



## EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

FINANCIAL MARKETS  
**Asset management**

### CONSULTATION DOCUMENT

#### CMU ACTION ON CROSS-BORDER DISTRIBUTION OF FUNDS (UCITS, AIF, ELTIF, EUVECA AND EUSEF) ACROSS THE EU

##### **Disclaimer**

This document is a working document of the Commission services for consultation and does not prejudice the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply **by 2 October 2016** at the latest to the **online questionnaire** available on the following webpage:

[http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds-2016/index\\_en.htm](http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds-2016/index_en.htm)

Should you have a problem completing this questionnaire or if you require particular assistance, please contact [fisma-cross-borders-investment-funds@ec.europa.eu](mailto:fisma-cross-borders-investment-funds@ec.europa.eu).

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.**

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published unless respondents indicate otherwise in the online questionnaire.

Responses authorised for publication will be published on the following webpage: [http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds-2016/index\\_en.htm#results](http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds-2016/index_en.htm#results)

## CONTENT OF THE CONSULTATION DOCUMENT

### INTRODUCTION

Creating a deeper single market for capital - a Capital Markets Union (CMU) which will strengthen Europe's economy and encourage investment in all 28 Member States is one of the European Commission's key priorities. The CMU is intended to mobilise capital in Europe and channel it to companies, including SMEs, and infrastructure projects that need it to expand and create jobs. By linking savings with growth, it will offer new opportunities for savers and investors.

Cross-border investment funds have an important role to play in achieving this aim. If funds can do business more easily cross border, they can grow and become more efficient, allocate capital efficiently across the EU, and compete within national markets to deliver better value and greater innovation for consumers.

The EU has a successful track of promoting the cross-border distribution of funds. The 1985 UCITS<sup>1</sup> Directive introduced a marketing passport for funds for the first time and a legislative regime where the most important aspects are now harmonised. Accordingly there should be no restriction on their sale across the European Union. Since then, and following several legislative updates, the UCITS market has grown to €8 trillion assets under management. Around 80% of UCITS funds are marketed cross-border<sup>2</sup>. More recently, the Alternative Investment Fund Managers Directive (AIFMD), agreed in 2013, introduced a passport for non-UCITS funds. There are currently about €5 trillion of asset under management for AIFs, with 40% of funds marketed across border<sup>3</sup>. AIFs which are managed by authorised AIFM in accordance with AIFMD should, in accordance with that Directive, be freely available for sale to professional investors in the European Union. Overall, 57 % of the funds (UCITS and AIFs) are marketed on cross-border basis<sup>4</sup>.

However, there is more that can be done to deepen the single market for funds: one third of UCITS that are marketed cross-border are only sold in one Member State in addition to their home country, and mainly back to the Member State where the Asset Management Company is domiciled. Another third is not sold in more than four Member States outside of their home country. EU UCITS funds are also significantly smaller than US mutual funds. There are more than 30,000 UCITS funds available for sale in Europe in contrast to 7000 mutual funds in the US and while the average European mutual fund is valued at approximately €200 million, its counterparts in the US are almost seven times as large. This has consequences for the economies of scale these funds can reap and fund costs. The costs of marketing across borders may fall disproportionately on smaller, start-up or more specialised funds.

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<sup>1</sup> [Directive 85/611/CEE](#)

<sup>2</sup> Source: European Commission staff calculation

<sup>3</sup> Source: European Commission staff calculation

<sup>4</sup> Source: European Commission staff calculation

The remaining barriers to cross-border distribution are varied – and may include the impact of concentrated fund distribution channels in individual member states, cultural preferences for funds managed in investors’ home states, and a lack of incentives for managers to compete cross-border. However, one obstacle that has been consistently cited, and which may be relatively more important for smaller managers, are the regulatory barriers to distribution. Regulatory barriers have been identified in response to the [Capital Markets Union<sup>5</sup> green paper](#) and to the [Call for Evidence on the EU Regulatory Framework for Financial Services<sup>6</sup>](#) as including burdensome registration procedures, costly and diverse marketing requirements, inconsistent administrative arrangements and tax obstacles. Eliminating unjustified barriers would support fund managers to engage more in cross-border marketing of their funds, increase competition and choice, and reduce costs for investors.

The Commission is seeking further details and evidence from stakeholders including fund managers, investors and consumer representatives in order to understand where and how the cross-border distribution of funds could be improved. Input from distributors is also welcome in order to build a fuller picture of the barriers to distribution. In order to build upon earlier responses to the CMU consultation and to the Call for Evidence on the EU regulatory framework for financial services, specific examples and where possible quantitative and financial evidence on the financial impact of the barriers, would be welcome. This includes the impact of marketing rules, administrative arrangements imposed by host countries, regulatory fees and notification procedures and also the most pertinent features of the tax environment. The Commission will use this information in its assessment on taking action to address the barriers, supporting the development of the CMU and increasing choice.

This consultation seeks feedback in the following areas:

- **Marketing restrictions:** EU funds marketed cross-border are usually required to comply with national requirements set by host Member States, which differ across the EU. Significant costs can be incurred in researching each EU Member State’s financial promotion and consumer protection regime, and providing appropriate materials on an on-going basis.
- **Distribution costs and regulatory fees:** EU funds can be subject to regulatory fees imposed by home and host Member States that vary significantly in both scale and how they are calculated. The costs themselves and the need to research them are reported as acting as a barrier to cross-border distribution.
- **Administrative arrangements:** Where EU funds using the marketing passport are sold to retail investors, host Member States sometimes introduce special administrative arrangements intended to make it easier for investors to subscribe, redeem and receive related payments from those funds, as well as receive tailored information to support them in doing so. These are an additional burden that may not always be justified by the value added for local investors.

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<sup>5</sup> [Green Paper: Building a Capital Markets Union, COMM\(2015\)0633.10](#)

<sup>6</sup> [Call for Evidence: EU Regulatory Framework for Financial Services, Commission Services, 2015](#)

- **Distribution networks:** With increasing use of online platforms to distribute funds, we want to understand the barriers that hinder the use of online and direct distribution across borders.
- **Notification processes:** Where funds are marketed on a cross-border basis and there is a need for documentation to be updated or modified, asset managers are required to give written notice to the competent authority of the host Member State. This can add cost and time to the process.
- **Taxation:** differential tax treatments can sometimes create barriers to cross border business. Feedback is sought on how best to promote best practice and avoid discriminatory tax treatment.

The Commission is grateful for the input of respondents informing the next stage of this work. The public consultation is open from 2 June 2016 to 2 October 2016.

This consultation complements other work by the Commission work seeking to improve the single market for investment products and asset management and improve outcomes for consumers and investors:

- As set out in the CMU action plan, the Commission will undertake a comprehensive assessment of European markets for retail investment products, including distribution channels and investment advice, drawing on expert input. The assessment will identify ways to improve the policy framework and intermediation channels so that retail investors can access suitable products on cost-effective and fair terms. The assessment will examine how the policy framework should evolve to benefit from the new possibilities offered by online based services and fintech.
- The Green Paper on retail financial services, which seeks to identify the specific barriers that consumers and firms face in making full use of the Single Market and ways in which those barriers could be overcome, including by making best use of new technology, subject to appropriate safeguards.
- The Call for Evidence (CfE) on the EU regulatory framework for financial services, which is assessing the evidence and feedback received on rules affecting the ability of the economy to finance itself and grow, unnecessary regulatory burdens, interactions, inconsistencies and gaps, and rules giving rise to unintended consequences.
- In parallel, following up on a call from the ECOFIN, the Commission has established a Member State Expert Group on barriers to free movement of capital, with the aim to map national barriers, identify the most damaging to the internal market and find the most efficient ways to remove them, including through voluntary commitments by Member States. National barriers to cross-border distribution of funds will also be discussed in that context. Through a collaborative process with Member States, a Report on barriers and a Roadmap for lifting or easing them is foreseen for adoption by end 2016.

In addition, the Commission has wider initiatives underway on the Single Market and Digital Single Market. The Single Market Strategy comprises targeted actions in three key areas: creating opportunities for consumers, professionals and businesses, encouraging modernisation and innovation and ensuring practical delivery that benefits consumers and businesses in their daily lives. It aims to facilitate cross-border provision of services and to

address key barriers for business services and construction. The Digital Single Market strategy intends to ensure, among other goals, better access for consumers and businesses to online goods and services across Europe. It also addresses the issue of the "level-playing field" between various service providers and envisages a comprehensive assessment of online platforms.

## THE CONSULTATION – SUMMARY OF QUESTIONS

### 1. INFORMATION ABOUT YOU

*Questions addressed in particular to asset managers and where appropriate, distributors (professional associations are invited in addition to consolidate information on behalf of their Members)*

**Question 1.1** – What types of funds do you market and to which types of investors do you market directly? [for each type of fund and investor]

**Question 1.1a** – If you have a general policy of differentiating between high net worth individuals and other retail investors then please also provide information on this.

**Question 1.1b** – Which channels do you use to distribute funds cross-border? Does your cross-border distribution policy differ depending on the type of investor you wish to address and the Member State?

**Question 1.1c** – Please expand upon your reply.

**Question 1.2** – Please provide your definition of high net worth retail individuals. Does this definition vary from one national market to another one?

**Question 1.3** – What is the sum of Assets under Management (€) of these funds? [for each type of fund and investor]

**Question 1.4** – Where are your funds mainly domiciled (In % of the number of your UCITS and AIFs)? [for each Member State where your funds are domiciled]

**Question 1.5** – Do you use the UCITS passport in order to market your UCITS funds in other EU Member States?

**Question 1.5a** – If you do not use the UCITS passport, please explain why this is.

**Question 1.6** – Do you use the AIFMD passport in order to market your EU AIFs in other EU Member States?

**Question 1.6a** – If you do not use the AIFMD passport, please explain why this is.

**Question 1.7** – Do you use a marketing passport for all your UCITS, AIF, ELTIF, EuVECA and EuSEF?

**Question 1.7a** – What percentage of your funds have you received permission to be marketed in (a) at least one other Member State and (b) at least two other Member States with the passport? What value of Assets under Management do these represent?

**Question 1.8** – In how many Member States, if any, do you market your funds (including sub-funds) on a cross border basis? (Please provide an aggregate figures or an estimate)

**Question 1.9** – In which Member States do you actively market your UCITS and AIFs?

**Question 1.9a** – Please provide the UCITS allocation between Member States [number of UCITS funds / sub-funds & AuM]. If this is not straightforward to obtain, please provide an estimate.

**Question 1.9aa** – Please provide any further details (e.g. assumptions your estimate is based upon)

**Question 1.9b-e** – [Please provide the details requested in 1.9a & 1.9aa for AIFs, EuVECAs, EuSEFs and ELTIFs]

***Questions addressed to investors:***

**Question 1.10** – What type of investor are you?

All types (consumer/investor representative)

**Question 1.11** – Do you invest in investment products?

Yes

**Question 1.11 a** – Please expand upon your response.

- Investment funds (UCITs, AIFs) although most individual fund investors have no clue what “UCITs” and “AIF” mean, and a fortiori if the fund they invest in is a UCITS or an AIF
- Investment-based insurance products: with-profit policies, unit-linked insurance contracts, annuities, etc.
- Bank savings/investment products
- Structured investment products
- Personal pension products
- DC occupational pension products where individuals have choice of amounts to invest and of asset/fund allocation.
- Shares
- Bonds

**Question 1.12** – Do you invest directly or indirectly in particular via an insurance wrapper such as unit linked insurance contracts in investment funds?

Both.

Please note the majority of EU households’ savings is in “packaged” or wrapped products versus securities. Direct retail investments in funds are only 8% of EU households’ financial wealth, versus 32% in life insurance and pension products.



Moreover, for example, more than half of French households invest in funds via unit-linked insurance contracts, not directly. The main reason marketed by intermediaries (retail investment products are much more “sold” than “bought”) is a supposed tax advantage. What is certain is that commissions on unit-linked insurance contracts are much higher than on straight investment funds.

**Question 1.12 a** – Please expand on your reply.

See above

**Question 1.13** – In which type of fund(s) do you invest [domestic / overseas UCITS / AIFs, EuVECAs, EuSEFs and ELTIFs]?

Again the vast majority of EU savers and individual investors will not understand these acronyms. If this consultation is to be really addressed to EU savers, it should be written in plain language, intelligible by the majority of the target audience (this is actually a MiFID rule about clear information).

This being said, EU savers are more likely to be sold AIFs than UCITS. For example in Europe the total number of UCITS was 30,145 compared to 27,648 AIFs. In a more particular case, in France there are 3500 domiciled UCITS funds and more than 8000 AIFs. These AIFs are mostly retail funds and are widely included in unit-linked insurance contracts. Also, French savers are forced to buy only AIFs in corporate savings and corporate pension plans. Same applies to a lot of other specific purpose tax-incentivized retail funds.

It is very unlikely that they will invest in ELTIFs as these funds are not tailored to individual investors.

They will consider EuVECA and EuSEFs only if they are competitive with existing venture capital or social enterprises local AIFs with regard to their tax incentives.

**Question 1.14** – What is the approximate allocation of your assets between funds [In % of your financial assets]?

See Eurostat and OECD statistics referred to in our answer to question 1.12

**Question 1.14a** – If it is helpful, please expand upon your reply.

Retail financial products are “advised”, promoted and sold to EU household mainly based on two criteria:

- level of profitability for providers (commissions)
- Tax advantages (perceived/advertised or real) for savers

This is usually detrimental to direct investments in securities (shares and bonds), to simple low cost packaged products such a low cost index ETFs (index funds are a 50/50 market between institutional and individual investors in the US versus 90/10 in Europe), and to Pan-European products such as UCITS funds as they usually do not enjoy the tax advantages of other local investment products such as specific AIFs, and as their use is quite often prohibited by national rules (in French corporate savings and pension plans for example).

**Question 1.15** – How do you inform yourself on available investment opportunities (e.g., investment advice, online information tools, face-to-face conversation with a bank staff or

financial advisor, etc.)?

The majority of EU households are “informed” about retail investment products by their financial intermediaries. The biggest retail intermediary network is that of universal and commercial banks. Many of these networks operate in a closed architecture model or limited open architecture limited to investment product providers that pay significant commissions.

## 2. GENERAL OVERVIEW

*Questions addressed in particular to asset managers (professional associations are invited in addition to consolidate information on behalf of their Members) and where appropriate, distributors who market or advise funds to investors*

*Other respondents are welcome to respond to some or all of the questions below.*

**Question 2.1** – What are the reasons for any limitation on the cross-border distribution of your funds? [for each host Member State - Regulatory costs and/or marketing requirements costs are too high, Lack of demand outside your home market, Host Market size is too small, Openness of the distribution network to third parties, Tax issues, Other]

**Question 2.1a** – Please expand upon and provide more detail on your response – please explain, what the issues are and how they limit the cross-border distribution of funds. Please cite the relevant provisions of the legislation concerned if possible.

**Question 2.2** – In your experience, which of the following issues are the **major regulatory and tax barriers** to the cross-border distribution of funds in the EU? For the issues you consider to be major barriers, please rank them in order of importance [Different definitions across the EU of what marketing is, Marketing requirements imposed by host Member States, Regulatory fees imposed by host Member States, Administrative arrangements<sup>7</sup> imposed by host Member States, Lack of efficiency of notification process, Difficult/cumbersome refund procedures for claiming relief from withholding taxes on distributions by the UCITS, AIFs, ELTIF, EuVECA or EuSEF, Higher taxation of investment funds located elsewhere in the EU/EEA than of domestic funds, Differences between the tax treatment of domestic and foreign fund managers as regards withholding tax/income reporting responsibilities and opportunities on income distributed by UCITS, AIF, ELTIF, EuVECA or EuSEF, Differences between Member States in tax reporting, Other: Please specify]

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<sup>7</sup> See section 6 for further details on administrative arrangements

### 3. MARKETING REQUIREMENTS

Where EU funds are marketed to investors, they are usually required to comply with national requirements set by host Member States. These marketing requirements, especially those relating to the content of communications<sup>8</sup>, differ across the EU. For example, some Member States require ex-ante approval of the marketing communications whether other Member States monitor the communications ex-post, and some Member States adopt a principles-based approach whereas others apply detailed rules.

Respondents to the CMU consultation viewed that these varying national requirements as a significant barrier to marketing funds cross-border, with significant costs incurred in researching each EU Member State's financial promotion and consumer protection regime, and providing appropriate materials on an on-going basis.

In the case of UCITS, the current disclosure regime has been established over a number of years, based on home Member State control with a maximum harmonisation regime (except for language translation) applying to the key investor information. However, anecdotal evidence suggests that at least some Member States require additional disclosures or review material before a UCITS may be marketed. While any consideration of this issue should give due attention to the concerns which have led regulators to require additional disclosures and to review marketing material, it may be better that any concerns, where justified, are addressed at the EU level, in order to eliminate barriers to the further development of the single market in this area.

#### *Question addressed to all respondents*

**Question 3.1a** – Are you aware of member state interpretations of marketing that you consider to go unreasonably beyond of what should be considered as marketing under the UCITS Directive<sup>9</sup>?

No

**Question 3.1aa** – Please explain your answer

**Question 3.1b** – Are you aware of member state interpretations of marketing that you consider to go unreasonably beyond the definition of marketing in AIFMD?

No

**Question 3.1bb** – Please explain your answer

**Question 3.1c** – Are you aware of any of the practices described above having had a material impact upon the cross-border distribution of investment funds?

No

**Question 3.1cc** – Please explain your answer.

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<sup>8</sup> Marketing communications comprise an invitation to purchase investment funds that contains specific information about the funds. In other words, this includes all the marketing materials that are used in order to promote or advertise a specific investment fund. For the purpose of these questions, the prospectus and the Key Information Documents are not considered as marketing communications

<sup>9</sup> Article 91 to 96 of the [Directive 2009/65/EC](#) of the European Parliament and of the Council of 13 July 2009

*Questions addressed in particular to asset managers (professional associations are invited in addition to consolidate information on behalf of their Members) and where appropriate, distributors who market or advise funds to investors and National Competent Authorities*

*Other respondents are welcome to respond to some or all of the questions below.*

**Question 3.2** – Which of the following, if any, is a particular burden which impedes the use of the marketing passport? [Different interpretations across Member States of what constitutes marketing, Different methods across Member States for complying with marketing requirements (e.g. different procedures) Different interpretations across Member States of what constitutes a retail or professional investor, Additional requirements on marketing communications imposed by host Member States, Translation requirements imposed by host Member States, Other domestic requirements]

**Question 3.2a** – Please can you expand on this below.

**Question 3.3** – Have you seen any examples of Member States applying stricter marketing requirements for funds marketed cross-border into their domestic market than funds marketed by managers based in that Member State?

**Question 3.3a** – Please explain your reply and provide evidence.

**Question 3.4** – Are domestic rules in each Member State on marketing requirements (including marketing communications) easily available and understandable?

**Question 3.4a** – If your answer is no, please provide details and specify in which Member State(s) the rules are not easily available and understandable and why.

**Question 3.5** – When you actively market your funds on a cross-border basis to retail investors/High Net worth retail individuals/ Professional investors do you use marketing communications (Leaflet, flyers, newspaper or online advertisement, etc.)? Please provide the percentage of your funds marketed on a cross-border basis using marketing communications in the host country

**Question 3.5a** – To what extent are marketing communications important in marketing your funds to retail investors, high net worth individuals and professional investors? Please explain your answer

**Question 3.6** – What types of marketing communication do you use for retail investors [leaflet / flyer, short booklet, newspaper advertisement, TV advertisement, radio advertisement, online advertisement, other (please specify)]

*Questions addressed to distributors who market or advise investment funds to investors*

**Question 3.7** – When you market funds on a cross-border basis to **retail investors** do you use marketing communications (Leaflet, flyers, newspaper or online advertisement, etc.)? Please provide the percentage of funds marketed on a cross-border basis using marketing communications in the host country

**Question 3.7a** – To what extent are marketing communications important in marketing funds to retail investors? Please explain your answer.

**Question 3.8** – When you market funds on cross-border basis to **high net worth retail individuals** do you use marketing communications? Please provide the percentage of your funds marketed on cross-border basis using marketing material in the host country

**Question 3.8a** – To what extent are marketing communications important in marketing funds to high net worth retail individuals? Please explain your answer.

**Question 3.9** – When you market funds on cross-border basis to **professional investors** do you use marketing communications? Please provide the percentage of your funds marketed on cross-border basis using marketing communication in the host country

**Question 3.9a** – To what extent are marketing communications important in marketing funds to professional investors? Please explain your answer.

#### *Questions addressed in particular to investors*

**Question 3.10** – To what extent is the UCITS Key Investor Information Document (KIID) useful in your investment decision? Is a KIID always provided to you?

KIID is considered as the only standardised pre-contractual document that contains (with respect to all its shortcomings) relevant information about the investment in a condensed, comparable and readable way.

Only a prospectus (fund statutes) can be more detailed, however it is very long, written in lawyers' language, and often contains too general information about the investment strategy and includes unweighted risk information.

Therefore, the KIID is the only document that is readable by the ordinary saver/investor.

The practice of distributors (intermediaries) is, that a KIID is provided only when a real interest is seen from a retail investor. Neither the existence of a KIID nor the information on the web page, where it can be found is usually given at an early interest stage. Instead, retail intermediaries tend to provide other information/marketing material than the KIID or to provide the KIID along with a huge amount of other (marketing) documents which makes it difficult for the investor to filter the regulated information (KIID) from the pure marketing material.

This is most unfortunate as typically marketing information is sketchier, not balanced and too often found inconsistent with that of the KIID. In particular, the ten-year past performance disclosure with that of the benchmark – which is included in a standardised and therefore comparable way in the KIID – is nowhere to be found in the on-KIID information provided at the retail point of sale. The KIID would be a much more reliable and comparable source of information.

**Question 3.11** – To what extent do marketing communications<sup>10</sup> play a role in your investment decision? Do you consult marketing materials before making your investment decision?

In many cases, direct marketing communication is provided by bank clerks or financial intermediaries, who rather "sell" than "look for a solution".

If the investment fund is "sold" by a financial intermediary, retail clients tend to consider this as a suspicious act as the clear consideration of client needs (real solution) is missing..

In some cases, retail investors compare marketing materials against the KIID (under the assumption that the clients are aware of the KIID, and understand what it is and where

they can find it)..

**Question 3.11a** – Please expand upon your reply.

**Question 3.12** – To what extent do you consider the marketing communications as providing a balanced views of the up-and downsides of a particular investment and do they contain meaningful information to assess risk and costs associated with the investment products?

Based on our experience, marketing communication cannot be viewed as balanced, especially for the following reasons:

Distributors often use selling techniques to promote and sell the product without relying on KIID as a document, where balanced information is given to a retail investor.

Marketing materials rarely contain key information for investors (risk, probability-weighted expectations of returns, strategy back tests, comparison with benchmark, fees and charges).

Marketing materials often rely on providing an "innovative" solution approach towards investing and do not really explain the "work" that is behind the process.

Marketing materials emphasize the chances of an investment while playing down its risks – not only as regards content but also through means of presentation (e.g. use of smaller fonts for risks, more prominent placement of chances in the marketing documents etc.). Besides, as mentioned previously they almost always prevent any comparison with competitor products due to a lack of standardisation.

**Question 3.13** – To what extent is it important for you to have marketing communications in your national language?

It is important, but not as much as being provided with the KIID without having to ask for it, and being explained what is it (a legally required information document approved by the public Authority).

**Question 3.14** – How relevant is the disclosure of the following information in the marketing communications? [The asset management company, Price, Costs, Past performances, Scenario/ future potential performance, Performance of the benchmark, How to get additional information, Specific risks, How to make a claim, How to get your money back, Information on Tax treatment of income distributions by the fund, Other: Please specify]

Considering the KIID structure and the techniques and methods used for calculations of key parameters, marketing materials could be more flexible in a way of calculating parameters.

As retail investors, we would consider most of the presented parameters highly relevant. However, key parameters are the fees (for the recommended holding period), taxes, and comparison of historical performance with a relevant benchmark.

**Question 3.14a** – Please explain the reasons for your response.

*Question addressed to all respondents*

**Question 3.15** – Do you consider that rules on marketing communications<sup>11</sup> should be more closely aligned in the EU?

Certainly yes. But more importantly, the mandatory consistency of marketing



communications with the KIID should be much better enforced throughout the EU Member States. We have a lot of cases where information on fees and on performance is different (and therefore almost always false).

Local, national language marketing materials should be controlled by the local, national NCA, in particular for consistency with the KIID and should allow local consumer and retail investor associations to flexibly react on potential wrongdoings of asset managers or distributors.

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<sup>10</sup> Marketing communications comprise an invitation to purchase investment funds that contains specific information about the funds. In other word, this includes all the marketing materials that are used in order to promote or advertise a specific investment funds. For the purpose of these questions, the prospectus and the Key Information Documents are not considered as marketing communications

<sup>11</sup> Marketing communications comprise an invitation to purchase investment funds that contains specific information about the funds. In other word, this includes all the marketing materials that are used in order to

**Questions 3.15a** – Please explain your answer – and if appropriate, to what extent do you think they should be harmonised?

As the UCITs (as well as potentially other PRIIPs) are really pan-European products, marketing communication materials should be harmonized to a maximum level possible.

**Question 3.16**– Is there a case for harmonising marketing communications for other types of investment products (other than investment funds)?

**Question 3.16a** – Please explain your reply and what should be the other products be?

**Question 3.17** – What role do you consider that ESMA – vis-a-vis national competent authorities - should play in relation to the supervision and the monitoring of marketing communications and in the harmonisation of marketing requirements? If you consider both should have responsibilities, please set out what these should be.

ESMA and NCAs should play an active ex-ante role and test the product features against parameters marketed via marketing materials. Furthermore it would be favourable if clear and straightforward requirements on – at least – the key parameters marketed would be developed by ESMA.

#### **IF YES TO QUESTION 3.15**

**Question 3.18** – Do you consider that detailed requirements– or only general principles on marketing communications<sup>12</sup> should be imposed at the EU level when funds are marketed to retail investors?

There should be clear and straightforward detailed requirements on several key parameters marketed.

For example, if the product is marketed as “innovative”, it should be compared to other dominant products offered on the market and the differences must be explained.

The fees must be compared to the market average.

The historical returns must be compared to the benchmark including at least the dominant competing products.

**Question 3.18a** – Please explain your reply.

**Question 3.19** – Do you consider that the requirements on marketing communications should depend on the type of funds or the specific characteristics of some funds (such as structured funds or high leverage funds) when those funds are marketed to retail investors?

No. There should be single rules applied to all funds.

We have to highlight, that AIFs are massively sold to retail investors where less information is provided to investors (as they are deemed to be professional investors via filled MiFID questionnaire).

**Question 3.19a** – Please describe the specific requirements.

**Question 3.19b** – Please describe the types of products which should have additional requirements on their marketing and their specific characteristics.

**Question 3.20** – Do you consider that detailed requirements – or only general principles on marketing materials, at the EU level, should be imposed when funds are marketed to professional investors only?

Less strict requirements can be imposed on marketing materials in case of professional investors, however previous answer shows issues with defining typical retail clients as professional investors.

**Question 3.20a** – Please explain your reply.

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promote or advertise a specific investment funds. For the purpose of these questions, the prospectus and the Key Information Documents are not considered as marketing communications

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#### 4. COSTS

Respondents to the CMU and CfE noted the relatively high cost of distributing funds – in terms of work to comply with regulation, fees charged by regulators and distribution costs. This section asks about the overall costs to asset managers wishing to market cross-border, and section 5 asks about fees charged by the regulatory authorities specifically.

*Questions addressed in particular to asset managers (professional associations are invited in addition to consolidate information on behalf of their Members) and where appropriate, distributors who market or advise funds to investors*

*Other respondents are welcome to respond to some or all of the questions below.*

**Question 4.1** – What proportion of your overall fund costs relate to regulation and distribution depending on the Member State where the fund is marketing regardless where it is domiciled? If this is not straightforward to obtain, please provide an estimate. Alternatively, please provide man hours spent on each. [Please answer for each relevant host Member State:

- **Regulatory costs** – Legal costs (Third party, Internal legal analysis) / Regulatory fees / Administrative arrangements / Marketing requirements / Others
- **Distribution costs** – Traditional Network distribution / Online distribution
- **Costs links to taxation system** – Costs in order to get the information / Costs to fulfil the obligation]

## 5. REGULATORY FEES

As noted in section 4, the range of regulatory fees charged by host Member States have been referred to by a number of respondents to the public consultations as hindering the development of the cross-border marketing of funds across the EU. A formal notification process applies in respect of the passporting of all EU investment funds. In many cases national competent authorities apply a fee to the processing of such notifications. A preliminary assessment by the Commission services shows that the level of fees levied by host Member State on asset managers varies considerably, both in absolute amount and how they are calculated, including some Member States who may not apply fees.

Notification procedures contained in the various fund legislation do not currently include any reference to regulatory fees. In some cases, such as EUVECA and EUSEF, all supervisory powers are reserved to the home competent authority and host authorities expressly prohibited from imposing any requirements or administrative procedures in relation to marketing. The Commission services are interested in views as to whether notification fees are compatible with an efficient notification procedure, the passporting rights provided for in legislation and, if fees were to be allowed, how to ensure that they are proportionate and not excessive.

*Questions addressed in particular to asset managers (professional associations are invited in addition to consolidate information on behalf of their Members)*

*Other respondents are welcome to respond to some or all of the questions below.*

**Question 5.1 – Does the existence and level of regulatory fees imposed by host Member States materially affect your distribution strategy?**

Placing the questions related to regulatory fees opens a space for discussion on the requirement of asset management companies to present transparently the fees tied to the regulation and distribution. It is proven that one-off entry fee is mostly tied to the distribution expenses.

There is a need for transparency of fees and the fees tied to the regulation should be presented in the KIID or the prospectus transparently to the retail clients as this type of fee effectively lower the performance and thus the overall return to the fund holder.

**Question 5.2 –** In your experience, do any Member States charge higher regulatory fees to the funds domiciled in other EU Members States marketed in their Member State compare to domestic funds?

**Question 5.2a –** Please explain your reply and provide evidence.

**Question 5.3 –** Across the EU, do the relative levels of fee charged reflect the potential returns from marketing in each host Member State?

**Question 5.3a –** Please explain your reply and provide examples.

**Question 5.4 –** How much would it cost you, in term of regulatory fees [one-off fees and ongoing], to market a typical UCITS with 5 sub-funds to retail investors in each of the following Member States (this excludes any commission paid to distributors)? Please respond for each Member State where you market your UCITS funds.

**Question 5.5 –** How much would it cost you in terms of regulatory fees [one-off fees and ongoing], to market a typical AIF with 5 sub-funds to professional investors in each of

the following Member States (this excludes any commission paid to distributors)? Please respond for each Member State where you market your AIFs.

***Question addressed to National competent Authority***

Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË - Tel. +32 22991111  
[http://ec.europa.eu/finance/index\\_en.htm](http://ec.europa.eu/finance/index_en.htm)

**Question 5.6** – How much would it cost, in term of regulatory fees, to market a typical UCITS with 5 sub-funds to retail investors in your Member State? Please explain which fees are one-off and which are annual.

**Question 5.7** – How much would it cost, in term of regulatory fees, to market a typical AIF with 5 sub-funds to retail investors in your Member State? Please explain which fees are one-off and which are annual.

*Questions addressed in particular to asset managers (professional associations are invited in addition to consolidate information on behalf of their Members) and National Competent Authorities*

*Other respondents are welcome to respond to some or all of the questions below.*

**Question 5.8** – Where ongoing fees are charged, are they related to use of the passport?

**Question 5.9** – Do differing national levels of, and bases for, regulatory fees hinder the development of the cross-border distribution of funds?

**Question 5.9a** – Please explain your answer.

**Question 5.10** – On who are regulatory fees are charged: managers or funds? Please describe if there are different practices across the EU.

## 6. ADMINISTRATIVE ARRANGEMENTS

Where EU funds using the marketing passport are sold to retail investors, host Member States sometimes introduce special administrative arrangements intended to make it easier for investors to subscribe, redeem and receive related payments from those funds, as well as receive tailored information to support them in doing so. Examples cited in earlier evidence include a requirement for UCITS funds to appoint a paying agent located in the host Member State, and a requirement for information contacts to be located in the host state. These have advantages for investors in allowing them to deal with local organisations, but a number of respondents to the CMU green paper viewed these requirements as an additional burden which is not always justified by the value added for local investors, especially when taking into account the development of new technologies. Moreover, UCITS and any funds marketing to retail investors are required in any case to have arrangements in place which allow investors to be confident that they know how to go about subscribing and redeeming to the fund. However the infrastructure through which payments are made and received and through which information is provided may generally no longer require a physical presence in a host Member State. Clarification that infrastructure can be provided through technical means as well as by local agents may be one way to address this issue. Views are sought on whether this would be likely to reduce costs and support the further integration of the single market.

In order to better assess this potential issue, and other administrative arrangements, it would be very helpful to have tangible evidence from stakeholders. The perspective of retail investors is also particularly welcomed in order to address and consider investor protection issues.

*Questions addressed in particular to asset managers (professional associations are invited in addition to consolidate information on behalf of their Members)*

*Other respondents are welcome to respond to some or all of the questions below.*

**Question 6.1** – What are the main barriers to cross-border marketing in relation to administrative arrangements and obligations in Member States? Please provide tangible examples of where you consider these to be excessive.

**Question 6.2** – Do you consider that requirements imposed by host Member States, in relation to administrative arrangements, to be stricter for foreign EU funds than for domestic funds?

**Question 6.2a** – Please explain your reply.

**Question 6.3** – What would be the estimated savings (in term of percentage of your overall costs) if you were no longer required to apply these administrative arrangements in the Member States where you market your units?

**Question 6.4** – In the absence of the administrative arrangements described in your response to Question 6.1, what arrangements would be necessary to support and protect retail investors?

**Question 6.5** – Do you consider that the administrative arrangements should differ if the fund is marketed to retail investors or professional investors?



**Question 6.6** – What is the impact in term of costs of making these facilities available in each Member State? Please quantify them in relation to each measure and for each Member States where you distribute your funds.

**Question 6.7** – Which alternative/additional administrative arrangements would you suggest in order to ensure greater efficiency in cross-border marketing and appropriate levels of investor protection?

**Question 6.8** – Are there any measures you would suggest to improve the efficiency and effectiveness of administrative arrangements within and across Member States?

**Questions addressed in particular to investors:**

**Question 6.9** – In general have you experienced any problems in being able to obtain information on, and invest, in foreign EU funds?

In principle, it is hard to find comprehensive information (web sites) comparing investment funds. As long as the information is in the national language, retail investors will not know or not realise if a fund is locally domiciled or domiciled in another Member State, and therefore they usually don't care in that case. It is different of course if the foreign-domiciled fund information is provided only in a foreign language.

Lack of comprehensive web sites (as many web sites often focus on domestic funds only) keep the information asymmetry on the side of retail investors, who are not able to compare the foreign funds to the domestic ones.

Another limitation is that non independent fund information and selling platforms will not mention low cost no-commission funds such as index ETFs.

**Question 6.9a** – Please describe your experience.

**Question 6.10** – Which facilities would you deem necessary to invest in EU funds domiciled in another Member State? Please explain.

KIID in local language and clear and comprehensive comparative web sites allowing to see key parameters of the funds.

Another issue is trust. Consumer (retail investor) experience and opinions on the fund or financial service (like for any other products - consumer electronics, hotels, car rental services) should be allowed.

**Question 6.11** – What are your main problems when investing in funds domiciled in jurisdictions other than your jurisdiction of residence? Are differences in languages an important issue?

Language is obviously a barrier if the KIID is not translated into the local language. Information asymmetry is another one.

Additional issue is the fear of a lower level of recovery schemes or lower consumer/investor protection rules in other Member States.

There should be one official language for all funds on the market (irrelevant whether sold domestically or in host countries). Domestic language should be allowed also as a secondary one.

**Question 6.12** – What is the best way to overcome such problems and facilitate your transactions?

**Question 6.12a** – Please clarify.

**Question 6.13** – Which kind of information do you need when making transactions on EU funds domiciled in another Member State?

## 7. DIRECT AND ONLINE DISTRIBUTION OF FUNDS

*Questions addressed in particular to asset managers (professional associations are invited in addition to consolidate information on behalf of their Members) and where appropriate, distributors*

*Other respondents are welcome to respond to some or all of the questions below.*

**Question 7.1** – What are the main issues that specifically hinder the direct distribution of funds by asset managers? [Regulatory requirements – Marketing requirements, Administrative arrangements, Others: please specify / Regulatory fees imposed by host Member States / Tax rules (e.g. withholding taxes) / Income reporting requirements / Lack of resources / Others: Please specify]

**Question 7.1a** – Please expand on your reply.

**Question 7.2** – What are the main barriers that hinder the online distribution of funds or the setting up new distribution platforms or other digital distribution ways?

**Question 7.3** – Are there aspects of the current European rules on marketing, administrative arrangements, notifications, regulatory fees and other aspects (such as know your customer requirements) that hinder the development of cross-border digital distribution of funds beyond those described in earlier sections?

**Question 7.3a** – What are these aspects?

**Question 7.3b** – Are there aspects of the current national rules on marketing, administrative arrangements, notifications, regulatory fees and other aspects (such as know your customer requirements) that hinder the development of cross-border digital distribution of funds beyond those described in earlier sections?

**Question 7.3c** – What are they?

**Question 7.4** – What do you consider to be the main reasons why EU citizens are unable to invest in platforms domiciled in another Member State?

**Question 7.5** – What would you consider to be appropriate components of a framework to support cross-border platform distribution of funds? What should be the specifications for the technical infrastructure of the facilities? Please clarify among others how you would address the differences in languages.

*Questions addressed in particular to investors*

**Question 7.6** – **Do you invest in funds via an on-line fund platform or a website?**

Yes

**Question 7.6a** – **Please expand upon your reply.**

Web sites of asset managers are for official documents and other standardized information.

What drives the decision of retail investors are the comparison web-sites that are managed either by commercial providers, and preferably by more (but still rare in existence) independent non-profit organization or by NCAs (but those are often not

built in a very user-friendly way).

**Question 7.6b** – If you have invested in funds online, what kind of information on the suitability or appropriateness of the investment was made available to you?

**Question 7.6c** – If you do not invest in funds via fund platform or a website, why do you not do so?

**Question 7.7** – What are your expectation when you invest via fund platform or a website?

Speed, independence, provision of information (KIID, etc.), low administration and individual approach via electronic means (app, emails, chat)

**Question 7.8** Do you invest in funds platform or a website domiciled in another Member State?

Typically, retail investors do not know if the website is domiciled in another Member State as long as it is available in his own language.

**Question 7.9** – What do you consider to be the main reasons why EU citizens are unable to invest in platforms domiciled in another Member State?

Language barriers of course and trust.

## 8. NOTIFICATION PROCESS

A number of respondents to the CMU green paper and the Call for Evidence noted difficulties with the notification process where funds marketed on a cross-border basis and there is a need for documentation to be updated or modified. Where initial notification in the case of UCITS or AIFM is between national competent authorities, without involvement by asset managers, in the event of a change in the information provided to the competent authority of the home Member States, asset managers are required to give written notice to the competent authority of the host Member State.

*Questions addressed in particular to asset managers (professional associations are invited in addition to consolidate information on behalf of their Members) and where appropriate, to national competent authorities*

*Other respondents are welcome to respond to some or all of the questions below.*

**Question 8.1** – Do you have difficulties with the UCITS notification process?

**Question 8.2** – If yes, please describe those difficulties.

**Question 8.3** – Have you experienced unjustified delay in the notification process before being able to market your UCITS in another Member State?

**Question 8.3a** – Please describe your experiences?

**Question 8.4** – Do you have difficulties with the AIFMD notification process?

**Question 8.4a** – If yes, please describe these difficulties.

**Question 8.5** – Have you experienced unjustified delay in the notification process before being able to market your AIFs in another Member State?

**Question 8.5a** – Please describe your experiences?

**Question 8.6** – What should be improved in order to boost the development of cross-border distribution of funds across the EU?

## 9. TAXATION

Many respondents to the CMU Green Paper pointed to tax issues as impeding the cross-border sale of funds. The issues seem to range from lack of access to tax treaties to difficulties in obtaining refunds of withholding taxes to discrimination of funds established in other Member States.

Provided that their approach is in accordance with EU rules, Member States are free to choose the tax systems that they consider most appropriate. However, in addition to assisting Member States to tackle tax avoidance and evasion, the Commission is seeking to identify and promote best practices around preventing double taxation/double non-taxation and to address any unjustified discrimination. This complements the multinational work underway, in particular at OECD level, in the same areas.

*Questions addressed in particular to asset managers and where appropriate, distributors (professional associations are invited in addition to consolidate information on behalf of their Members)*

*Other respondents are welcome to respond to some or all of the questions below.*

**Question 9.1** – Have you experienced any difficulties whereby tax rules across Member States impair the cross-border distribution and take-up of your UCITS or AIF or ELTIF or EuVECA or EuSEF?

**Question 9.1a** – Please describe the difficulties, including whether they relate to discrimination against UCITS or AIF (including ELTIF, EuVECA or EuSEF) sold on a cross-border, and provide examples. Please cite the relevant provisions of the legislation concerned.

**Question 9.2** – Have you experienced any specific difficulties due either to the absence of double taxation treaties or to the non-application of treaties or to terms within those treaties which impede your ability to market across borders? For example: difficulties in determining the nationality of your investors or difficulties in claiming, or inability to claim, double tax relief on behalf of your investors.

**Question 9.2a** – Please, describe those difficulties, and if applicable, how these can best be resolved – for example through amendments to double taxation treaties. Please share any examples of best practice that could help to address these issues.

**Question 9.3** – Feedback to earlier consultations has suggested that the levying of withholding taxes by Member States has impeded the cross-border distribution of UCITS or AIFs (including ELTIF, EuVECA and EuSEF). Withholding taxes are usually reduced or even eliminated under double taxation treaties. But in practice it has been claimed that it is difficult for non-resident investors to collect any such withholding tax reductions or exemptions due under double taxation treaties. Have you experienced such difficulties?

**Question 9.3a** – Please provide examples of the difficulties with claiming withholding tax relief suggest possible improvements and provide information on any best practices existing in any Member States. Please cite the relevant provisions of the legislation concerned.

**Question 9.4** – What are the compliance costs per Member State (in terms of a percentage of assets under management) of managing its withholding tax regimes (fees

for legal and tax advisers, internal costs, etc.)? Do they have a material impact on your UCITS or AIF (including ELTIF, EuVECA and EuSEF) distribution strategy?

**Question 9.5** – What if any income reporting or tax withholding obligations do you have in the Member States where the UCITS or AIF (including ELTIF, EuVECA and EuSEF) is located and what if any difficulties to you have with reporting formats? What kind of solutions and best practices, if any, would you suggest to overcome these difficulties? If a single income reporting format were to be introduced across the EU, what would be the level of costs saved? Would this have a material impact on your UCITS or AIF (including ELTIF, EuVECA and EuSEF) distribution strategy?

**Question 9.6** – Are there any requirements in your Member State that the UCITS or AIFs (including ELTIF, EuVECA and EuSEF) need to invest in assets located in that Member State in order to qualify for preferential tax treatment of the proceeds of the UCITS or AIF (including ELTIF, EuVECA and EuSEF) received by the investors in the UCITS or AIFs?

**Question 9.7** – Have you encountered double taxation resulting from the qualification of the UCITS or AIF (including ELTIF, EuVECA and EuSEF) as tax transparent in one Member State and as non-tax transparent in another Member State?

**Question 9.8** – Have you encountered difficulties in selling a UCITS or AIF cross-border because your UCITS or AIF (including ELTIF, EuVECA and EuSEF) or the proceeds produced by the UCITS or AIF (including ELTIF, EuVECA and EuSEF) would not receive national (tax) treatment in the Member State where it was sold? Please provide a detailed description, including quotes of the national provisions leading to the not granting of national treatment.

#### *Question addressed to investors*

**Question 9.9** – Have you experienced any difficulties relating to the taxation of investment in UCITS or AIF (including ELTIF, EuVECA and EuSEF)? Please describe those difficulties and provide examples.

Yes, widespread difficulties for Pan-European funds: UCITS:

Direct retail investments into UCITS are typically not tax-incentivised unlike those in local specific purpose AIFs and those in wrapped products such as unit-linked insurance contracts or wrapped personal pension products (for example a UCITS life cycle fund will typically not have access to the tax advantages linked to other local wrapped and more fee-laden PPPs).

**Question 9.10** – Are you worse off tax-wise if you invest in a UCITS or AIF (including ELTIF, EuVECA and EuSEF) sold from another Member State than if you invest in a comparable domestic UCITS or AIF? What is the reason for this higher tax burden? Please cite the relevant provisions of the national legislation

Yes. For example, most UCITS funds domiciled in France take the legal form of “FCPs” not SICAVs”, contrary to Luxembourg and Belgium domiciled funds. A Belgian resident investing in an equity SICAV that capitalises dividends will not pay income tax on the dividends received by the SICAV. But if he invests in an equity FCP that also capitalises dividends, he will have to pay a 27% tax on the dividends received by the FCP. Therefore a comparable French domiciled equity fund will be



strongly discriminated tax wise versus Luxembourg or Belgium domicile. There is no justification for this discrimination and cross-border barrier to the free movement of capital (Belgium taxes dividends received by a FCP even if it does not distribute them to the FCP investors on the ground that a FCP is “transparent” tax wise, which is not the case of a SICAV. But French tax law for example does not discriminate between FCPs and SICAVs (dividends capitalised by both FCPs and SICAVs are not taxed) and this Belgian tax rule penalises French-domiciled funds for no economic reason.

See also above 9.9.

**Question 9.11** – To what extent are tax rules preventing you from investing across borders in UCITS or AIF (including ELTIF, EuVECA and EuSEF)?

Massively: see 9.9 above.

Again this is one key reason for the small share of investment funds (especially UCITs) in the financial assets of EU households.

**Question 9.12** – Do you see any other tax barriers to investment in cross-border UCITS and AIFs (including ELTIF, EuVECA and EuSEF)? Please specify them and cite the relevant provisions of the national legislation.

## 10. OTHER QUESTIONS

### *Question addressed to all respondents*

**Question 10.1** – Are there any other comments or other evidence you wish to provide which you consider would be helpful in informing work to eliminate barriers to the cross-border distribution of UCITS or AIFs (including ELTIF, EuVECA and EuSEF)?

We wish to reiterate that retail funds are mostly “sold” not “bought”. Therefore the main barriers to the cross-border distribution of UCITS and AIF funds are to be found not with EU savers (except for the language barrier of course), but with the behaviour of national member states rules, and of providers and distributors of investment funds.

For example, providers of unit-linked insurance contracts very often use local AIFs versus Pan-European UCITS because they are more profitable for them, not for the investor (see for example [Better Finance research on the real return of long term and pension savings](#), for example the French life insurance case).

Better Finance made a series of proposals to tackle these issues. One would be to forbid the use of local AIFS in packaged retail investment products such as unit-linked insurance contracts, personal pension plans and DC corporate plans. In the USA only general purpose mutual funds are used in these wrapper products. This is one key reason for the proliferation of funds in Europe as noted by this consultation paper on page 3.

One big cross-border barrier not addressed in this questionnaire is **the non-tax regulatory barriers set up by Member States**. For example, France forbids the use of UCITS funds in corporate savings and DC plans in favour of purely local and specific AIFs called “FCPEs”, generating the creation of 2500 of those, adding to the proliferation of retail funds in Europe to the clear detriment of EU savers.