



# Legal Update

## ESMA publishes overview of national rules governing fund marketing

The European Securities and Market Authorities (“ESMA”) (Overall European financial regulator) submitted to the European Parliament, the Council and the European Commission its second report (the “Report”) on national rules governing the marketing of investment funds under the Regulation of cross-border distribution of funds in July 2023.

### Background

The legal regime for cross border distribution of funds in Europe was updated by the Regulation on facilitating cross border distribution of collective investment undertakings (the “Regulation”). This provides that since 30 June 2021 and every second year thereafter ESMA must submit a report to the which presents an overview of national marketing requirements in all member states. It must also contain an analysis of the effects of national laws, regulations and administrative provisions governing marketing communications based also on the information received from national competent authorities (“NCAs”), including the Central Bank of Ireland. ESMA submitted its first such report to the co-legislators on 30 June 2021.

### Contents

The Report intended to assess the level of convergence achieved in national legislations following the transposition of the CBDF Directive (Directive 2019/1160). Section 2 of the Report explains the methodology followed by ESMA to develop it. ESMA asked the NCAs of all EU member states to provide a summary of their national laws,

regulations and administrative provisions governing the market requirements of UCITS and AIFs in their jurisdictions and to indicate where there have been any amendments compared to the provisions provided in the first report. Section 3 of the Report contains an overview of marketing requirements applicable in each member state. The purpose of this section is to provide an overview of national laws for UCITS and AIFs in all member states. Section 4 contains an analysis of the effects of such national laws, regulations and administrative provisions governing marketing communications in each member state.

### Findings and Next Steps

This Report found that a greater level of harmonisation had been reached in areas where national divergences existed, in particular regarding pre-marketing of AIFs. The next iteration of this report will be submitted in two years of publication of this Report.

### How can Clerkin Lynch help?

Clerkin Lynch can assist clients with detailed advice on the rules relating to fund marketing.

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