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Luxembourg Newsflash - 27 September 2022

Cross-border distribution of investment funds – New CSSF FAQ

On 20 September 2022, the CSSF published a new FAQ: CBDF - Guidance on marketing communications.

The FAQ contains a series of Q&As on key aspects of the application of Article 4 of Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings (the “**CBDF Regulation**”) and the ESMA guidelines on marketing communications (“**MCs**”) (the “**ESMA Guidelines**”). The FAQ is intended to bring further clarity on the supervisory expectations of the CSSF. The FAQ is to be read in conjunction with the ESMA Guidelines as well as the Q&A to be published by ESMA with respect to MCs.

The CSSF provides *inter alia* the following main clarifications:

- all Investment Fund Managers (“**IFMs**”) listed in Section 2 of CSSF Circular 22/795 are in scope of Article 4 of the CBDF Regulation and in scope of the ESMA Guidelines;
- as regards Funds, Article 4 of the CBDF Regulation applies to UCITS and AIFs including those set up as EuVECAs, EuSEFs, ELTIFs and Money Market Funds managed by an IFM listed in Section 2 of CSSF Circular 22/795;
- Article 4 of the CBDF Regulation also applies to MCs addressed to investors or potential investors of regulated and non-regulated Funds managed by an IFM listed in Section 2 of CSSF Circular 22/795, irrespective of whether the Funds managed are Luxembourgish or non-Luxembourgish;
- MCs addressed to investors or potential investors that are not resident in the EEA are not in scope;
- MCs targeting professional investors are in scope;
- on the question of whether distributors or intermediaries involved in the distribution of Funds managed by an IFM are impacted by Article 4 of the CBDF Regulation, the CSSF refers to ESMA’s Q&As on the application of the UCITS Directive/AIFMD, which provide that “*Fund managers are responsible for the compliance with Article 4 of Regulation (EU) 2019/1156, irrespective of who is the actual entity marketing the fund, and of the relationship it has with the third party distributor (whether it is contractual or not)*”;
- from a governance and organisational perspective, an IFM must be involved in the process of preparing and validating MCs through its senior management and/or its internal control functions;
- an IFM may also appoint third parties outside its group to perform tasks in the preparation and/or validation of MCs, subject to adequate oversight of such delegates;
- IFMs should amend their marketing procedures and processes to ensure compliance with Article 4 of the CBDF Regulation;

- IFMs with a MiFID top-up license should also provide information on MCs in relation to the services of discretionary portfolio management and investment advice.

In addition, the FAQ sets out the relevant requirements for informing and reporting to the CSSF; in particular:

- as from 16 September 2022, IFMs in scope of CSSF Circular 22/795 must be ready to provide information relating to the MCs used when requested;
- as from 1 April 2023, those IFMs must be able to link this information to the relevant Fund (sub-fund) and identify if a given MC contains ESG information; and
- IFMs in scope of CSSF Circular 22/795 must be ready to provide a copy or reproduction of any MC linked to a Fund they manage when requested.

Should you require more detailed information and assistance on the above topic and its implications, please liaise with your usual contact within Arendt.

[Access the CSSF FAQ here_](#)

your contacts



FLORENCE STAINIER
Partner
Investment Management

[Learn more_](#)



ILARIA FERRARIS
Manager
Investment funds cross-border
distribution

[Learn more_](#)



Arendt & Medernach SA
Registered with the Luxembourg Bar
RCS Luxembourg B 186371

arendt.com

41A avenue JF Kennedy
L-2082 Luxembourg
T +352 40 78 78 1

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