “marketing”. Any communications relating to draft documentation do not fall within the meaning of an “offer” or “placement” for the purposes of UK AIFM rules. For example, a promotional presentation or a pathfinder version of the private placement memorandum would typically not constitute an “offer” or “placement”, provided that such documents cannot be used by a potential investor to make an investment in the AIF. Draft offering / constitutional documents would generally qualify as “pre-marketing” in the UK, provided that they cannot be used by a potential investor to make an investment in the AIF.

Anything that falls short of “marketing” (so is not an “offering” or “placement”) constitutes “pre-marketing” for the purposes of the UK framework. Firms may engage in “pre-marketing” in the UK, provided that they stay within the limits of the UK financial promotions regime. This regime does not require any notification to be made to the FCA, but firms that are not authorised in the UK must satisfy themselves that they can benefit from an exemption under the relevant rules. The most common exemptions include communications made to certain types of investors (including investment professionals, sophisticated investors and high net worth individuals).





National Lists of Examples of Marketing/Pre-Marketing Material (1/2)

Have NCAs provided for a list of examples on what constitutes “marketing” and/or “pre-marketing”?

In most jurisdictions, the NCAs have not yet published a list of examples of marketing/pre-marketing material *per se* (e.g. Finland, Germany, Sweden, Italy).

Country specific observations

Denmark

No list of examples of marketing material has been published in Denmark.

Finland

No list of examples of marketing material has been published in Finland.

France

Local pre-existing regulation and regulatory guidance of the AMF already included a non-exhaustive list of examples of marketing communications of investment products and services.

Germany

The German legislator did not provide for a list of examples of marketing material *per se*. The relevant BaFin guidance dating pre-CMD (cf. *BaFin's FAQ on the distribution and acquisition of investment funds under the KAGB (Häufige Fragen zum Vertrieb und Erwerb von Investmentvermögen nach dem KAGB*, last modified in 2018) only contained examples of activities which would qualify as "marketing" and which would not (see also p. 16 above). However, it is generally agreed that a marketing communication (Werbung) comprises all statements that are aimed at arousing an interest in the acquisition of certain shares of the

investment or at increasing an existing interest and thereby increasing their sales. The used medium is generally irrelevant.

Ireland

The CBI has not provided for a non-exhaustive list of examples of “marketing communication” and/or a negative list. The CBI has primary and statutory responsibility for the regulation of advertising for Financial Services and Products, and where applicable, their requirements are set out in the Consumer Protection Code 2012 issued by the CBI. The Consumer Protection Code 2012 does not include a specific definition of what constitutes an advertisement in respect of a product or service.

All marketing communications are, however, also subject to the rules of the Advertising Standards Authority of Ireland (ASAI) Code. The ASAI Code states that a “marketing communication” includes, but is not limited to, advertising, as well as other techniques such as promotions, sponsorships and direct marketing, and should be interpreted broadly to mean any form of communication produced directly by, or on behalf of, advertisers intended primarily to promote products, to influence the behavior of and/or to inform those to whom it is addressed. Advertising or advertisement for the purpose of the ASAI Code includes, but is not limited to, a form of marketing communication carried by the media, usually in return for payment or other valuable consideration or in a space that would generally be provided for in return for payment.

The ASAI Code applies to (A) marketing communications i) in newspapers, magazines and other printed publications, including free distribution newspapers and magazines; ii) in posters and other promotional media in public places, including moving images and digital screens; iii) in brochures,

leaflets, circulars, mailings, fax transmissions, emails and text transmissions; iv) broadcasts on television or radio or screened in cinemas or with video, DVD or Blu-ray; v) carried on any digital and electronic storage materials, media and/or computer systems including, but not limited to, online advertisements in paid-for space (including banner or pop up advertisements and online video advertisements); vi) paid-for search listings; preferential listings on price comparison sites; viral advertisements; in-game advertisements; commercial classified advertisements; advergames that feature in-display advertisements; advertisements transmitted by Bluetooth; advertisements distributed through web widgets and online sales promotions and prize promotions; vii) in non-paid-for space online, under the control of the advertiser or their agent, including but not limited to advertisers’ own websites, that are directly connected with the supply or transfer of goods, services, facilities, opportunities, prizes and gifts or which consist of direct solicitations for donations; as well as (B) promotional marketing and sales promotions; and (C) advertorials.

Direct marketing communications that originate outside Ireland and sales promotions and marketing communications on non-Irish websites, if targeted at Irish consumers, are subject to the jurisdiction of the relevant authority in the country from which they originate if that authority operates a cross border complaint system.

Italy

No list of examples of marketing material has been published in Italy.



National Lists of Examples of Marketing/Pre-Marketing Material (2/2)

Luxembourg

The CSSF has not provided for a list of examples of “marketing” vs. “pre-marketing” material as of today. This being said, relevant CSSF guidance (CSSF FAQ on AIFMs, last updated in June 2021) specifies that the provision of draft offering documentation does not qualify as “marketing” provided that such draft documents cannot be used by prospective investors to formally subscribe or commit to subscribe shares or units of the AIF. In addition, such CSSF guidance provides that the “marketing” may be materialised in various forms (e.g. advertising, distribution of AIF documents to prospective investors, roadshows, distance marketing).

Poland

So far, the KNF has not provided a list of examples of “marketing communications” and/or a negative list as such. There is an expectation that the KNF will be reluctant to provide a negative list. In any case, based on past experience with the local regulatory practice, one might assume that, if the KNF decides to publish a list of examples of marketing communications in the future, it would strongly emphasize that each case (i) should be verified on a case-by-case basis; and (ii) the medium used for marketing communication is irrelevant.

Spain

Local pre-existing regulation or regulatory guidance (respectively, CNMV Circular 2/2020) already included a non-exhaustive list of examples of marketing communications of investment products and services. Importantly, in Spain, a negative list of marketing communications was also already included in CNMV Circular 2/2020. Such Circular provides also guidance on marketing carried out through the internet or mobile devices.

Sweden

No list of examples of marketing material has been published in Sweden. However, a bill to the current legislation provides that the concept of marketing should be interpreted broadly and include advertisements, marketing by phone/e-mail/mail/events and other promotions and similar marketing communications (also at the time before units/shares in an existing AIF are sold to an investor). A message broadcasted on a social media platform may qualify as marketing in Sweden.

The Netherlands

The AFM has not provided a list of examples regarding “marketing communications” per se. However, the AFM has published a more general policy rule on the provision of information (*Beleidsregel informatieverstrekking*). This policy rule provides guidance to financial undertakings and issuing institutions, about the interpretation of open norms regarding the provision of information. In this document, the AFM addresses a broad variety of topics, including requirements for market parties regarding (online) advertisement. Although the policy rule does not include a list of examples of what (online) advertisements are, they do provide a guideline as to when something could be considered an (online) advertisement.

United Kingdom

Chapter 8 of the Perimeter Guidance manual of the FCA Handbook (cf. PERG 8.37) provides detailed guidance on the definition of “marketing” and in particular on how the FCA interprets the terms “offering” and “placement” for the purposes of the UK AIFM rules. The interpretation is technology neutral and does not differentiate between the medium of communication. That being said, according to the FCA, documentation should be in “materially final form” to qualify as “marketing” and be able to be used by the potential investor to make an investment in the AIF. Therefore, communications made through social media would not typically constitute “marketing” under the UK AIFM rules. However, they would most likely constitute financial promotions and therefore the relevant requirements would need to be met.



Conditions for Pre-Marketing (1/2)

Have NCAs provided for any special conditions for pre-marketing under local laws and/or local interpretation of the CMD?

In general, most countries have not introduced country-specific conditions to pre-marketing. Rather, they appear to follow the same basic principles as the ones set out in Art. 2 CMD (e.g. Finland, Denmark, Germany and Poland). This being said, additional disclaimers in fund documentation might need to be included either by way of law/regulatory guidance (e.g. UK, Germany, the Netherlands, Ireland) or as a matter of best practice (e.g. France).

Country specific observations

Denmark

No special local conditions for pre-marketing have been introduced as of to date.

Finland

No special local conditions for pre-marketing have been introduced as of to date.

France

In France on the other hand, it is strongly recommended to include specific disclaimers in French law governed fund documentation (in cases of both active marketing and reverse solicitation). Please reach out to your usual DLA Piper contact in France for further details on the specific wording to be added in documentation.

Germany

The FoStoG essentially mirrors the conditions for pre-marketing laid down in Art. 2 CMD. In addition, BaFin generally requires specific measures to be taken to prevent marketing to retail investors. This includes, *inter alia*, a highlighted statement in all documents that the funds mentioned may not be subscribed by German retail investors as well as access restrictions for online platforms.

Ireland

The Irish legislator has not yet introduced any special conditions for pre-marketing (as it has not published any draft legislation transposing the CMD into Irish law). Separate conditions apply to the marketing of AIFs. Specifically, prospectuses and marketing communications for AIFs must include regulatory disclosure statements and disclaimers in each copy of the prospectus and in any marketing material for the purposes of promoting the AIF.

Italy

No special local conditions for pre-marketing have been introduced as of to date.

Luxembourg

No special local conditions for pre-marketing have been introduced as of to date.

Poland

No special local conditions for pre-marketing have been introduced as of to date.

Spain

CNMV Circular 2/2020 provides criteria on which disclaimers should be included in marketing documentation of investment products and services, but it does not provide with any specific example of such disclaimers. For instance, the marketing communications and the way they are presented shall allow for a proper understanding, taking into account the target audience to which the product is addressed and, in particular, shall avoid creating disproportionate or false impressions or expectations that may act as an incentive to contract the product or a different appearance from reality regarding the characteristics of the product. When the media or format used imposes space or time limitations such that it is not possible to include all the relevant information or warnings about the product in the initial marketing communication piece, it must refer to alternative sources of information or be included in a secondary advertising piece so that in any case it is possible to find out all the relevant information or warnings about the product or service quickly and easily. When marketing communications issued through digital media or social networks include relevant information in images, videos or other visual, sound or audiovisual resources in order to overcome the limitation of space or time, their viewing by the recipient shall be promoted by including express indications in the advertising such as “click on the image to obtain more information” or similar formulas.

Sweden

No special local conditions for pre-marketing have been introduced as of to date.



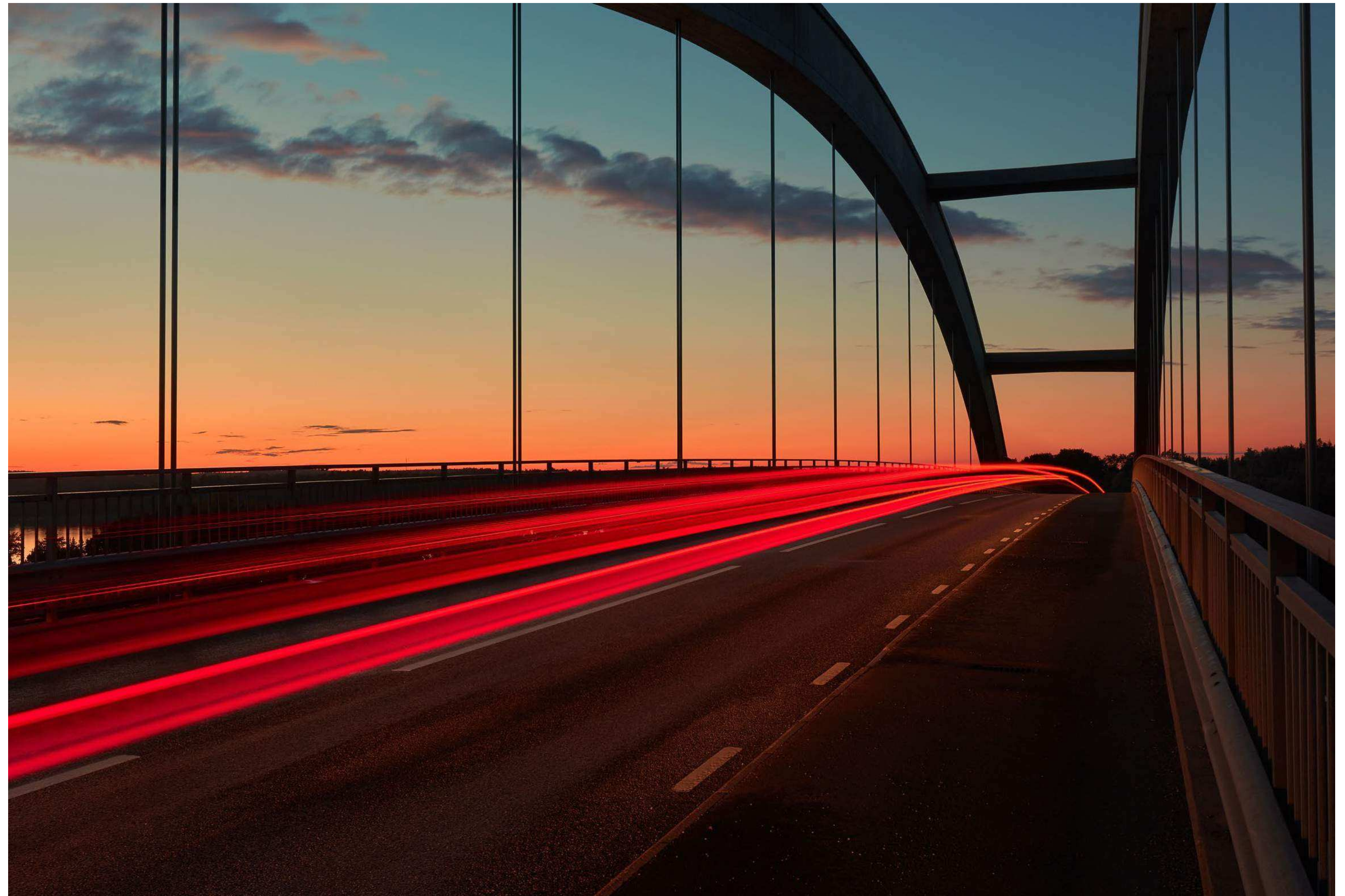
Conditions for Pre-Marketing (2/2)

The Netherlands

AIFMs are subject to general information requirements pursuant to article 4:19 and 4:20 of the Dutch FSA. All information provided by an AIFM must be correct, clear and not misleading. The commercial purpose of the communication must be identifiable. In a precontractual phase, the provided information must enable the investor to make an adequate assessment of the product or service. Article 66a of the Decree Market Conduct Supervision (*Besluit gedragstoezicht financiële ondernemingen Wft*) provides for requirements applicable to the essential information document, which must be in line with Regulation no. 583/2010. The AIFM is more specifically required to include a risk indicator, in accordance with article 2:3 Further Regulations on the Supervision of the Conduct of Financial Undertakings FSA (*Nadere Regeling gedragstoezicht financiële ondernemingen Wft*) as a disclaimer, which may look like the image on: https://wetten.overheid.nl/afbeelding?toestandid=BWBR0020540/2020-01-01_0&naam=259569.png&schalen=nee. Please reach out to your usual DLA Piper contact in the Netherlands for further details on the specific wording to be added in the documentation.

United Kingdom

A non-UK authorised firm that is looking to communicate a financial promotion by relying on an exemption under the financial promotions' regime, must include certain disclaimers in its documentation. The content of such disclaimers must be tailored according to the specific circumstances of each case. In addition, any pre-marketing will most likely constitute a financial promotion and therefore must be made within the limits of the UK financial promotions regime. Please reach out to your usual DLA Piper contact in the UK for further details on the specific wording to be added in the documentation.





Non-EU AIFMs (1/2)

Have NCAs clarified if the new pre-marketing regime applies to non-EU AIFMs for pre-marketing of (EU and non-EU) AIFs?

The new pre-marketing rules do not apply to non-EU AIFMs under the CMD. Therefore, it remains at the discretion of NCAs to specify the rules to apply to non-EU AIFMs regarding any pre-marketing activities (in relation to both EU and non-EU AIFs). However, NCAs are required to ensure that the national rules shall not in any way disadvantage EU AIFMs vis-a-vis non-EU AIFMs (cf. Recital (12) CMD).

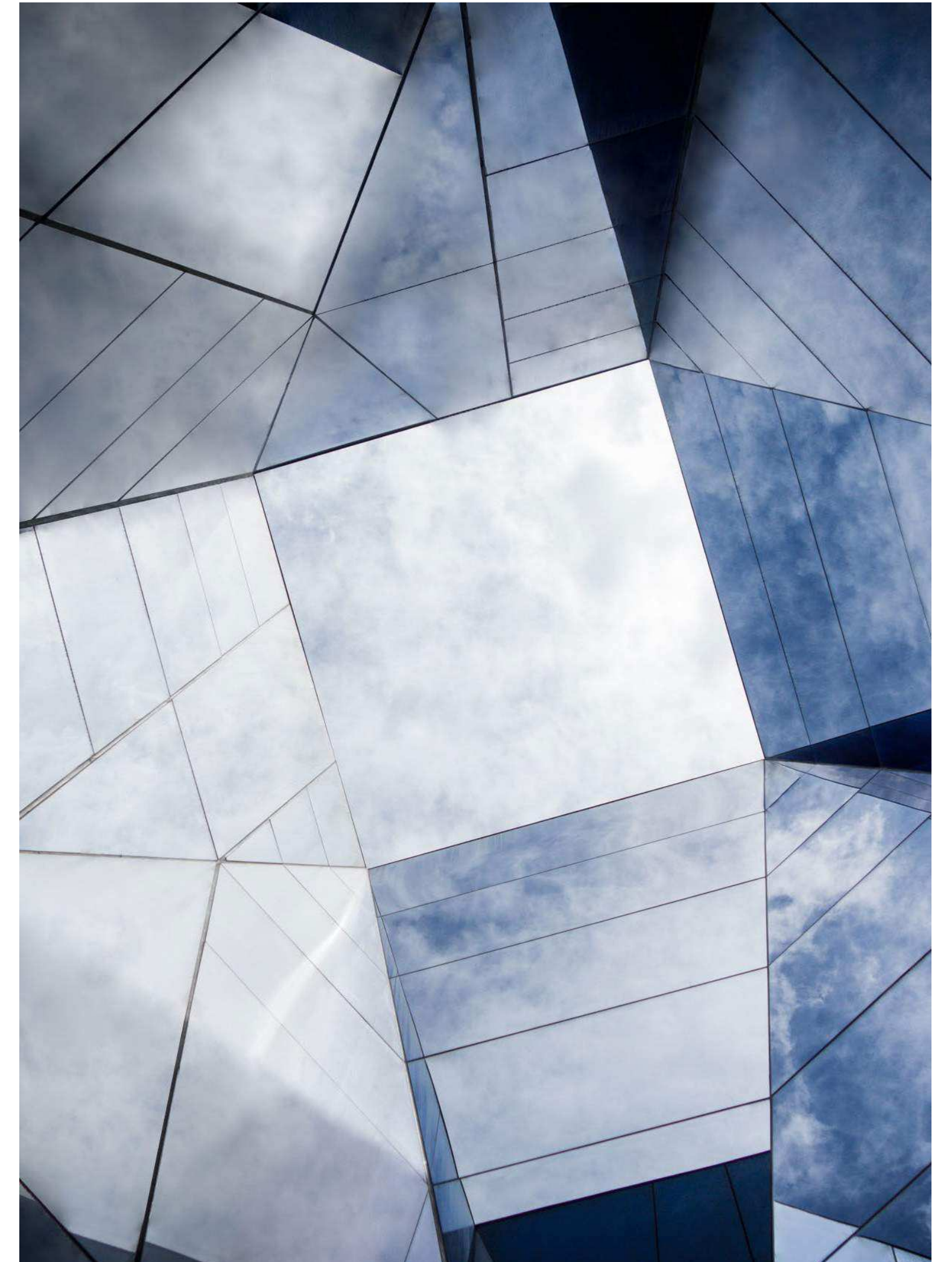
Country specific observations

The NCAs have so far adopted divergent approaches, i.e.:

- **No guidance:** in some countries there has been no clarification by the NCA in respect of the regime to apply to the pre-marketing of (EU/non-EU) AIFs by non-EU AIFMs. This appears to be the case in Sweden, Spain, Italy, Ireland, France and the Netherlands for instance.
- **Application to EU AIFMs only:** the Polish draft legislation provides that the pre-marketing regime will apply only to EU AIFMs for marketing of EU AIFs. Unless any changes are introduced to the draft bill implementing the CMD to national law or clarification by the NCA is published, the non-EU AIFMs and EU AIFMs marketing non-EU AIFs will not be subject to the pre-

marketing regime and only the provisions relating to the marketing of non-EU AIFs will apply to them. In a similar vein, the Danish draft bill provides that the pre-marketing rules shall not apply to non-EU AIFMs. The same is stipulated in the Luxembourg draft bill, however, the preparatory acts of the draft bill state that non-EU AIFMs shall be subject to similar provisions as EU AIFMs regarding pre-marketing. There has been no additional guidance in this respect.

- **Equal application to non-EU AIFMs:** other countries like Germany provide that the pre-marketing regime will equally apply to non-EU AIFMs for marketing of (EU and non-EU) AIFs in Germany in line with Recital (12) CMD. A similar provision is contained in the Finnish government's draft legislative proposal regarding the transposition of CMD into Finnish law (i.e., it is proposed that the provisions on pre-marketing shall apply to non-EU AIFMs carrying out pre-marketing of (EU and non-EU AIFs) in Finland, the marketing of which has not been yet notified to the Financial Supervisory Authority). Moreover, the relevant UK rules also apply equally to UK and non-UK AIFMs (subject to any applicable requirements under the UK financial promotions regime).



Non-EU AIFMs (2/2)

Have NCAs clarified if the new pre-marketing regime applies to non-EU AIFMs for pre-marketing of (EU and non-EU) AIFs?

The NPPR in a nutshell

The NPPR is a mechanism allowing non-EU managers to market investment funds that are not allowed to be marketed under the AIFMD domestic marketing or passporting regimes. This principally relates to the marketing of non-EU AIFs by non-EU AIFMs. NPPRs are not a form of cross-border distribution and NPPRs' rules vary significantly across jurisdictions.

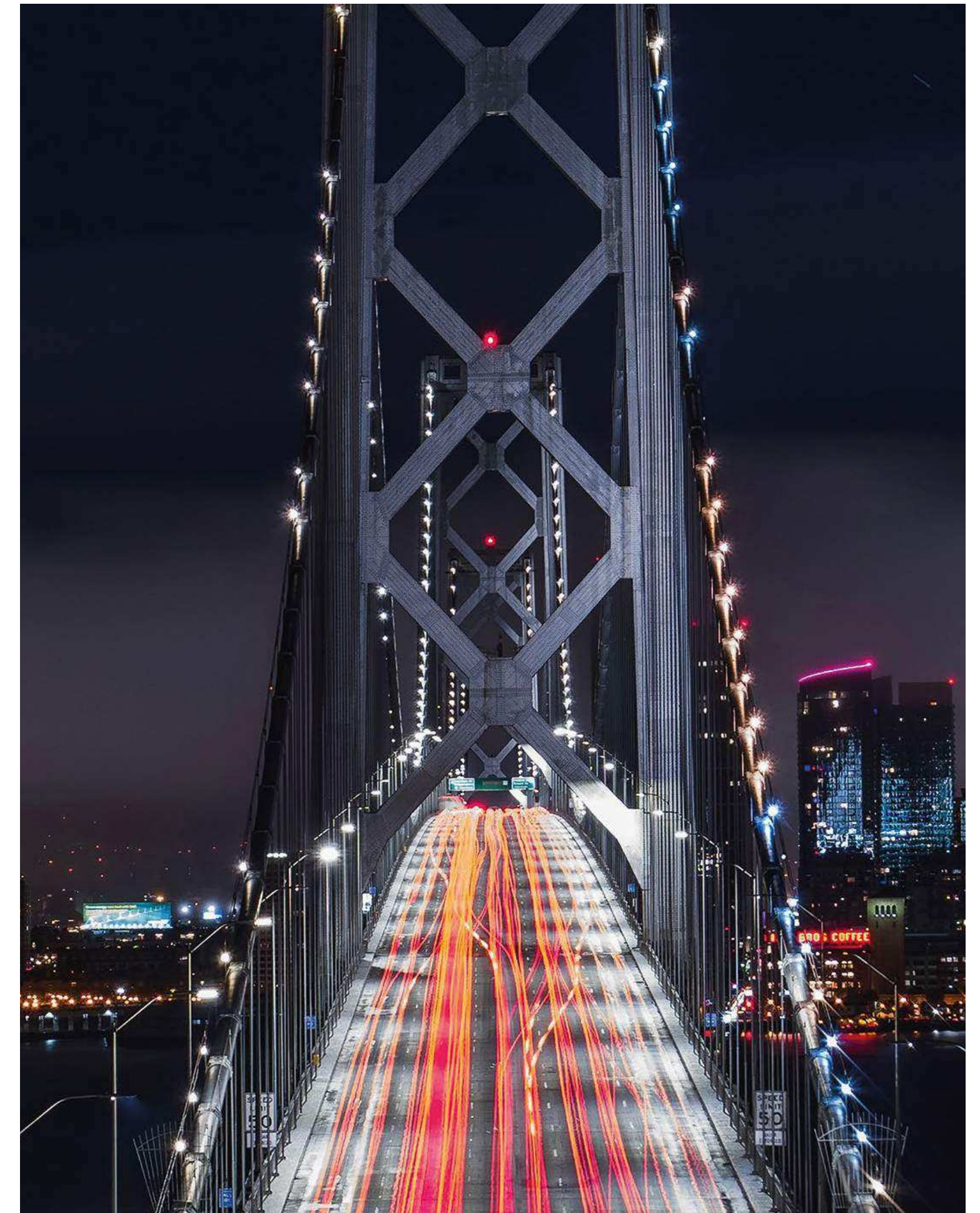
Pursuant to the ESMA's annual statistical report published on 8 April 2021 (cf. *ESMA50-165-1734*), at a minimum estimated EUR 2.1tn NAV, the NPPR market is equivalent to more than one-fifth of the EU AIF market.

Country specific observations

Variant approaches have been adopted across EU countries and the UK in respect of the NPPR.

- **No NPPR available:** Sweden, Spain, Italy and France appear to not have in place a NPPR to allow for the marketing by non-EU AIFMs at this stage. Moreover, the Finnish private placement exemptions, which previously covered e.g. the offering of non-UCITS funds to professional investors, are no longer available as such. However, with respect to non-EU AIFMs wishing to market their funds to professional investors in Finland, Finland has not implemented any national requirements that go beyond the requirements set out in Article 42 of the AIFMD.

- **NPPR available:** In other countries such as Germany, United Kingdom, Ireland, the Netherlands, Denmark, Luxembourg and Poland, the current NPPR regime and any conditions applicable thereto shall remain applicable. For instance, the NPPR in the Netherlands is available for marketing by non-EU AIFMs if they offer participation rights to qualified investors only. In Denmark, a license is required for marketing to individually selected investors by non-EU AIFMs subject to a series of conditions being met, such as the following: i) information in accordance with Art. 23 of the AIFMD being presented; ii) the non-EU AIFM presenting a declaration from the NCA or an attorney stating that the home country of the AIF will accordingly grant permission for Danish AIFs to be marketed in that country; iii) a depositary having been appointed; iv) adequate corporation agreements between the Danish FSA and the NCA of the AIFM and the AIF having been put in place).





Reverse Solicitation (1/2)

Was reliance on reverse solicitation permitted in EU jurisdictions and the UK before the CMD?

Usually reverse solicitation is seen as providing information regarding an AIF and making units or shares of that AIF available for purchase to a potential investor following an initiative of that investor (or an agent of that investor) without any solicitation made by the AIF or its AIFM (or an intermediary acting on their behalf) in relation to the relevant AIF. Reliance in reverse solicitation is only permitted in certain EU jurisdictions within the AIFMD framework and must be assessed on a case-by-case basis. Reliance on reverse solicitation has been permitted in all major EU jurisdictions (and the UK) within the AIFMD framework.

Country specific observations

Some countries appear to be stricter/more prescriptive than others in respect of the interpretation of reverse solicitation or vice versa. For example:

Denmark

The DFSA's guidance indicates that even minor advertisement efforts might exclude the possibility of relying on reverse solicitation.

Germany

The explanatory memorandum to FoStoG explicitly states that reverse solicitation shall qualify neither as marketing nor as pre-marketing. According to the relevant BaFin guidance dating pre-CMD (cf. *BaFin's FAQ on the distribution and acquisition of investment funds under the KAGB (Häufige Fragen zum Vertrieb und Erwerb von Investmentvermögen nach dem KAGB*, last modified in 2018), a mediation by a third-party not instructed by the AIFM is seen as an example of reverse solicitation (i.e., on the grounds that marketing would not be carried out at the initiative of the AIFM).

Italy

The authenticity of reverse solicitation shall be assessed on a de facto basis. Under the Italian regulatory practice, reverse solicitation schemes shall constitute exceptions and cannot be used as a business model. Although the NCA have provided no official guidance in this respect, per regulatory and market practice, a series of elements can be taken into consideration to determine whether a reverse solicitation is genuine. By way of example, i) a high number of Italian clients accessing the services; and / or ii) the presence of contracts governed by Italian laws; and / or iii) the presence of advertising material directly or indirectly addressing/accessible to Italian clients could undermine the qualification of a reverse solicitation scheme as genuine and effective. In addition, all means (e.g. press releases, advertising on the internet, brochures, phone calls or face-to-face meetings, etc.) should be considered to determine if the Italian clients or potential clients have been subject to any solicitation, promotion or advertising services, activities or instruments. Finally, the possible requalification of a reverse solicitation scheme as abusive could be triggered regardless of the booking location of the involved transactions.

Poland

So far there has been no formal legal basis for reverse solicitation in the Polish transposition of the AIFMD. Nevertheless, the Polish government and the KNF are aware and recognize that a number of AIFMs relies on reverse solicitation in Poland.

The Netherlands

A set of indicators to determine whether or not an AIFM is considered to be actively offering participation rights has been provided by the Dutch NCA (included but not limited to i) the failure to use disclaimers or inadequate maintenance thereof; ii) the failure to include a list of countries at which the activities are expressly aimed, or inadequate maintenance thereof; the use of Dutch as the language of the activities; iii) the regular distribution area of the used media is amongst others the Netherlands; iv) the canvassing (e.g. via e-mail) of residents in the Netherlands; v) the supply of information about the Netherlands tax system; the supply of information about a foreign tax system in relation to the Netherlands; vi) mentioning a contact point / person in the Netherlands, etc.).

United Kingdom

The UK financial promotions regime will be applicable to any prior or subsequent communication made by the AIFM that could amount to an invitation or inducement to invest regardless of reliance on reverse solicitation for the purposes of AIFMD marketing. The FCA has also clarified that a confirmation from the investor that the offering or placement of units of shares of the AIF was made at its initiative, should normally be sufficient to demonstrate that this is the case, provided this is obtained before the offer or placement takes place. However, AIFMs and investment firms should not be able to rely upon such confirmation if this has been obtained to circumvent the requirements of the UK AIFM rules.



Reverse Solicitation (2/2)

Have NCAs clarified whether the location of investors would play any role in respect of the applicability of the marketing presumption rule? In other words, would reliance on reverse solicitation be available to an AIFM pre-marketing to investors located outside its home MS on the grounds that no pre-marketing occurred in the AIFM’s home MS?

Albeit it seems that there has been no official regulatory guidance in most countries in this respect, variant approaches are currently expected to be adopted across the EU and the UK. It remains to be seen whether the current expectation will be confirmed by means of a specific rule/formal regulatory guidance.

Country specific observations

Denmark

In Denmark, the wording of draft legislation indicates that the 18-month marketing presumption rule applies to all investments, irrespective of whether pre-marketing activities have even been carried out in the country of residence of the investor.

Finland

There has been no official guidance regarding the territorial scope of the rule as of today.

France

Albeit one should expect the AMF to take a territorial approach on this matter, local counsel has reasons to believe that, in cases where an investor would be located in France and pre-marketing would occur in France, it would be unlikely that the AIFM could escape a notification requirement merely because the final acts of marketing would occur outside of France.

Germany

Given the territorial application scope of the KAGB, one might should assume that the marketing presumption would only apply in cases of subscriptions by a German investor or in Germany after pre-marketing in Germany (i.e., a German nexus would normally be required).

Ireland

There has been no official guidance regarding the territorial scope of the rule as of today.

Italy

There has been no official guidance regarding the territorial scope of the rule as of today.

Luxembourg

There has been no official guidance regarding the territorial scope of the rule as of today.

Poland

Although the Polish draft bill amending the Polish Investment Funds Act remains silent in this respect, an interpretation similar to Germany would most likely be followed (i.e., a Polish nexus, by means of the residence of investor/their substance, place of signature of documents, etc., would be required for the 18-month marketing presumption rule to apply).

Spain

There has been no official guidance regarding the territorial scope of the rule as of today.

Sweden

There has been no official guidance regarding the territorial scope of the rule as of today.

The Netherlands

The Dutch draft implementing act transposing CMD does not appear to limit the scope of the 18-month marketing presumption by reference to the location of the investor, however, the application of this rule is limited to AIFMs located in the Netherlands.

United Kingdom

It seems that the 18-month marketing presumption rule would apply to all investments, irrespective of whether pre-marketing activities have been carried out in the country of residence of the investor.



Marketing De-Notification Process

Have NCAs published any local guidance regarding the marketing de-notification process and the prohibition of pre-marketing successor funds for a period of 36 months following a marketing de-notification?

So far, the NCAs in most EU jurisdictions have not issued any special guidance with respect to the marketing de-notification arrangements and the relevant regulatory filings to be made by AIFMs in accordance with CMD.

In addition, the prohibition of pre-marketing successor funds is expected to be implemented in accordance with the text of the CMD across the EU (e.g. in Germany, Poland, Denmark, Finland, Luxembourg or the Netherlands). Subsequently, it is expected that the prohibition of pre-marketing successor AIFs for a period of 36 months from the de-notification date shall apply to pre-marketing activities carried out in the jurisdictions listed in the de-notification filing in line with the text of Art. 32a CMD.





Third-Party Distributors

Have NCAs published any local guidance in the context of distribution by third-parties on behalf of an AIFM?

So far, EU jurisdictions and the UK consider the distribution/marketing of units/shares as a regulated activity triggering a licensing requirement.

Country specific observations

Denmark

There has been no dedicated local guidance in this respect.

France

AMF published guidance on (i) *placement services and marketing of financial instruments*; and (ii) *placing of financial instruments without a firm commitment basis*, investment advice and consultancy services provided to firms in relation to capital structure, industrial strategy and mergers and acquisitions. There is currently an expectation that this guidance will be updated following transposition of CMD especially as it relates to the prohibition on using third parties to conduct pre-marketing unless those third parties are regulated.

Germany

The distribution of AIFs by third-parties is subject to the German provisions transposing MiFiD II. BaFin has produced guidance on how to apply for specific licenses and on their respective scope (although note that there is no dedicated guidance for AIF distribution by third-parties in Germany).

Italy

There has been no dedicated local guidance in this respect. The CMD has not been implemented in Italy nor the NCA provided any guidance with respect to the implementation of CMD. As a general rule, distribution of investment products in Italy is an activity reserved to duly authorised bank, investment firms, AIFMs or financial advisors (consulente finanziario abilitato all’offerta fuori sede).

Luxembourg

As a matter of principle, the Luxembourg law of 5 July 1993 on the financial sector explicitly requires a license for the performance of the marketing activity by third-party distributors not qualifying as AIFMs. This being said, the CSSF issued very recently an updated version of the FAQ on AIFMs, reminding market participants the specific exemptions that might be available to them when providing investment services within the sense of MiFID II (e.g. placing of units of UCIs without a firm commitment basis), which may, *inter alia*, be used in the context of the marketing of AIFs. Most notably, the intra-group exemption (as provided for in Art. 2(1)(b) MiFID II) might be relied upon in the context of the provision of distribution services by entities belonging in the same group as the AIFM/AIF.

Poland

There has been no dedicated local guidance in this respect.

Spain

Spanish law considers the distribution of financial instruments an activity linked to the provision of investment services and which can only be performed by entities holding a licence/authorisation to provide investment services in Spain.

Sweden

There has been no dedicated local guidance in this respect.

The Netherlands

In a similar vein, third-parties involved in distributing participation rights on behalf of an EU AIFM shall be considered to provide the service of reception and transmission of orders in relation to one or more financial instruments or to execute orders on behalf of clients and would therefore qualify as an investment firm and need a license accordingly. This can either be by applying for a license as an investment firm, or through the establishment of a branch in the Netherlands or by providing investment services cross-border (provided that the entity is duly licensed and supervised by a home state supervisory authority).

United Kingdom

Placement agents and other UK distributors will need to consider whether they have the appropriate regulatory authorisations and seek to move EU distribution to an appropriately authorised entity in the EU in light of Brexit.



National Requirements on Marketing Communications

Have NCAs published any country-specific requirements applicable to marketing communications further expanding on the ESMA Guidelines?

Most countries have not issued any country-specific requirements applicable to marketing communications but are rather expected to endorse the ESMA Guidelines as soon as these enter into force (e.g. the Netherlands, Germany, Finland, Luxembourg, Ireland, Poland and France).

Country specific observations

In some countries, country-specific (i.e., not CMD/CMR driven and dating pre-CMD/CMR) requirements already apply most notably:

Denmark

NCA has not introduced any country-specific requirements applicable to marketing communications and is expected to endorse the ESMA Guidelines as soon as their final version enters into effect.

Finland

NCA has not introduced any country-specific requirements applicable to marketing communications and is expected to endorse the ESMA Guidelines as soon as their final version enters into effect.

France

AMF has published guidance on drafting collective investment marketing materials which was updated on 16 March. These rules require in particular that any information contained in marketing material shall be fair, clear and not misleading.

Germany

NCA has not introduced any country-specific requirements applicable to marketing communications and is expected to endorse the ESMA Guidelines as soon as their final version enters into effect.

Ireland

The CBI has primary and statutory responsibility for the regulation of advertising for Financial Services and Products, and where applicable, local requirements are set out in the Consumer Protection Code 2012 issued by the CBI. All marketing communications are, however, also subject to the rules of the Advertising Standards Authority of Ireland (ASAI) Code which includes additional local guidance.

Italy

NCA has not introduced any country-specific requirements applicable to marketing communications and is expected to endorse the ESMA Guidelines as soon as their final version enters into effect.

Luxembourg

NCA has not introduced any country-specific requirements applicable to marketing communications and is expected to endorse the ESMA Guidelines as soon as their final version enters into effect.

Poland

NCA has not introduced any country-specific requirements applicable to marketing communications and is expected to endorse the ESMA Guidelines as soon as their final version enters into effect.

Spain

Spanish local requirements for the marketing of investment products and services are set out in CNMV Circular 2/2020 (e.g. regarding the principles and criteria to which the marketing communications shall adhere and content and format of the marketing communications).

The Netherlands

NCA has not introduced any country-specific requirements applicable to marketing communications and is expected to endorse the ESMA Guidelines as soon as their final version enters into effect.

United Kingdom

The financial promotions regime also applies to fund marketing communications. This regime applies in a different manner depending on whether the person making the financial promotion is FCA-authorised or not. More particularly, UK-authorised AIFMs must comply with the requirements set out in the FCA Handbook when marketing in the UK (Chapter COBS 4). These require, among other things, that all financial promotions are identifiable as such and are fair, clear and not misleading. Firms that are not authorised in the UK must satisfy themselves that they can benefit from an exemption under the financial promotions' regime. The most common exemptions include communications made to certain types of more 'sophisticated' investors (including investment professionals, sophisticated investors and high net worth individuals).



Glossary of Terms (1/2)

AIF	An alternative investment fund within the meaning of Art. 4(1)(a) AIFMD (as defined below)
AIFM	An alternative investment fund manager within the meaning of Art. 4(1)(b) AIFMD (as defined below)
AIFMD	Directive 2011/61/EU on alternative investment fund managers of the European Parliament and of the Council of 8 June 2011 as amended
AMF	<i>Autorité des Marchés Financiers</i> , i.e. the French Financial Markets Authority
AFM	The Dutch Authority on Financial Markets
ASAI CODE	Advertising Standards Authority of Ireland Code
BAFIN	<i>Bundesanstalt für Finanzdienstleistungsaufsicht</i> , i.e. the competent NCA in Germany
CBI	Central Bank of Ireland, i.e., the Irish regulator for the financial sector
CMD	Directive 2019/1160 of the European Parliament and of the Council of 20 June 2019, amending the AIFMD with regard to the cross-border distribution of collective investment undertakings
CMR	Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending the EuVECA Regulation; the EuSEF Regulation; and the PRIIPs Regulation
CNMV	<i>Comisión Nacional del Mercado de Valores</i> , i.e. the competent NCA in Spain
COBS	The FCA Conduct of Business Rules

CONSOB	<i>Commissione Nazionale per le Società e la Borsa</i> , i.e. the Italian regulator for the financial sector
CRD	Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms
CSSF	<i>Commission de Surveillance du Secteur Financier</i> , i.e. the Luxembourg regulator for the financial sector
DFSA	Dutch Financial Supervision Act (<i>Wet op het financieel toezicht</i>)
DRAFT ITS	Final report on implementing technical standards under the CMR (cf. 29 January 2021/ ESMA34-39-961)
EC	European Commission
ESMA	European Securities and Markets Authority
ESMA GUIDELINES	Draft ESMA guidelines on marketing communications under the CMR
EU	European Union
EUSEF	A European Social Entrepreneurship fund
EUSEF REGULATION	Regulation (EU) 346/2013 of the European Parliament and of the Council of 17 April 2013 on euSEF



Glossary of Terms (2/2)

EUVECA	A European Venture Capital funds
EUVECA REGULATION	Regulation (EU) 345/2013 of the European Parliament and of the Council of 17 April 2013 on euVECA
FCA	Financial Conduct Authority, i.e. the competent NCA in the UK
FIN-FSA	Finnish Financial Supervisory Authority (<i>FI: Finanssivalvonta</i>)
FOSTOG	The Fund Location Act (<i>Fondsstandortgesetz</i>)
ITS	Commission Delegated Regulation (EU) 2021/955 of 27 May 2021 on laying down implementing technical standards on the application of the CMR
KAGB	German Capital Investment Code (<i>Kapitalanlagegesetzbuch</i> , KAGB)
KNF	The Polish Financial Supervision Authority (<i>Komisja Nadzoru Finansowego</i>)
LPA	Limited Partnership Agreement
MANREGS	Management Regulations
MIFID II	Directive 2014/65/EU on markets in financial instruments of the European Parliament and of the Council of of 15 May 2014, as amended

MS	EU Member States (excluding for the avoidance of doubt the UK)
NAV	Net Asset Value
NCA	National Competent Authority
NPPR	National Private Placement Regime
PERG	Perimeter Guidance Manual of the FCA
PPM	Private Placement Memorandum
PRIIPS REGULATION	Regulation 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), as amended
SWEDISH FSA	<i>Finansinspektionen</i> , i.e. the competent NCA in Sweden
UCITS	Undertaking for Collective Investment in Transferable Securities
UCITS DIRECTIVE	Directive 2009/65/EU of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended
UK	United Kingdom



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National Databases on Marketing Requirements

Denmark

NCA has published the following information regarding applicable laws and provisions governing marketing requirements on their website: <https://www.finanstilsynet.dk/Lovgivning/Information-om-udvalgte-tilsynsomraader/Kollektive-investeringer/FAIF/Markedsfoering>, last updated in 2016 (in Danish).

Finland

NCA has published the following information regarding applicable laws and provisions governing marketing requirements on their website: <https://www.finanssivalvonta.fi/en/capital-markets/alternative-investment-fund-managers-AIFMs/> regarding marketing provisions applicable to AIFMs. https://www.finanssivalvonta.fi/en/regulation/FIN-FSA-regulations/code-of-conduct/15_2013/ (available only in Finnish and Swedish).

France

NCA has published the following information regarding applicable laws and provisions governing marketing requirements on their website: AMF's "*Guide to UCITS, AIF and other investment fund marketing regimes in France*", last updated on 26 June 2018 (<https://www.amf-france.org/en/regulation/policy/doc-2014-04>).

Germany

https://www.bafin.de/EN/Aufsicht/KVGenInvestmentfonds/ErlaubnisVertrieb/Vertrieb/Vertrieb_node_en.html (last updated in 2020).

Ireland

NCA has published the following information regarding applicable laws and provisions governing marketing requirements on their website: <https://www.centralbank.ie/regulation/industry-market-sectors/funds-service-providers/aifm/passporting>
<https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/funds/aifs/guidance/aif-rulebook-march-2018.pdf?sfvrsn=6>
<https://www.centralbank.ie/regulation/industry-market-sectors/funds/aifs/guidance/inward-marketing-of-aif-to-retail-investors>
<https://www.centralbank.ie/regulation/industry-market-sectors/funds/aifs/guidance/aif-q-a>

The CBI has existing webpages (in English) detailing applicable laws and provisions governing marketing requirements on its website. We would, however, expect the CBI to further update its website with supplementary information in advance of the 2 August 2021 deadline.

Italy

NCA has not yet published any information regarding applicable laws and provisions governing marketing requirements on their website.

Luxembourg

NCA has published the following information regarding applicable laws and provisions governing marketing requirements on their website: <https://www.cssf.lu/en/marketing-alternative-investment-funds/>

Poland

NCA has not yet published any information regarding applicable laws and provisions governing marketing requirements on their website.

Spain

Information only for undertakings for collective investment in transferable securities (UCITS) via this link: <https://www.cnmv.es/Portal/Legislacion/ModelosN/ModelosN.aspx?id=IICEX> which has not been updated since 2014.

Sweden

NCA has not yet published any information regarding applicable laws and provisions governing marketing requirements on their website.

The Netherlands

The website of the AFM does not yet provide up-to-date and complete information on the applicable laws, regulations and administrative provisions governing marketing requirements for AIFs. The AFM has issued an overview of the Level 1 (*the AIFMD and its implementation*), Level 2 (*Regulations by the EC*) and Level 3 (*ESMA Guidelines*) legislation applicable to AIFMs (in Dutch). Limited information is published in English can be found via <https://www.afm.nl/en/professionals/doelgroepen/aifm/aifm/algemeen>

United Kingdom

NCA has published information regarding applicable laws and provisions governing marketing requirements on their website: <https://www.fca.org.uk/firms/aifmd/uk-aifm/marketing>. However, the relevant information has not been updated in light of Brexit yet. A comprehensive and updated guidance on AIF marketing communications can be via this link: <https://www.handbook.fca.org.uk/handbook/PERG/8/37.html>.

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