

Cross-border distribution update

Regulation (EU) 2019/1156 ("CB Regulation") and Directive (UE) 2019/1160 ("CB Directive") on cross-border distribution became applicable on 2 August 2021. On the same date, ESMA published the Guidelines on marketing communications under the CB Regulation ("Marketing Communications Guidelines"). The CB Directive was implemented in Luxembourg by means of the Law of 21 July 2021.

The CB Directive notably includes:

- a pre-marketing definition for AIFMs.
- a de-notification process for marketing of units/shares of UCITS and AIFs. In this context the CSSF has published a Circular on the process of de-notification of Luxembourg-based UCITS (Circular CSSF 21/778) which updates Circular CSSF 11/509 on the notification procedures to be followed by a UCITS;
- new facilities to be made available to UCITS/AIF retail investors;
- new requirements in case of changes to information contained in the marketing notification of UCITS. In this context, the CSSF has published on 10 August 2021 a FAQ on the cross-border distribution of funds notifications procedures

The CB Regulation notably provides that all UCITS/AIFs marketing communications addressed to investors must:

- be identifiable as such;
- describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner;
- include fair, clear and not misleading information.

The Marketing Communication Guidelines determine the detailed format and content of all marketing communications addressed to investors for UCITS and AIFs, including when they are set up as EuVECAs, EuSEFs, ELTIFs and MMFs.

They will become applicable from 2 February 2022 and notably include:

- a list of documents that may be considered as marketing communications and a list of documents that should not be considered as marketing communications;
- guidelines on the identification as such of marketing communications;
- guidelines on the description of risks and rewards in an equally prominent manner;

- guidelines on the fair, clear and not misleading character of marketing communications, with clarification on the information to be provided on costs, past performance and expected future performance, and on sustainability-related aspects.

For any further information please contact us or visit our website at www.elvingerhoss.lu.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter.