



# Revised EU Fund Cross Border Distribution Regime

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# Legislation and Key Guidance:

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## **European Level Legislation**

- UCITS Directives 2009/65/EC
- AIFMD 2011/61/EU
- Regulation (EU) 2019/1156 - facilitating cross-border distribution of collective investment undertakings (“CIUs”)
- Regulation 2021/955- Cross border distribution of investment funds (Implementing Regulation)
- Directive 2019/1160 - amending UCITS Directive and AIFMD with regard to cross-border distribution of CIUs

## **Guidance**

- ESMA34-45-1272 Guidelines on marketing communications under the Regulation on cross-border distribution of funds: August 2021
- ESMA34-45-1814 Review of marketing requirements and marketing communications under the Regulation on cross-border distribution of funds: July 2023
- UCITS and AIFMD Q&As



# Legislation and Key Guidance:

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## Ireland

- UCITS Regulations, S.I. No 352 of 2011 (as amended)
- Central Bank UCITS Regulations, S.I. No 230 of 2019
- UCITS Q&As
- Central Bank Website
  
- AIFM Regulations, S.I. No 257 of 2013 (as amended)
- AIF Rulebook
- AIFMD Q&As
- Central Bank Website



# Legislative Obligations: Regulation 2019/1156

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Article 1 – uniform rules on the publication of national provisions concerning marketing requirements for collective investment undertakings and on marketing communications addressed to investors

Article 2 – Applies to AIFMs, UCITS ManCos, EuVECA managers; and EuSEF managers.

Article 4 – Requirements for marketing materials- further details provided in ESMA Guidelines

- *-ensure marketing communications addressed to investors are identifiable as such and describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading.*

Articles 5 & 6 – National requirements to be published and central database maintained

Article 7 – Potential for prior notification and approval of marketing materials (solely for verification)

Articles 9 & 10- National requirements for fees and charges to be published.

Articles 15 & 16 – concept of pre-marketing for EuVECA and EuSEF funds. This concept is introduced for UCITS and AIFs in amendments to the relevant Directives.



# Legislative Obligations: ESMA34-45-1272

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Guidelines on marketing communications under the Regulation on cross-border distribution of funds

- identification as such as marketing communications
- description of risks and rewards in an equally prominent manner
- fair, clear and not misleading character of marketing communications
  - General requirements
  - risks and rewards
  - Costs
  - past performance and expected future performance
  - sustainability-related aspects



# Legislative Obligations: Regulation (EU) 2019/1156

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**Responsibility to ensure compliance with the rules governing marketing communications ?**

Clarification in ESMA Q&A issued July 2022

- *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).*



# Legislative Obligations: Directive (EU) 2019/1160

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## Article 1

- UCITS obligation for an office in host MSs is removed.
- certain update notifications, including for new share classes, require one month's prior notification.
- Formal deregistration process for UCITS set out.

## Article 2

- Pre-marketing regime for AIFs set out.
- Formal deregistration process for AIFs set out.
- Obligation for an office in host MSs is removed.



# Legislative Obligations: Directive (EU) 2019/1160

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## “pre-marketing”

- *means 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;’*
- any subscription within 18 months of pre-marketing is deemed via marketing (no reverse solicitation)
- notification required within two weeks of beginning pre-marketing.
- only certain authorised firms may conduct pre-marketing.
- if de-register may not engage in pre-marketing for 36 months.





# Legislative Obligations: Regulation 2021/995

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Article 1 – obligation for all MS NCAs to publish specified information in a template format

- [UCITS : https://www.centralbank.ie/regulation/industry-market-sectors/funds/ucits/guidance/publication-of-national-provisions-governing-marketing-requirements-for-UCITS](https://www.centralbank.ie/regulation/industry-market-sectors/funds/ucits/guidance/publication-of-national-provisions-governing-marketing-requirements-for-UCITS)
- [AIFs: https://www.centralbank.ie/regulation/industry-market-sectors/funds/aifs/guidance/publication-of-national-provisions-governing-marketing-requirements-for-AIFs](https://www.centralbank.ie/regulation/industry-market-sectors/funds/aifs/guidance/publication-of-national-provisions-governing-marketing-requirements-for-AIFs)

Article 2 - obligation for all MS NCAs to publish details of fees or charges in a template format

- [UCITS : https://www.centralbank.ie/regulation/industry-market-sectors/funds/ucits/guidance/publication-of-regulatory-fees-and-charges-for-ucits](https://www.centralbank.ie/regulation/industry-market-sectors/funds/ucits/guidance/publication-of-regulatory-fees-and-charges-for-ucits)
- [AIFs: https://www.centralbank.ie/regulation/industry-market-sectors/funds/aifs/guidance/publication-of-regulatory-fees-and-charges-for-aifs](https://www.centralbank.ie/regulation/industry-market-sectors/funds/aifs/guidance/publication-of-regulatory-fees-and-charges-for-aifs)

Article 3 & 4 – obligation to inform ESMA of the above and designate a relevant contact point

Articles 5 & 6 – information to be provided to ESMA to facilitate creation of a central database



# Central Bank Approach: UCITS

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## Requirements for Irish authorised UCITS seeking to market in another Member State

Directive 2009/65/EC provides that from 1 July 2011 notification by a UCITS seeking to market into another Member State will be issued between the the relevant competent authorities and this transmission is to be performed on an electronic basis.

The Central Bank's requirements for UCITS authorised under the Regulations are set out in the Central Bank UCITS Regulations.

To market its units in another Member State Irish UCITS must transmit a notification letter to the Central Bank with information in relation to the marketing requirements of the host Member State as well as the latest versions of the UCITS documents.

- The notification must be complete and accurate, any incomplete submissions will not be accepted and will require a full re-submission
- An individual notification is required for each Member State to which the UCITS is seeking to market
- UCITS must ensure that the relevant supporting documents submitted with its notification as per Article 93(2) of Directive 2009/65/EC are available electronically on a website. Details of this website must be included in the notification letter
- The Central Bank will inform the UCITS when transmission to the relevant host Member State competent authority has taken place.



# Central Bank Approach: UCITS

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Central Bank does not require notification or prior approval of UCITS marketing communications

However, UCITS must ensure compliance with:

- Regulation 116 (facilities) of the UCITS Regulations;
- Regulation 54 (advertising standards) and 97 (facilities agent) of the Central Bank UCITS Regulations; and
- the advertising standards set out in Schedule 6 of the Central Bank UCITS Regulations.

UCITS marketing in Ireland must comply with the [Consumer Protection Code](#) of the Central Bank.

When a UCITS ceases to market in Ireland it must comply with Regulation 97 of the Central Bank UCITS Regs.



# Central Bank Approach: AIFs

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## Requirements for marketing AIFs in Ireland

The Central Bank does not require notification or prior approval of marketing communications for AIFs.

Passporting regime available for Professional Investor Funds

There are specific additional requirements to market AIFs to retail investors

National Private Placement Regime potentially available for non-EU funds

# Fees and Charges: UCITS and AIFs

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## Cross-border management fees and charges

No fees or charges are levied by the Central Bank of Ireland in relation to:

- 1.Registration;
- 2.Notification of documents and for any subsequent update of prior notification;
- 3.Passporting; or
- 4.Management.

## Cross-border marketing fees and charges

No fees or charges are levied by the Central Bank of Ireland in relation to:

- 1.Pre-marketing;
- 2.Registration;
- 3.Notification of documents and for any subsequent update of prior notification;
- 4.Passporting; or
- 5.De-notification.