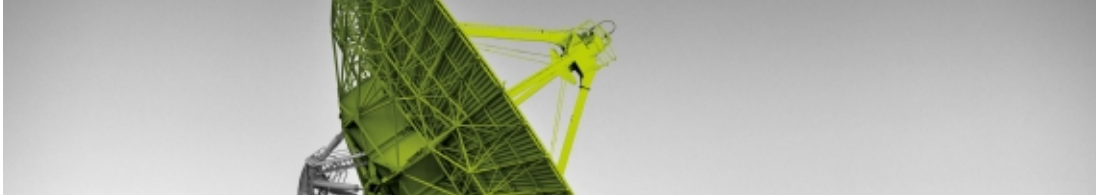


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Luxembourg Newsflash - 12 July 2019

## Uniform rules for the cross-border marketing of investment funds

**Distribution channels and marketing approaches for investment funds will have to be reviewed and adapted where necessary during the course of the next two years.**

Today on 12 July 2019, after one year of negotiations among the European co-legislators, the Directive with regard to cross-border distribution of collective investment funds, amending the UCITS Directive and the AIFM Directive (the “CBDF Directive”) and the Regulation on facilitating cross-border distribution of collective investment funds and amending the EuVECA and the EuSEF Regulations (the “CBDF Regulation”) were published in the Official Journal of the EU. The new regime under the CBDF framework will enter into force on 1 August 2019. Although the CBDF framework will fully apply only as of 2 August 2021, one should already start focusing on some of the new rules to absorb the new practices which are likely to be established by some EU jurisdictions before the CBDF framework will apply.

### **Harmonising the regime for pre-marketing, setting out rules on reverse solicitation**

The CBDF framework will introduce uniform European rules regulating the pre-marketing of alternative investment funds (“AIFs”). The new pre-marketing regime will apply to all AIFs, for both not yet established AIFs and AIFs that are established in the home Member State but not yet notified for marketing in the host Member State. During the pre-marketing phase, the EU AIFM will be allowed the use of draft documents of not yet established AIFs, provided the documents are labelled as draft, remain subject to changes, and thus do not constitute a formal offer.

The new pre-marketing regime will be at cost of an additional formality: EU AIFMs will have to notify any pre-marketing activity to their home regulator thereby ensuring that the regulator of the host Member State is aware of any pre-marketing activities undertaken on its territory.

The new pre-marketing regime will also have an impact on reverse solicitation. EU AIFMs having pre-marketed will no longer be able to rely on reverse solicitation during 18 months from the beginning of the pre-marketing activity. Equally, none of the investors contacted during the pre-marketing phase may avail themselves of reverse solicitation. These investors may only acquire units or shares once the AIF is authorised for marketing in the relevant Member State.

Under the new regime only investment firms, credit institutions, UCITS management companies or AIFMs will be authorised to conduct pre-marketing and marketing activities.

While providing a level playing field for fund distribution within the European Union, it is not clear yet, how the new pre-marketing regime will apply to non-EU AIFMs. The preamble to the CBDF Directive states that the new pre-marketing regime should not disadvantage EU AIFMs vis-à-vis non-EU-AIFMs, but as this statement is not repeated in the CBDF Directive it remains to be seen how Member States will implement the new regime towards third country managers.

### Common rules for the discontinuation of marketing

The CBDF framework provides for uniform rules and conditions for the discontinuation of the marketing of some or all shares/units in a UCITS or AIF in one or several host Member States. Contrary to the initial proposal, the CBDF Directive no longer requires the application of thresholds, neither in relation to a minimum number of investors nor in relation to assets under management, in order for the fund manager to be allowed to proceed with a de-notification. Under the new regime a UCITS, respectively an AIFM, may de-notify arrangements made for marketing, where the following conditions are fulfilled:

1. **a blanket offer** to repurchase or redeem shares/units is being offered to the remaining investors of open-ended funds. No blanket offer is required for investors in closed-ended AIFs and in ELTIFs;
2. **the intention to stop** arrangements for the marketing in host Member States is being made public in an official or approved language by means of a publicly available medium;
3. **contractual arrangements** with intermediaries and delegates are modified or terminated with effect from the date of the de-notification to prevent further offerings, while the fund manager continues to provide information (i.e. annual reports, offering document amendments, KIIDs/KIDs) to those investors that decided not to accept the repurchase order. The pre-marketing of shares/units in a de-notified EU AIF will be impossible for a duration of 36 months in the Member State where the de-notification occurred.

### Administrative arrangements and requirements for local agents

The new CBDF framework provides for the arrangements UCITS and AIFMs distributing to retail investors need to make available in each Member State where they intend to market investment funds. In accordance with the CBDF Directive, UCITS and AIFMs have to provide facilities, in each Member State where they intend to distribute, to perform the following tasks:

- processing of subscription, repurchase and redemption orders and provision of information thereto;
- handling of information and access to procedures relating to the investor's exercise of the rights arising from its investment in the investment fund;
- provision of access to information and documents (both in electronic and physical form), such as to the prospectus, key investor documents (KIID/KID) and annual reports;
- contact point for any communication with the regulator of the host Member State.

While most of these arrangements are already known in the UCITS environment, these will be new requirements to be observed by AIFMs when distributing AIFs to retail investors in the European Union. To ensure a uniform implementation of these arrangements, the CBDF Directive clearly states that host Member States may not require UCITS or AIFMs to have a physical presence nor to appoint a local third party in the targeted host Member State for any of these tasks. Such clarification is welcome as the implementation of the UCITS Directive by the different Member States with regard to the requirement for the above facilities proved to be burdensome.

### Related content

To read the new **CBDF Directive**, [click here](#)\_

To read the new **CBDF Regulation**, [click here](#)\_

To read the Arendt Newsflash discussing the **initial proposal** published by the European Commission on 12 March 2018, [click here](#)\_

**Please liaise with your usual contact in the Fund Formation Team\_**



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