Irish Funds
10th Floor, One George's Quay Plaza,
George's Quay, Dublin 2, Ireland.

t: +353 (0) 1 675 3200
f: +353 (0) 1 675 3210

e: info@irishfunds.ie
w: irishfunds.ie

Submitted via online questionnaire

Answers to questionnaire

1. Information about you

The following questions are addressed in particular to asset managers and where appropriate, distributors (professional associations are invited in addition to consolidate information on behalf of their Members).

Question 1.1 - What types of funds do you market and to which types of investors do you market directly?

UCITS / type of investors

Retail investors (who are neither high net worth individuals nor professional investors)	Yes
High net worth individuals	Yes
Asset Management Company	Yes
Insurances	Yes
Banks	Yes
Pension funds	Yes
Other professional investors	Yes

AIFs (excluding EuVECA, EuSEF and ELTIF) / type of investors

Retail investors (who are neither high net worth individuals nor professional investors)	Yes
High net worth individuals	Yes
Asset Management Company	Yes
Insurances	Yes
Banks	Yes
Pension funds	Yes
Other professional investors	Yes

Question 1.1.a - If you have a general policy of differentiating between high net worth individuals and other retail investors then please also provide information on this:

Our members have noted that the marketing strategy of a management company does not typically differentiate between high net worth (HNW) individuals and other individuals but between retail clients and institutional clients. All retail clients are addressed by IFAs. We have noted in previous submissions, as have other associations such as EFAMA, the potential benefits of defining a common EU category of semi-professional investor which could facilitate cross-border marketing to HNW individuals in a consistent manner.

The Irish Qualifying Investor Alternative Investor Fund (QIAIF) provides for the marketing of this category of investment fund to individual investors subject to a meeting a minimum subscription of €100,000 (or its equivalent in other currencies) and falling into one of the following categories:

- a professional client within the meaning of Annex II of MiFID; or
- receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the Qualifying Investor AIF; or
- certifies that they are an informed investor by providing the following:
    1. confirmation (in writing) that the investor has such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or
    2. confirmation (in writing) that the investor's business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the property of the Qualifying Investor AIF.

Question 1.1.b – Which channels do you use to distribute funds cross-border? Does your cross-border distribution policy differ depending on the type of investor you wish to address and the Member State?

Direct marketing	**X**
Online marketing (website, online platform etc.)	**X**
National distributors network: Insurance	**X**
National distributors network: Bank	**X**
National distributors network: Financial advisors	**X**
National distributors network: Others	

Question 1.1c – Please expand upon your response to question 1.1, 1.1a and 1.1b:

Irish domiciled collective investment schemes hold net assets valued at €1.93 trillion (UCITS €1.47tn in UCITS and €461bn in AIFs). Data from the Central Bank of Ireland splits the various asset classes as follows:

Equity Funds	26%
Bond Funds	20%
Balanced Funds	5%
Money Market Funds	23%
Other UCITS	2%
AIFs	24%

Question 1.2 – Please provide your definition of high net worth retail individuals. Does this definition vary from one national market to another one?

Please see response 1.1.a

Question 1.3 – What is the sum of Assets under Management of these funds?

Data not available

Question 1.4 – Where are your funds mainly domiciled?
(In % of the number of your UCITS and AIFs)

Country	UCITS	AIFs
Ireland	100%	100%

Question 1.5 – Do you use the UCITS passport in order to market your UCITS funds in other EU Member States?

Yes

Question 1.6 – Do you use the AIFMD passport in order to market your EU AIFs in other EU Member States?

Yes

Question 1.7 – Do you use a marketing passport for all your UCITS, AIF, ELTIF, EuVECA and EuSEF?

UCITS	Yes
AIF	Yes
ELTIF	Data not available
EuVECA	Data not available
EuSEF	Data not available

Question 1.7a - What percentage of your funds have you received permission to be marketed in
(a) at least one other Member State
(b) at least two other Member States
with the passport? What value of Assets under Management do these represent?

	% of your funds	Value of assets it represents
In at least one other Member State	88% UCITS 35% AIFs	Data not available
In at least two other Member States	70% UCITS 18% AIFs	Data not available

Question 1.8 - In how many Member States, if any, do you market your funds (including sub-funds) on a cross border basis?

27 Member States

Question 1.8a – Please provide an aggregate figures or an estimate:

	# UCITS	as % of all UCITS	# AIFs	as % of all AIFs
Austria	1,170	46%	46	10%

Belgium	404	16%	14	3%
Bulgaria	0	0	6	1
Croatia	-	0%	-	0%
Cyprus	19	1%	1	0%
Czech Republic	15	1%	1	0%
Denmark	567	22%	24	5%
Estonia	1	0%	1	0%
Finland	817	32%	32	7%
France	1,344	53%	49	11%
Germany	1,540	60%	60	13%
Greece	59	2%	2	0%
Hungary	5	0%	2	0%
Italy	1,006	39%	38	8%
Latvia	1	0%	-	0%
Lithuania	1	0%	1	0%
Luxembourg	1,046	41%	36	8%
Malta	18	1%	2	0%
Netherlands	1,107	43%	41	9%
Poland	4	0%	2	0%
Portugal	240	9%	4	1%
Romania	-	0%	1	0%
Slovakia	15	1%	2	0%
Slovenia	-	0%	1	0%
Spain	1,039	41%	27	6%
Sweden	1,008	40%	27	6%
UK	1,893	74%	107	23%

Question 1.9 - In which Member States do you actively market your UCITS and AIFs?

	UCITS	AIFs
Austria	Yes	Yes
Belgium	Yes	Yes
Bulgaria	No	Yes
Croatia	No	No
Cyprus	Yes	Yes
Czech Republic	Yes	Yes
Denmark	Yes	Yes
Estonia	Yes	Yes
Finland	Yes	Yes
France	Yes	Yes
Germany	Yes	Yes
Greece	Yes	Yes
Hungary	Yes	Yes
Ireland	Yes	Yes
Italy	Yes	Yes
Latvia	Yes	No
Lithuania	Yes	Yes
Luxembourg	Yes	Yes
Malta	Yes	Yes
Poland	Yes	Yes
Portugal	Yes	Yes
Romania	Yes	Yes
Slovakia	No	Yes
Slovenia	No	Yes

Spain	Yes	Yes
Sweden	Yes	Yes
The Netherlands	Yes	Yes
United Kingdom	Yes	Yes

Question 1.9a – Please provide the UCITS allocation between Member States. If this is not straightforward to obtain, please provide an estimate.

	Number of UCITS funds / sub-funds	Asset under Management
Austria	1170	Data not available
Belgium	404	Data not available
Bulgaria	0	Data not available
Croatia	0	Data not available
Cyprus	19	Data not available
Czech Republic	15	Data not available
Denmark	567	Data not available
Estonia	1	Data not available
Finland	817	Data not available
France	1344	Data not available
Germany	1540	Data not available
Greece	59	Data not available
Hungary	5	Data not available
Ireland		Data not available
Italy	1006	Data not available
Latvia	1	Data not available
Lithuania	1	Data not available
Luxembourg	1046	Data not available
Malta	18	Data not available
Poland	4	Data not available
Portugal	240	Data not available
Romania	0	Data not available
Slovakia	15	Data not available
Slovenia	0	Data not available
Spain	1039	Data not available
Sweden	1008	Data not available
The Netherlands	1107	Data not available
United Kingdom	1893	Data not available

Question 1.9aa – Please provide any further details (e.g. assumptions your estimate is based upon) to your answer to question 1.9a:

Data based on information sourced from Lipper IM database for Irish domiciled UCITS funds, and information is in relation to funds registered for sale

Question 1.9b - Please provide the EU AIF allocation between Member States. If this is not straightforward to obtain, please provide an estimate.

	Number of UCITS funds / sub-funds	Asset under Management
Austria	46	Data not available
Belgium	14	Data not available
Bulgaria	6	Data not available

Croatia	0	Data not available
Cyprus	1	Data not available
Czech Republic	1	Data not available
Denmark	24	Data not available
Estonia	1	Data not available
Finland	32	Data not available
France	49	Data not available
Germany	60	Data not available
Greece	2	Data not available
Hungary	2	Data not available
Ireland		Data not available
Italy	38	Data not available
Latvia	0	Data not available
Lithuania	1	Data not available
Luxembourg	36	Data not available
Malta	2	Data not available
Poland	2	Data not available
Portugal	4	Data not available
Romania	1	Data not available
Slovakia	2	Data not available
Slovenia	1	Data not available
Spain	27	Data not available
Sweden	27	Data not available
The Netherlands	41	Data not available
United Kingdom	107	Data not available

Question 1.9bb – Please provide any further details (e.g. assumptions your estimate is based upon) to your answer to question 1.9b:

Data based on information sourced from Lipper IM database for Irish domiciled AIFs funds, and information is in relation to funds registered for sale

2. General Overview

Questions addressed in particular to asset managers (professional associations are invited in addition to consolidate information on behalf of their Members) and where appropriate, distributors who market or advise funds to investors.

Other respondents are welcome to respond to some or all of the questions below.

Question 2.1 – What are the reasons for any limitation on the cross-border distribution of your funds?

	Regulatory costs and/or marketing requirements costs are too high	Lack of demand outside your home market	Host Market size is too small	Tax issues	Other
Austria	X			X	X
Belgium	X			X	
Bulgaria					
Croatia					
Cyprus					
Czech					

Republic					
Denmark	X				
Estonia					
Finland					
France	X				X
Germany	X			X	X
Greece	X				
Hungary					
Ireland	X				
Italy	X				
Latvia					
Lithuania					
Luxembourg	X				
Malta					
Poland					
Portugal	X				
Romania					
Slovakia					
Slovenia					
Spain	X			X	
Sweden	X				X
The Netherlands		X		X	
United Kingdom	X				

If the openness of the distribution network to third parties is a reason for a limitation on the cross-border distribution of your funds, please rank it from 1 (being the less open market) to 5 (being the most open market):

	1 (less open)	2	3	4	5 (more open)
Austria					
Belgium					
Bulgaria					
Croatia					
Cyprus					
Czech Republic					
Denmark					
Estonia					
Finland					
France					
Germany				X	
Greece					
Hungary					
Ireland					
Italy			X		
Latvia					
Lithuania					
Luxembourg					
Malta					
Poland					
Portugal					
Romania					

Slovakia					
Slovenia					
Spain					
Sweden					
The Netherlands				X	
United Kingdom					

Question 2.1a – Please expand upon and provide more detail on your response to questions 2.1 and 2.1a - please explain what the issues are and how they limit the cross-border distribution of funds? Please cite the relevant provisions of the legislation concerned if possible:

Regulatory costs and/or marketing requirements costs are too high

The translation of legal and regulatory requirements for registration – overall is one of the most significant hurdles as it is not easy to access local requirements. Whilst there is an EU Directive setting out the notification steps to follow, each country has its own legal and regulatory framework setting out country-specific requirements. Translations into common international languages such as English are not provided by regulators, which then requires the hiring of translation services and legal services, incurring an added expense and a layer of complexity to setting up and distributing the funds (especially if there are any changes to legislation). Member State requirements in relation to the notification process are difficult to identify, most notably, but not exclusively, in Belgium, Greece, Italy, Spain, and Portugal. This process is often more difficult as Member States can be very slow to publish the requirements in English, e.g. Belgium

The difficulty in identifying marketing rules and the compliance issues which flow from this (i.e. the costs of obtaining both translations and the opinions of local counsel), is particularly limiting to the cross-border distribution of funds. With regard to AIFMs seeking to passport to Spain this can be very difficult as there is no published guidance available on the CNMV website. There is a fundamental need for closer alignment between Member States in terms of marketing requirements and / or the maintenance of a central online repository containing the marketing rules applicable in each jurisdiction. Fund managers can therefore be more certain that they are compliant when distributing funds on a cross-border basis.

Inconsistency in the requirements and charges relating to paying agent / third party representatives fundamentally leads to both delays in the processes governing the cross-border distribution of funds and increased costs (both in relation to internal resources (i.e. man hours) and in real terms). By way of example, in certain Member States, where paying agents view distribution as an opportunity to sell funds for a fee or to set up separate distribution arrangements (e.g. Portugal).

In some Member States, such as Spain, UCITS are required to appoint a local distributor who acts as a designate providing certain information to the CNMV. Italy also requires the appointment of a distributor if the UCITS is marketed to retail investors.

There is a requirement by some Member States to appoint a local paying agents to UCITS such as in Austria, Belgium, UK, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain and Sweden.

In certain Member States there is an obligation to include additional disclosures for local investors which must form part of or accompany the home Member States approved prospectus such as Austria, Belgium, UK, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain and Sweden.

With regard to marketing materials (i.e. those outside of the prospectus, KIID etc.), certain Member States (MS), including Belgium and France, require marketing materials be drawn up in accordance

with local laws and filed and/or approved before use. While this is not contrary to the UCITS Directive there are often time delays and the rules are not always applied consistently.

With regard to the additional investor disclosures required for UCITS under German rules for local investors, BaFin requires that "*The prospectus intended for marketing in the Federal Republic of Germany must contain a page-numbered information section for investors in Germany that is an integral part of the prospectus and is listed in the table of contents...*". BaFin's requirements assume managers know they want to passport to market in Germany at the time of preparation of the prospectus which is simply not always the case. A large proportion of managers may only take this decision down the line meaning it is not possible for them to subsequently supplement the home state approved prospectus to reflect the additional German investor disclosures but rather modify the (home state approved) prospectus resulting in additional compliance burden and costs for managers.

Special disclosures for Germany include:

- The financial statements must include a prominent and up-to-date statement, if at least one sub-fund is not authorised for marketing in Germany, and therefore no notification to BaFin has been made.
- Furthermore, should the financial statements include any references to documents available for investors in the UCITS home Member State, it should also be added that these are available at the Information agent in Germany.

More often than not an Italian distributor/institutional asset allocator requires the investment manager to be on the “Allfunds” platform. It is believed this is due to the administrative headaches associated with UCITS investing relative to ETF investing for distributors/institutional investors. This “unwritten” requirement can impede the ability to distribute if the Investment manager is not on the platform. Please note that we are aware that this is as a result of client preference but can assume that this may also be impacted by the ease of investing and settling trades for ETFs vs UCITS (which the Allfunds platform seeks to address).

Tax issues

For retail investors or taxable insurance companies in the Netherlands, Dutch domiciled institutional pension funds have a favourable tax regime relative to other EU domiciled funds. Dutch domiciled funds are effectively exempt from any dividend withholding tax and Dutch investors are able to fully credit any withholding tax they incur against their income tax liability, even if the amount of withholding tax exceeds this. Dutch investors holding units of foreign domiciled funds cannot offset withholding tax against their tax liability if it is higher than the amount of tax they owe.

Institutional pension funds have an even more favourable tax regime. They effectively are exempt from any dividend withholding tax which means they have a preference for tax transparent pooled vehicles or segregated accounts. An Irish UCITS will incur the withholding tax while a Dutch structure would not, resulting in a tax inefficiency under the Irish structure in comparison with the Dutch structure.

Divergent reporting requirements, coupled with the inconsistent application of taxation rules across the EU, mean that the distribution of funds into certain jurisdictions can be challenging/prohibitive – see our responses to Section 9 for further information.

In Spain where a fund has in excess of 500 investor’s managers are required to report to the CNMV if they wish to benefit from the tax roll over relief.

Notification of the appointment of the tax agent to the Austrian Federal Ministry of Finance is required in Austria.

In order to make a UCITS fund tax transparent for a German investor a Daily NAV, Interim Profit, Equity Profit/Real Estate Profit have to be published on a webpage that contains data on sub-funds registered in Germany, and are to be provided on a daily basis. Additionally, the appointment of a

German tax adviser is required to calculate an 'Accumulated Deemed Distribution' which is published alongside the NAV.

We are aware that this is a requirement of the German tax authorities and that these have to be published in the German Federal Gazette, so investors are able to access this information which will allow them to complete their own tax filing. While this does not limit the cross-border distribution of funds by itself, it does impact the cost associated with operating the fund and thus increasing the TER relative to other EU investors. This is a noticeable difference relative to other markets. It should be noted that Germany is changing its tax rules and this may be addressed.

Other

In Sweden the definition of marketing had been gold plated in order to cover any promotional (non-product specific) activities undertaken by managers (described further in 8.6 below) effectively creating a barrier to market entry.

Dependent on the Member State in question there can be very different interpretation on the definition of marketing. In France and Belgium the regulators require review and approval of all marketing material. However it was noted that documentation which would not be termed as marketing material by certain Member States was regarded as such by other Member States.

It has been noted that in Belgium the web based pre-approval for seeking to market in Belgium is time consuming and cumbersome.

A number of Member States, such as Belgium, France and Germany, require that the NAV and /or investor notices are published in a local medium.

Question 2.2 – In your experience, which of the following issues are the major regulatory and tax barriers to the cross-border distribution of funds in the EU?

For the issues you consider to be major barriers, please rank them in order of importance (1 - most important; 6 - relatively less important).

	1 (Most Important)	2	3	4	5 (Relatively Less Important)	Not an Issue
Different definitions across the EU of what marketing is	X					
Marketing requirements imposed by host Member States	X					
Regulatory fees imposed by host Member States	X					
Administrative arrangements (see section 6 for further details on administrative arrangements) imposed by host Member States			X			
Lack of efficiency of notification process			X			
Difficult/cumbersome refund procedures for claiming relief from withholding taxes on distributions by the UCITS, AIFs, ELTIF, EuVECA or EuSEF				X		

Higher taxation of investment funds located elsewhere in the EU/EEA than of domestic funds			X			
Differences between the tax treatment of domestic and foreign fund managers as regards withholding tax/income reporting responsibilities and opportunities on income distributed by UCITS, AIF, ELTIF, EuVECA or EuSEF			X			
Differences between Member States in tax reporting		X				
Other						

3. Marketing Requirements

Where EU funds are marketed to investors, they are usually required to comply with national requirements set by host Member States. These marketing requirements, especially those relating to the content of communications8, differ across the EU. For example, some Member States require ex-ante approval of the marketing communications whether other Member States monitor the communications ex-post, and some Member States adopt a principles-based approach whereas others apply detailed rules.
Respondents to the CMU consultation viewed that these varying national requirements as a significant barrier to marketing funds cross-border, with significant costs incurred in researching each EU Member State 's financial promotion and consumer protection regime, and providing appropriate materials on an on-going basis.
In the case of UCITS, the current disclosure regime has been established over a number of years, based on home Member State control with a maximum harmonisation regime (except for language translation) applying to the key investor information. However, anecdotal evidence suggests that at least some Member States require additional disclosures or review material before a UCITS may be marketed. While any consideration of this issue should give due attention to the concerns which have led regulators to require additional disclosures and to review marketing material, it may be better that any concerns, where justified, are addressed at the EU level, in order to eliminate barriers to the further development of the single market in this area.

*** Marketing communications comprise an invitation to purchase investment funds that contains specific information about the funds. In other word, this includes all the marketing materials that are used in order to promote or advertise a specific investment funds. For the purpose of these questions, the prospectus and the Key Information Documents are not considered as marketing communications.**

The following questions are addressed to all respondents.

Question 3.1a – Are you aware of member state interpretations of marketing that you consider to go unreasonably beyond of what should be considered as marketing under the UCITS Directive*?
** Article 91 to 96 of the Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009*

Yes

Question 3.1aa – Please explain your answer to question 3.1a:

Divergence between NCAs on the interpretation of what is marketing acts as a significant barrier to market entry. Fund managers cite concerns over the wide variance of what NCAs see as "marketing" - the definition of what really constitutes marketing is essential because different countries have very different tolerances. Furthermore such divergences are not always related to the need for prior notification, for example, instances where the marketing interpretation does not trigger the need for a prior notification (e.g. in some Member States no notification is required when marketing to a limited number of prospective investors), however, the information on that rule/interpretation is not always publicly available or easily understandable.

Additionally marketing materials have very different purposes and uses dependent on the Member State's interpretation. France and Belgium were cited as particular examples whereby, as further described in 8.6 below, both regulators require prior review and approval of all marketing materials. A number of fund managers noted that materials which they would not consider marketing are considered such by the respective local authorities. One example cited was an educational type paper produced by one manager on "*what is an ETF*" (a generic description about ETFs) which was considered a marketing document simply because the manager in question markets ETF products in France.

While the connection can be understood to some extent, other regulators would take the view that such materials are not marketing documents (particularly as there is another document produced which is a marketing document), whereas in the case of this example, the AMF view is all encompassing whereby because a manager markets a product in France that anything they produce that is any way related to a type of product is considered implicit marketing of that product.

Sweden was also cited as one Member State where the definition of marketing had been gold plated to cover any promotional (non-product specific) activities undertaken by managers (described further in 8.6 below) thereby effectively creating a barrier to market entry.

Given the lack of clarity and variance of interpretation, harmonisation and more (centralised) formal guidance and best practice approach would be welcomed.

UCITS	
France	With regard to marketing materials (i.e. those outside of the prospectus, KIID etc.), certain Member States (MS), including Belgium and France, require these be drawn up in accordance with local laws and filed and/or approved before use. While this is not contrary to the UCITS Directive, it could be construed as an impediment for a UCITS to freely market its units in another MS as contemplated under Art. 93(3) whereby it may *"…access the market of the UCITS host Member State as from the date of that notification*" being that date of receipt of confirmation from its home MS that it has transmitted the notification letter. MS review/approval of marketing materials can be slow (i.e. no prescribed timeframes) and rules applied inconsistently/inconsistent comments made. With the evolution of marketing practices, managers are increasingly looking to new technology driven marketing strategies.
Belgium	The appointment of one or more local agents; and/or the publication of prices and/or investor notices to be published in local medium (e.g. newspaper) acceptable to the host MS regulator. We would also cite Belgian website pre-approval requirements being onerous and causing significant delay.
Norway	Norway does not impose any requirement for marketing materials to be filed and/or approved in advance, it does require that all materials used in Norway offering sales of units of the UCITS shall make reference to the availability of the

	prospectus and the KIID, and point out where these documents are available to Norwegian investors.
Spain	In addition to the basic documentation, a Marketing Memorandum for subscribers in Spain needs to be kept by the local distributors. This is a standard document (no need to submit it to the CNMV) prepared by each distributor itself directly in Spanish following the standard form provided on the CNMV's website. (Circular 2/2011) While the marketing memorandum is not required to be filed with the CNMV. In practice, managers selling into Spain usually complete one marketing memorandum for their distributor which is then provided to investors.
Germany	With regard to the additional investor disclosures required for UCITS under German rules for local investors, BaFin requires that "*The prospectus intended for marketing in the Federal Republic of Germany must contain a page-numbered information section for investors in Germany that is an integral part of the prospectus and is listed in the table of contents...*". BaFin's requirements assume managers know they want to passport to market in Germany at the time of preparation of the prospectus which is simply not always the case. A large proportion of managers may only take this decision down the line meaning it is not possible for them to subsequently supplement the home state approved prospectus to reflect the additional German investor disclosures but rather modify the (home state approved) prospectus resulting in additional compliance burden and costs for managers. Special disclosures Germany • The financial statements must include a prominent and up-to-date statement, if at least one sub-fund is not authorised for marketing in Germany, and therefore no notification to BaFin has been made. • Furthermore, should the financial statements include any references to documents available for investors in the UCITS home Member State, it should also be added that these are available at the Information agent in Germany.
UK	The FCA has introduced additional specific information requirements to be provided by both UK based and foreign recognised funds sold to UK retail investors. This information are defined in COBS 13.3.1R (2) As per the Policy Statement 11/10 issued by the UK FCA, this additional information must be "in a format that is sufficiently clear and prominent to catch the attention of retail investors. It will be helpful to retail investors if firms providing the information electronically make it available in the same part of their website as the KII document itself". It's the view of the FCA that unless confirmation/evidence can be provided (if requested) that each retail investor will be provided with the full prospectus/addendum/factsheets/application form and that specific attention has been drawn to the additional information listed above, it is unlikely to meet the "format that is sufficiently clear and prominent to catch the attention of retail investors". Some possible examples of documents that may potentially meet with the requirement could be documents along the lines of marketing brochures, standalone documents etc. - but if it is included in these the information must be sufficiently clear and prominent to catch the attention of retail investors.

	Consequently it's recommended to issue a Supplementary Information Document ("SID") disclosing the additional information in format that is sufficiently clear and prominent to catch the attention of retail investors. The SID must be provided to retail investors who must read it alongside to the KIID. There is no requirement to provide a copy of the SID to the UK FSA nor should it be included in the registration or notification file for public marketing, only that the SID must be provided to retail investors by the entity who sells the units/shares of the scheme to retail investors.
Denmark	In accordance to Section 3(3) of the Executive Order, the UCITS must include information on the UCITS' Danish representative in the prospectus or in a Supplement hereto; cf. Section 8 of the Executive Order. If the information is provided in the prospectus, a reference must be made in Part B, no. 3, of the Notification Letter to the relevant page or pages in the prospectus. If the information is provided in a separate Supplement to the prospectus, the Supplement must be attached to the Notification Letter together with the prospectus in Part A, Attachments, no. 2), and a reference to the Supplement should be made.
Portugal	Local marketing memorandum – 'Private conditions' document required

Question 3.1b – Are you aware of member state interpretations of marketing that you consider to go unreasonably beyond the definition of marketing in AIFMD?

Yes

Question 3.1bb – Please explain your answer to question 3.1b:

Similar to the above, the divergence between NCA interpretations of marketing is a significant barrier to market entry. Respondents cite concerns of the variance of what NCAs see as "marketing" - the definition of what really constitutes marketing is essential because different countries have very different tolerances. Sweden was cited as one example where the definition of marketing has been gold-plated to include promotional activities effectively creating a barrier to market.

Furthermore, the position regarding pre-marketing remains unclear and inconsistent in the single market. While a small number of NCAs have provided some guidance with a view to enabling certain activities to be undertaken by managers prior to marketing (e.g. preliminary meetings with prospective investors to gauge interest etc.), it is still not clear to what extent a given activity is to be considered as marketing or pre-marketing and whether it triggers compliance with AIFMD.

Given the lack of clarity and variance of interpretation, harmonisation and more (centralised) formal guidance and best practice approach would be welcomed.

Pre-marketing:

A harmonised approach to the acceptable level of "soft" or "pre-marketing" (i.e. promotional activities managers can undertake before triggering "AIFMD marketing requirements") needs to be adopted. What constitutes "pre-marketing" differs in each Member State. In some jurisdictions (such as Denmark and Sweden) "marketing" can potentially capture any form of advertising or sales promotion and even a teaser on a specific fund vehicle can trigger AIFMD requirements. In contrast, in other jurisdictions (such as The Netherlands and the UK) a draft prospectus making clear that no subscription is possible is acceptable. EU jurisdictions with a broader concept of pre-marketing have tended also to be the jurisdictions with more straightforward AIFMD registration requirements, making a manager's cost-benefit analysis much easier. Being able to talk to investors on the basis of draft documentation allows managers, to assess real investor interest and gauge whether the time and cost of AIFMD registration is worthwhile.

AIFMD	
Germany	While BaFin's rules are not as prescribed for AIFs being marketed to (semi-) professional investors, German rules do specify that additional investor disclosures are made available for German investors.
France	In accordance with Article 314-30 of the AMF General Regulation,6 "The AMF may require investment services providers to submit their marketing communications for the investment services that they provide and the financial instruments that they offer prior to publication, distribution or broadcast. It may require changes to the presentation or the content to ensure that the information is accurate, clear and not misleading.

Question 3.1c – Are you aware of any of the practices described above having had a material impact upon the cross-border distribution of investment funds?

Yes

Question 3.1cc – Please explain your answer to question 3.1c:

As further described in our response at 3.1aa above, different interpretations of what constitutes marketing, in particular, effectively constitutes a market entry barrier. Such variances in country specific marketing requirements make it difficult for managers to produce harmonised marketing materials for use on a pan-EEA basis, resulting in legal uncertainty, significant delays not to mention additional costs as customised legal advice per MS is always necessary.

According to one respondent, the French requirements in relation to marketing materials referenced in 3.1aa above have had a material impact on the way they market in France and the information they make available to French investors in particular. This respondent noted that when it comes to France because of the experience they have had, they have actually taken the decision to curtail the materials they provide in France. As a result they have taken the view that for French investors who are interested and who would usually have access to a broad range of materials to choose from (which help from differentiating the simple to the more complex products, describing investment details etc.), that in France this manager has curtailed their materials to providing only what they have to. As a consequence, French investors effectively only have a limited resource of materials available to them, such as fact sheets. We believe this approach is allowing them to get through a regulatory process quicker but in reality acknowledged this is not particularly good for investors. Similar examples were cited for Belgium where respondents were critical of the requirements and response timeframes from the FSMA which materially impact their ability to market products on a cross border basis.

Questions addressed in particular to asset managers (professional associations are invited in addition to consolidate information on behalf of their Members) and here appropriate, distributors who market or advise funds to investors and National Competent Authorities.

Other respondents are welcome to respond to some or all of the questions below.

Question 3.2 – Which of the following, if any, is a particular burden which impedes the use of the marketing passport?

Different interpretations across Member States of what constitutes marketing?	X

Different methods across Member States for complying with marketing requirements (e.g. different procedures)?	X
Different interpretations across Member States of what constitutes a retail or professional investors?	X
Additional requirements on marketing communications imposed by host Member States?	X
Translation requirements imposed by host Member States?	X
Other domestic requirements	X

Question 3.2a – Please explain your answer to question 3.2:

The variance of interpretation across Member States on the definition of marketing is one of the key barriers to the use of the marketing passport. Furthermore, the differing methods of complying with individual MS's marketing requirements and marketing communications is another key factor in the barrier to the use of the marketing passport. Please see our responses at 3.1a, 3.1b and 8.6 for further details.

Additionally, as referenced in our response at 8.6 below, identification and availability of the NCA requirements can often be difficult to locate on certain NCA websites, furthermore the divergence of requirements and obligations can be unclear or in some cases the latest rules not available in English. Suggest implementation of a central repository of each NCA's requirements with link to current section of each NCA's website applicable to UCITS and AIFMD.

With regard to Germany only there is a requirement for a UCITS to have an Information Agent

Under German law there are three tiers of defined investor:

- professional investor
- semi-professional investor
- retail investor

Under German law an AIF can be marketed to both professional investors and semi-professional investors. To qualify as a semi-professional investor, an investor must meet one of four prerequisites. However an Irish QIAIF can only be sold to a “Qualifying Investor”, and only one of the semi-professional investor prerequisites meets the “Qualifying Investor” requirements (Section 1 (19) nos. 33a of the KAGB).

Only the KIID must be translated into German, all other documentation can be in English.

Under German law any marketing material made available to one client or type of client must be made available to all clients. This rule applies to German funds only, not foreign funds passported into Germany.

Finally the BVI (the German funds industry association) issues template documents such as KIIDs and general rules and requirements for marketing materials such as factsheets. It is the norm for German funds to follow these templates and requirements to the letter. In reality if an Irish fund wants to integrate the German market, the BVI templates and requirements should be followed for at least the fact sheet.

Generally on a pan-European basis, the inconsistency in approach across jurisdictions relates to gold-plating requirements.

With respect to the Netherlands, there are no additional gold-plating requirements such as paying agent appointments etc. which is a positive. From the perspective of translation requirements, there are no specific translation requirements imposed by the Dutch regulator (aside from the requirement to translate the KIIDs), more so it is up to the fund to decide whether to translate into local language from a strategic marketing perspective.

Question 3.3 – Have you seen any examples of Member States applying stricter marketing requirements for funds marketed cross-border into their domestic market than funds marketed by managers based in that Member State?

Yes

Question 3.4 – Are domestic rules in each Member State on marketing requirements (including marketing communications) easily available and understandable?

No

Question 3.4ab – If your answer to question 3.4 is no, please provide details and explain why the rules are not easily available and understandable in this/these Member State(s):

Multiple extensive texts in local language often contain the required information. This gives rise to extensive research and compliance costs. The crux of this issue is that there is no centrally managed system setting out the relevant requirements. Instead, local marketing requirements are often contained within several individual pieces of legislation, rules and guidance. This makes the conceptually simple task of identifying the relevant rules particularly difficult. This issue is compounded by the fact that, even when the specific requirements are located, the regulations are often only available in the local language. As such, there is an overreliance on local counsel and other service providers to determine compliance with marketing rules. This is both costly and time inefficient. In relation to the Netherlands generally rules regarding information sharing/marketing requirements are stricter in some jurisdictions in comparison with others e.g. the UK is stricter than the Netherlands. Specific rules at a jurisdictional level can result in a lack of transparency and an ineffective information sharing system. In respect of Germany BAFIN provides a non-exhaustive list of the provisions specific to investments to be complied with when marketing units of UCITS as specified in Article 91(3) of Directive 2009/65/EC. However the majority of the legislation is only available in the German language. There is no such guidance for AIFs. As referred to above, this issue would be best addressed by the use of a centralised online repository, maintained by an appropriate body, such as ESMA.

Question 3.5 – When you actively market your funds on a cross–border basis to <u>retail investors/High Net worth retail individuals/Professional investors</u> do you use marketing communications (Leaflet, flyers, newspaper or online advertisement, etc.)?

Retail investors	<u>X</u>
High net worth individuals	<u>X</u>
Professional investors	X

Question 3.5a – Please provide the percentage of your funds marketed on a cross–border basis using marketing communications in the host country:

	% of your funds marketed on a cross–border basis using marketing communications in the host country
Retail Investors	Information is not available
High net worth retail individuals	Information is not available
Professional investors	Information is not available

Question 3.5b – To what extent are marketing communications important in marketing your funds to retail investors, high net worth individuals and professional investors? Please explain your answer:

Marketing communications are an important tool for targeting professional investors. Marketing communications are used to target professional clients, explain the differences of funds to clients and to keep current and prospective investors updated on existing and new funds. Beyond the standard KIID and fund prospectus that is made available in the required language of that country managers create fund flyers, fund factsheets, and whitepapers (research insights).
"Marketing" materials are particularly important in respect of funds that may ultimately be distributed to retail investors, in order to provide educational information in respect of investing and highlight key facts in respect of the funds in question.

Question 3.6 – What types of marketing communication do you use for retail investors?

Leaflet / flyer	X
Short booklet	X
Newspaper advertisement	X
TV advertisement	X
Radio advertisement	X
On line advertisement	X
Other	X

The following questions are addressed to all respondents.

Question 3.15 – Do you consider that rules on marketing communications* should be more closely aligned in the EU?

** Marketing communications comprise an invitation to purchase investment funds that contains specific information about the funds. In other word, this includes all the marketing materials that are used in order to promote or advertise a specific investment funds. For the purpose of these questions, the prospectus and the Key Information Documents are not considered as marketing communications*

Yes

Question 3.15a – Please explain your answer to question 3.15 – and if appropriate, to what extent do you think they should be harmonised:

More harmonised rules would result in greater transparency, particularly with the increase in the use of digital channels. An increase in the transparency around the sharing of marketing information across jurisdictions could result in a greater ability to organise business across borders with the end goal to ultimately drive down prices for investors within this more transparent environment.

In the Netherlands the harmonisation of the marketing rules in EU would help for consistency and comparability for investors when looking at different financial products (i.e. funds but also insurance

products). An example would be to either remove the Risk Indicator in the Netherlands or introduce it to the other countries as well.

This would help ensure that investors in all EU states have available to them all of the fund's investor materials, not simply those that have been determined to be appropriate to satisfy the level of regulatory approval exercised.

It is also clear that harmonisation, to the fullest extent possible, would significantly reduce the internal resource and cost associated with complying with the divergent marketing regimes (i.e. in identifying, and complying with, local requirements). This saving would only work to the advantage of investors, both in terms of the range of products available and the costs related to investing.

Question 3.17 – What role do you consider that ESMA – vis-a-vis national competent authorities – should play in relation to the supervision and the monitoring of marketing communications and in the harmonisation of marketing requirements? If you consider both should have responsibilities, please set out what these should be.

ESMA and the NCAs should work closely together but ultimately ESMA should be in a position to ensure consistency across the jurisdictions and to avoid gold-plating and additional marketing requirements being imposed at an NCA level.

It is undeniably challenging that each Member State has different marketing rules. Instructing local counsel to advise on the rules in each jurisdiction is costly and time consuming. It would be very useful to be able to access an up-to-date summary of the procedure for, and cost of marketing in, each Member State. ESMA could be responsible for setting up and maintaining a central online repository of this information so that firms can access a resource which provides a high level understanding of the marketing requirements in each jurisdiction (without having to instruct local counsel to prepare detailed advice).

5. Regulatory fees

As noted in section 4, the range of regulatory fees charged by host Member States have been referred to by a number of respondents to the public consultations as hindering the development of the cross-border marketing of funds across the EU. A formal notification process applies in respect of the passporting of all EU investment funds. In many cases national competent authorities apply a fee to the processing of such notifications. A preliminary assessment by the Commission services shows that the level of fees levied by host Member State on asset managers varies considerably, both in absolute amount and how they are calculated, including some Member States who may not apply fees.
Notification procedures contained in the various fund legislation do not currently include any reference to regulatory fees. In some cases, such as EUVECA and EUSEF, all supervisory powers are reserved to the home competent authority and host authorities expressly prohibited from imposing any requirements or administrative procedures in relation to marketing. The Commission services are interested in views as to whether notification fees are compatible with an efficient notification procedure, the passporting rights provided for in legislation and, if fees were to be allowed, how to ensure that they are proportionate and not excessive.

Questions addressed in particular to asset managers (professional associations are invited in addition to consolidate information on behalf of their Members)

Other respondents are welcome to respond to some or all of the questions below.

Question 5.1 – Does the existence and level of regulatory fees imposed by host Member States materially affect your distribution strategy?

Yes	
No	X
Don't know/no opinion/not relevant	

Question 5.2 – In your experience, do any Member States charge higher regulatory fees to the funds domiciled in other EU Members States marketed in their Member State compare to domestic funds?

Yes	X
No	
Don't know/no opinion/not relevant	

Question 5.2a – Please explain your answers to question 5.2 and provide evidence:

When reviewing fund regulators, typically the on-going fund levies charged by the national competent authority to funds under its direct supervision, (i.e. domestically domiciled funds) are higher than the pass-porting charges by that national competent authority

Question 5.3 – Across the EU, do the relative levels of fee charged reflect the potential returns from marketing in each host Member State?

Yes	
No	X
Don't know/no opinion/not relevant	

Question 5.3a – Please explain your answers to question 5.3 and provide examples:

The fees across the EU do not reflect the potential returns from marketing in the respective countries, with regulatory fees not necessarily moving in line with the pool of assets in each country.

Question 5.4 – How much would it cost you, in term of regulatory fees [one-off fees and ongoing], to market a typical UCITS with 5 sub–funds to retail investors in each of the following Member States (this excludes any commission paid to distributors)? Please respond for each Member State where you market your UCITS funds.

UCITS Passporting

Country	**Initial Regulator Fee**	**Annual Maintenance Regulator Fee**	**Translations**	**Service Provider Fees***	**Additional Costs**	**Total Cost**
Germany	€115 per sub fund	€494 per sub fund	**KIID Translations** - €150/€200 per KIID	**Information Agent** – Minimum Annual Fees €6,000	Addendum to Prospectus is required. (**Legal Costs**) **Third Party registration services**: Initial: €2,000 Annual: €4,000	€12,809 Excluding legal costs for Addendum

Switzerland (Non-Qualified Investors)	CHF 10,000 per fund	CHF 1,500 for 1st sub fund CHF 700 for additional sub funds	Circa CHF 15,000	**Swiss Rep** – Initial Fees CHF 10,000 Annual Fees CHF 10,000 for 1st sub fund CHF 7,000 for additional sub funds **Paying Agent –** CHF1,500 – 3,000 per fund	**Third Party registration services**: Initial: €2,000 Annual: €1,000	€45,000-€50,000 (Prices based on the marketing of 1 sub fund)
France	€2,000 per fund/sub fund	€2,000 per fund/sub fund	**KIID Translations** - €150/€200 per KIID	**French Centralizing Correspondent** – Minimum Annual Fees €6,000	**Third Party registration services**: Initial: €2,000 Annual: €4,000	€16,200
Austria	€1,100 per umbrella including 1st + €220 additional sub funds.	€600 per umbrella including 1st + €200 additional sub funds.	**KIID Translations** - €150/€200 per KIID	**Information/Paying Agent** – Minimum Annual Fees €6,000	**Third Party registration services**: Initial: €2,000 Annual: €4,000	€13,900- (Prices based on the marketing of 1 sub fund)
UK	£1,200 per umbrella	£455 per sub fund	**KIID Translations** - €150/€200 per KIID	**Facilities Agent** – Minimum Annual Fees €6,000	**Third Party registration services**: Initial: €2,000 Annual: €4,000	€14,000-€15,000

Question 5.5 – How much would it cost you in terms of regulatory fees [one-off fees and ongoing], to market a typical AIF with 5 sub–funds to professional investors in each of the following Member States (this excludes any commission paid to distributors)? Please respond for each Member State where you market your AIFs.

AIFMD Passporting (to professional investors)

Country	Initial Regulator Fee	Annual Maintenance Regulator Fee	Translations*	Service Provider Fees*	Additional Costs	Total Cost
Germany	€772 per fund/sub fund	€216 per sub fund	**N/A**	**N/A**	**Third Party registration services**: Initial: €3,000	€3,988
Switzerland	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
France	€2,000 per fund/sub fund	€2,000 per fund/sub fund	**N/A**	**N/A**	**Third Party registration services**: Initial: €3,000	€7,000
Austria	€1,100 per AIF €220 from 2nd sub-fund for additional sub-funds	€600 per AIF €220 from 2nd sub-fund for additional sub-funds	**N/A**	**N/A**	**Third Party registration services**: Initial: €3,000	€4,700 - (Prices based on the marketing of 1 sub fund)
UK	**N/A**	**N/A**		**N/A**	**Third Party registration services**: Initial: €3,000	€3,000

**Fees may be applicable when marketing to retail investors*

AIFMD NPPR (to professional investors)

Country	Initial Regulator Fee	Annual Maintenance Regulator Fee	Translations	Service Provider Fees	Additional Costs *	Total Cost
Germany	€6,582 per fund		**Notification & Business Plan** - €1,000-€3,000	**N/A**	**Third Party registration services**: Initial: €3000-€8000	€10,000 - €18,000
Switzerland	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
France	€2,000 per fund/sub fund	€2,000 per fund/sub fund	**N/A**	**Local Representative** – Minimum Annual Fees €6000	**Third Party registration services**: Initial: €3,000	€13,000
Austria	**EU AIFM** €2,000 per fund	**EU AIFM** €2,000 per fund	**N/A**	**Local Representative for Non EU AIFM** – Minimum Annual Fees €6,000	**Third Party registration services**: Initial: €2,000	€12,000 (Non-EU AIFM) €6,000 (EU AIFM)

UK	**For UK and EEA AIFMs** GBP 125 **For non-EEA AIFMs** GBP 250 **Non-EEA Small AIFMs** GBP 125	**For UK and EEA AIFMs** GBP 350 **For non-EEA AIFMs** GBP 500 **Non-EEA Small AIFMs** GBP 350	**N/A**	**Facilities Agent** – Minimum Annual Fees €6,000	**Third Party registration services**: Initial: €1,000	**For UK and EEA AIFMs** €7,450 **For non-EEA AIFMs** €8,000 **Non-EEA Small AIFMs** €7,450

** May be additional Adhoc costs for updates/changes to registrations*

6. Administrative Arrangements

Where EU funds using the marketing passport are sold to retail investors, host Member States sometimes introduce special administrative arrangements intended to make it easier for investors to subscribe, redeem and receive related payments from those funds, as well as receive tailored information to support them in doing so. Examples cited in earlier evidence include a requirement for UCITS funds to appoint a paying agent located in the host Member State, and a requirement for information contacts to be located in the host state. These have advantages for investors in allowing them to deal with local organisations, but a number of respondents to the CMU green paper viewed these requirements as an additional burden which is not always justified by the value added for local investors, especially when taking into account the development of new technologies. Moreover, UCITS and any funds marketing to retail investors are required in any case to have arrangements in place which allow investors to be confident that they know how to go about subscribing and redeeming to the fund. However the infrastructure through which payments are made and received and through which information is provided may generally no longer require a physical presence in a host Member State. Clarification that infrastructure can be provided through technical means as well as by local agents may be one way to address this issue. Views are sought on whether this would be likely to reduce costs and support the further integration of the single market.

In order to better assess this potential issue, and other administrative arrangements, it would be very helpful to have tangible evidence from stakeholders. The perspective of retail investors is also particularly welcomed in order to address and consider investor protection issues.

Questions addressed in particular to asset managers (professional associations are invited in addition to consolidate information on behalf of their Members).

Other respondents are welcome to respond to some or all of the questions below.

Question 6.1 – What are the main barriers to cross-border marketing in relation to administrative arrangements and obligations in Member States? Please provide tangible examples of where you consider these to be excessive:

1. **Cost**

At the outset, the following costs associated with the appointment of local agents impacts the ability of UCITS to access markets:

- The amount of time spent on finding such a local agent, negotiation and review of the relevant local agent agreements;
- Local agent costs themselves;
- Legal review of the agreements: these agreements are very often governed by foreign laws and regulations. As a result, appointment of external local law firm to ensure proper review of the agreements;
- Maintenance aspects of these agreements.

2. <u>Lack of harmonisation</u>

UCITS are faced with an inconsistent approach amongst Member States with respect to the requirement to appoint a local agent such as:

- Some Member States require the appointment of local paying agents to UCITS (such as Austria, Belgium, UK, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain and Sweden) while other Member States do not impose any obligation to appoint a local agent (such as the Netherlands, Norway or Finland).

- Some Member States have a two tiered UCITS passport system with a lighter regime available for UCITS marketing to institutional investors only (for example in Denmark and Italy a paying agent in only required if the UCITS is marketed to retail investors). The two tiered UCITS passport approach may increase risk of a regulatory breach for larger managers where monitoring of sales and marketing under a two tiered approach may prove more onerous. UCITS by nature are available to retail and institutional investors, therefore a streamlined approach to both types of investors would be welcomed.

- Certain Member States require UCITS to appoint a local distributor such as Spain where the local distributor acts as a designate in providing certain information to the CNMV. Italy also requires the appointment of a distributor where the UCITS is marketed to retail investors.

- The timing requirements with respect to the appointment of such agents is also unclear. For example, Austria requires the paying agent to be appointed to the UCITS prior to the submission of the Notification File to the home Member State regulator and also requires that certain confirmations from the paying agent be included in the Notification File. In such cases the selection of agents and the negotiation of agreements can lead to delays in progressing the Notification process.

- In addition to the requirement to appoint local agents, certain Member States require information with respect to such agents to be disclosed in a Country Supplement to the Prospectus of the UCITS for example, Germany and Austria require a Country Supplement with details of the Paying and Information Agent, a list of all sub-funds registered, details of the tax agent and other Austrian tax disclosures and any marketing restrictions the UCITS will abide by in Austria. Country Supplements must be filed with the Central Bank of Ireland for noting prior to the submission of the Notification Pack therefore in addition to the cost in the preparation of such documents, it also delays the Notification process.

- While noting tax is covered in section 9, the administrative arrangements around this were cited as excessive by a number of respondents.

3. <u>Difficulty Identifying Local Requirements</u>

Compounding the lack of harmonisation is the difficulty in identifying the requirements which apply in each Member State. In an effort to resolve this issue it is suggested that ESMA be tasked with

retaining a central repository with links to the regulator's website of each Member State where each regulator should set out the requirements with respect to administrative arrangements applicable to both the UCITS and AIFMD notification process.

Question 6.4 – In the absence of the administrative arrangements described in your response to Question 6.1, what arrangements would be necessary to support and protect retail investors?

Providing investors with digital means of: (i) checking the most recent documentation and pricing structure relating to the funds available locally; (ii) obtaining education resources (as and where appropriate); and (iii) having the ability to easily compare products, would be particularly beneficial.

The creation of an online repository, detailing information on funds available in a particular jurisdiction would also help to support and protect retail investors. In particular, such information could include links to the websites of the relevant fund providers, together with more practical / logistical detail in relation to investments (i.e. information on corporate actions and an explanation of fund documentation).

Question 6.5 – Do you consider that the administrative arrangements should differ if the fund is marketed to retail investors or professional investors?

Yes, based on their respective knowledge bases and ability to access the most pertinent information.

7. Direct and online distribution of funds

Questions addressed in particular to asset managers (professional associations are invited in addition to consolidate information on behalf of their Members) and where appropriate, distributors.

Other respondents are welcome to respond to some or all of the questions below

Question 7.1 – What are the main issues that specifically hinder the direct distribution of funds by asset managers?

Marketing requirements	X
Administrative arrangements	X
Regulatory fees	X
Tax rules	X
Income reporting requirements	X
Lack of resources	
Others	X

Others

One of the greatest challenges to direct distribution is lack of brand recognition which is why many managers will usually seek distribution arrangement with local distribution partners such as a local distributor, insurer or platform.

Question 7.1a – Please expand on your answers to question 7.1

In terms of direct distribution platforms one of the keys to success is consistency of processes and documentation. The more processes and documentation have to be tailored for a specific jurisdiction the greater the costs for entering new markets. In particular we note differences in marketing documentation in our responses to Section 3 on barriers to marketing.

Registration Timelines:

- From receipt of fund registration documents, the home NCA has 10 working days to confirm registration documents have been sent to the foreign jurisdiction regulator (host state regulator) or to respond and request additional information. From when the host state regulator receives the documents from the home NCA, they have 5 working days to confirm the fund has been registered. This is an EU standard with the exception of the Netherlands, which indicates that this process can take up to 2 months to confirm, which is contrary to EU legislation. However, in our experience the 5 day rule has been adhered to in the Netherlands. However, it would be beneficial if all rules were adhered to both formally and informally in this regard.

Subsequent sub-fund notifications

- For subsequent sub-funds to be passported into a jurisdiction a manager has already passported to, EU legislation requires you to follow the same procedure (EU Notification Process and Timelines). However, the Dutch regulator sees the registration of additional sub-funds as an amendment to the existing UCITS registration and requires that managers notify them directly as opposed to following the EU Notification Process. This process is at odds with legislation, but is often followed to ensure the regulator is satisfied. The Dutch NCA does not acknowledge subsequent notifications. The manager has to check the register to see if they have successfully passported. Therefore it would be helpful if there was a formal interaction guideline that was followed EU wide.

Registration Fees

We have found that there is a disparity in relation to fund registration fees:

- Netherlands : €1,500 (once-off fee charged at registration stage and at umbrella level)
- Italy: €4,000 (charged annually)
- Germany: €115 (once-off fee charged at registration stage per sub-fund).

Third party appointments

- EU legislation allows for the appointment of a Paying Agent and/or Information Agent depending on whether you are distributing to retail or professional investors.
- Some members have appointed an Information Agent for Germany but have not done so for other jurisdictions as it is not required.

Question 7.2 – What are the main barriers that hinder the online distribution of funds or the setting up new distribution platforms or other digital distribution ways?

A key barrier to the effective online distribution of funds and particularly the setting up of new digital distribution tools, is the lack of clarity at both an EU and national level on the concept of 'advice'.

We would encourage the NCAs/ESMA to develop a tailored and consistent approach to regulating the different types of advice and the channels through which it is provided, ranging from online

guidance to traditional face-to-face financial advice, to meet the differing needs of investors and to take into account the evolution of digital advice.

Question 7.3 – Are there aspects of the current <u>European rules</u> on marketing, administrative arrangements, notifications, regulatory fees and other aspects (such as know your customer requirements) that hinder the development of cross–border digital distribution of funds beyond those described in earlier sections?

Yes

Question 7.3a – What are these aspects of European rules?

As noted above there is a need to harmonise cross-border marketing requirements to allow for the development of newer marketing channels such as social media and to create further efficiencies in the operation of the European passport.

We also draw attention to different dealing processes resulting from requirements for multiple local paying agents which run contrary to the benefits of scale which a platform can offer. A well designed platform, we believe, can offer all the facilities in terms of information, disclosure and payment facilities that an individual retail investor needs to transact.

Question 7.3b – Are there aspects of the current national rules on marketing, administrative arrangements, notifications, regulatory fees and other aspects (such as know your customer requirements) that hinder the development of cross–border digital distribution of funds beyond those described in earlier sections?

Yes

Question 7.3c – What are these aspects of national rules?

There is an urgent need to simplify the process of conducting Know Your Client (KYC) and Anti-money laundering (AML) checks on consumers. More consistent KYC and AML processes would simplify the process for a consumer in one Member State to buy a product based in another Member State.

Without a more streamlined digital process consumers will fail to engage with the development of new on-line services such as “robo-advice”. We very much welcome the call made by Lord Hill at the Public Hearing on Retail Financial Services for the creation of a European digital ID/ e-ID, for consumers dealing with the financial services industry, which should facilitate consumer dealings without sacrificing standards of consumer and crime prevention.

The application of AML legislation may typically include a risk assessment based on various criteria such as customer risk, country risk, risk associated with products, transactions or the distribution, selling of the product. An online platform would ideally be able to run a single process compliant with the EU AML Directive in all counties in which it operates rather than multiple processes

The KYC requirements of anti-money laundering legislation limits the ability to open and maintain business relationships with investors across the EU. The KYC requirements of each jurisdiction requires the submission of documents from multiple sources which verify the investor's identity but to different levels. For example, in Ireland the submission of physical documentation is required in all cases whereas in the UK investors are able to be verified using electronic ID verification methods.

The flexibility provided by the fourth Anti-Money Laundering Directive to account for national specificities conflicts with the desire to provide investors with easy and simplified access across jurisdictions. This inconsistency, and specifically the lack of uniformity relating to the digital submission of documents, hinders the development of cross-border digital distribution of funds.

Question 7.4 – What do you consider to be the main reasons why EU citizens are unable to invest in platforms domiciled in another Member State?

We believe marketing and AML requirements represent significant barriers to EU citizens being able to invest in platforms domiciled in another Member State. In addition, the issue of national bias towards products is a more complex issue and requires building up confidence in the successful application of cross-border asset protection and systems of redress.

Question 7.5 – What would you consider to be appropriate components of a framework to support cross–border platform distribution of funds? What should be the specifications for the technical infrastructure of the facilities? Please clarify among others how you would address the differences in languages.

We believe that the appropriate components could include:

- coordination of AML and KYC requirements between jurisdictions
- consistent marketing requirements so that documents can simply be translated without having to be redesigned
- the launch of a European digital identity for financial services
- suitability and client take on procedures which recognise the differences in consumer behaviour when dealing online rather than in a face to face environment

8. Notification process

A number of respondents to the CMU green paper and the Call for Evidence noted difficulties with the notification process where funds marketed on a cross-border basis and there is a need for documentation to be updated or modified. Where initial notification in the case of UCITS or AIFM is between national competent authorities, without involvement by asset managers, in the event of a change in the information provided to the competent authority of the home Member States, asset managers are required to give written notice to the competent authority of the host Member State.

Questions addressed in particular to asset managers (professional associations are invited in addition to consolidate information on behalf of their Members) and where appropriate, to national competent authorities.

Other respondents are welcome to respond to some or all of the questions below.

Question 8.1 – Do you have difficulties with the UCITS notification process?

Yes

Question 8.2 – If you have difficulties with the UCITS notification process, please describe them:

1) Lack of harmonisation i.e. some Member States impose additional requirements not applicable in other Member States in particular with respect to:

- The appointment of local agents (see response to 6.1 above);

- The obligation to include additional disclosures for local investors which must form part of or accompany the home Member States approved prospectus (such as Austria, Belgium, UK, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain and Sweden);

- Some Member States (such as Belgium, France and Germany) require the NAV and/or investor notices to be published in a local medium;

- Certain Member States (such as Belgium and France) require marketing materials (i.e. outside of the KIID and Prospectus) to be in accordance with local laws and filed and/or approved before use. While this is not contrary to the UCITS Directive, it could be construed as an impediment for a UCITS to freely market its units in another Member State as contemplated under Art. 93(3) whereby it may *"…access the market of the UCITS host Member State as from the date of that notification*" being the date of receipt of confirmation from its home Member State that it has transmitted the notification letter. Member States review/approval of marketing materials can be slow (i.e. no prescribed timeframes) and rules applied inconsistently/inconsistent comments made. With the evolution of marketing practices, managers are increasingly looking to new technology driven marketing strategies.

- The lack of clarity in relation to the requirements for marketing of share classes in Member States can cause difficulties where new share classes are to be marketed after the initial passport application has been made. The majority, but not all Member States require additional share classes to be notified first (notably Denmark does not). The majority of Member State's registers maintained in relation to UCITS passporting are maintained on a sub-fund basis only and not on a share class basis.

2) It is difficult to identify the requirements which each Member State has in respect of the notification process and to find this information of the relevant Member State regulator's website. Most notably (but not exclusively) Belgium, Greece, Italy, Spain, Portugal. Belgium in particular is very slow to make its latest requirements available in English.

A number of managers cited operational difficulties with the evidencing of successful transmission of the notification file and an inconsistent approach to evidencing registration of funds in NCAs registers. The reality is that managers invariably have one or more investor clients on the other end who are basically reliant (for internal compliance purposes etc.) on evidence in the host NCS register that the fund is in fact registered, however how NCAs' registers are maintained is very inconsistent. Consequently certain categories of investors are unable to subscribe until such time as they have evidence of marketing approval in the NCA's register.

Separately German requirements (described further in 8.6 below) whereby the additional information for German investors form part of the home NCA approved prospectus by being incorporated into it is considered excessive and administratively burdensome.

It is frustrating that obtaining a UCITS marketing passport is not necessarily the end of the process: you still need to investigate whether the Member State into which you are marketing has gold plated the passporting requirements (either in terms of additional investors disclosures or imposing additional fees). If you are marketing into several jurisdictions, the cost of determining the extent of the gold plating can be high and is time consuming.

Furthermore, there is often uncertainty surrounding permission to commence marketing activities due to delays in updates to the host Member State's register (following transmission from the home regulator). Similarly, when minor / routine updates are required to a host Member State's records /

register, a cost is incurred in doing so. Although not prohibitive, we consider this to be somewhat unnecessary for simple administrative tasks.

Question 8.3 – Have you experienced unjustified delay in the notification process before being able to market your UCITS in another Member State?

Yes

Question 8.3a – Please describe your experiences with such an unjustified delay in the notification process before being able to market your UCITS in another Member State:

As noted in the response at 3.1a above, the differing methods of complying with individual Member State's marketing requirements contributes to delays and adds to considerable costs in the notification process resulting in barriers to the use of the marketing passport.

Question 8.4 – Do you have difficulties with the AIFMD notification process?

Yes

Question 8.4a – If you have difficulties with the AIFMD notification process, please describe them:

Lack of harmonisation i.e. some Member States impose additional requirements not applicable in other Member States in particular with respect to:

1) For AIFMs seeking to passport AIFs under Art. 32, Spain notably has no published guidance available on the CNMV website albeit the CNMV has gold-plated the passport requirements by imposing a requirement whereby a representative registered in Spain is required to be identified for processing payment of CNMV regulatory levy. Such gold-plated provisions are not contemplated under paragraph (h) Annex IV of AIFMD. An EU AIFM should be empowered to discharge the regulatory levy for AIFs it manages without the need to engage a locally domiciled third party representative.

2) Some Member States, such as Germany, impose an obligation to include additional disclosures for local investors which must form part of or accompany the home Member States approved prospectus.

It is difficult to identify the requirements which each Member State has in respect of the notification process and to find this information of the relevant Member State regulator's website. Most notably (but not exclusively) Belgium, Greece, Italy, Spain, Portugal. Belgium in particular are very slow to make its latest requirements available in English.

Question 8.6 – What should be improved in order to boost the development of cross–border distribution of funds across the EU?

1. As referenced in 3.1, identification and availability of the requirements referenced at Art 91(3) of the UCITS Directive can often be difficult to locate on certain NCAs websites, furthermore requirements can be unclear or in some cases the latest rules not available in English. We suggest implementation of a central repository of each NCA requirements with link to current section of each NCA website applicable to UCITS and AIFMD.

2. Lack of harmonisation - this is particularly relevant for UCITS whereby some but not all NCAs impose additional requirements for UCITS from other Member States marketing locally.
The most notable obligations imposed include (A) the appointment of one or more local agents; and/or (B) the availability of additional disclosures for local investors which must form part of or accompany the home state approved prospectus when it is circulated locally; and/or (C) the publication of prices and/or investor notices be published in local medium (e.g. newspaper) acceptable to the host NCA. Suggest such gold plating requirements, particularly in relation to Member States where local agents play an entirely passive role, are removed.

   In relation to (C) and in particular the local publication requirements that are imposed by some Member states, most notably France and Germany, a suggestion that relevant publications/letters etc., are made available on the Manager's and/or UCITS website should be sufficient.

   We suggest the establishment and retention of a central repository of individual NCA requirements identifying (A) any local agent(s) to be appointed; and/or (B) those requiring any additional investor disclosures; and/or (C) local publication requirements.

   In relation to AIFMs seeking to passport AIF under Art. 32, Spain notably has no published guidance available on the CNMV website albeit they have gold-plated the passport requirements by imposing a requirement whereby a representative, registered in Spain, is required to be identified for processing payment of CNMV regulatory levy. Such gold-plated provisions are not contemplated under paragraph (h) Annex IV of AIFMD. An EU AIFM should be empowered to discharge the regulatory levy for AIFs it manages without the need to engage a locally domiciled third party representative.

   It is further worth noting that the CNMV impose a similar requirement for UCITS seeking to passport into Spain (further details herein), as well as imposing a requirement on the UCITS to engage a local entity to submit documents relating to "material changes" through the CNMV online portal.

   The CNMV also impose a requirement to include the CNMV registration number on all materials relating to the UCITS being distributed in Spain – including KIIDs. For large managers this gold plating requirement can be costly and administratively burdensome.

   Some Member States have a two tiered UCITS passport system with a ligher regime available for UCITS marketing to professional investors only (or in the case of Belgium where no offer is made to the public). The two tiered UCITS passport approach may increase risk of regulatory breach for larger managers where monitoring of sales and marketing under a two tiered approach may prove more onerous. UCITS by nature are available to retail and professional investors, therefore a streamlined approach to both types of investors would be welcomed.

   The Belgian FSMA imposes a particular document naming criteria for documents to be submitted to it electronically and for KIID documents in particular to be consolidated into a single PDF file. Such gold-plated provisions are not contemplated under the UCITS Directive and place unnecessary compliance and cost burdens on managers, this is particularly relevant where the FSMA's naming criteria may conflict with the UCITS home NCA requirements.

   In the case of UCITS and AIFMD, Germany is the most notable Member State to impose additional investor disclosure obligations. With regard to the additional investor disclosures required for UCITS under German rules for local investors, BaFin require that "*The prospectus intended for marketing in the Federal Republic of Germany must contain a page-numbered information section for investors in Germany that is an integral part of the prospectus and is listed in the table of contents...*". BaFin's requirements assume managers know they want to passport to market in Germany at the time of preparation of the prospectus which is simply not always the case. A large proportion of managers may only take this decision down the line meaning it is not possible for them to subsequently supplement the home state approved prospectus to reflect the

additional German investor disclosures but rather modify the (home state approved) prospectus resulting in additional compliance burden and costs for managers.

While BaFin's rules are not as prescribed for AIFs being marketed to (semi-) professional investors, German rules do specify that additional investor disclosures are made available for German investors. Noting BaFin's specific investor disclosure requirements for UCITS outlined across, a supplement (or annex) to the home NCA approved prospectus should in fact fulfil these obligations insofar as it implicitly states that it "is an integral part of the prospectus" and is clear that it forms part of and should be read in conjunction with the prospectus. The additional gold-plating whereby the table of contents in the home state approved prospectus be amended to include reference to any such disclosures goes beyond the intention of the UCITS directive. It is worth noting that while a number of NCAs do impose similar additional local investor disclosures (accompany the prospectus) when circulated to local investors, currently no other NCA imposes the level of gold-plating that Germany do. In the context of Irish authorised UCITS any modifications to the home state approved prospectus are required to be filed with and noted by the Central Bank of Ireland prior to their use. It would be recommended that German requirements are closer aligned with those of other NCAs thereby removing the requirement for amendment to the home state approved prospectus.

3. Marketing materials
With regard to marketing materials (i.e. those outside of the prospectus, KIID etc.), certain Member States, including Belgium and France, require these be drawn up in accordance with local laws and filed and/or approved before use. While this is not contrary to the UCITS Directive, it could be construed as an impediment for a UCITS to freely market its units in another MS as contemplated under Art. 93(3) whereby it may "*…access the market of the UCITS host Member State as from the date of that notification*" being that date of receipt of confirmation from its home NCA that it has transmitted the notification letter.

NCAs review/approval of marketing materials can be slow (i.e. no prescribed timeframes) and rules applied inconsistently/inconsistent comments made. With the evolution of marketing practices, managers are increasingly looking to new technology driven marketing strategies.

While Norway does not impose any requirement for marketing materials to be filed and/or approved in advance, it does require that all materials used in Norway offering sales of units of the UCITS shall make reference to the availability of the prospectus and the KIID, and point out where these documents are available to Norwegian investors.

We would suggest greater clarity and visibility around individual NCA rules regarding specific marketing materials. Again would recommend ESMA maintain a central repository. A system allowing Managers to file template marketing materials for approval by the NCAs, eliminating the requirement to file similar materials for new umbrellas, funds etc. would be welcomed also. Furthermore, consider whether ESMA could work with industry organisations around adopting a set of cross-border marketing guidelines (similar to Social Media Charter etc).

4. Concerning the payment of registration fees (initial and ongoing) and leveraging off the idea of a central repository (at ESMA level), could a database which details regulators' bank transfer details be established which could further mitigate the risk of fraudulent activity? Or perhaps each regulator could ensure that there is a dedicated section on their websites with the salient information re regulatory fee payments and a spreadsheet/database of website links could be published by ESMA to inform the funds industry (just to note we wouldn't suggest ESMA takes responsibility for the ongoing responsibility for such a document, general contact details for each regulator could be included in the document along with a caveat to check the website link provided within the document for up-to-date details).

5. Also on the subject of invoicing with respect to annual regulatory fees – would it be possible to agree on a common approach to regulatory fee payments across the different regulators i.e. managers are issued with invoices from some regulators but from other regulators (e.g. Austria)

where the onus is on the manager to take the initiative in paying the fees directly themselves, in some cases there are a mixture of both. This results in a significant drain on resources within the regulators and the manager, there is also additional fees racked up where regulators employ local counsel to collect their fees on their behalf. A standardisation of process across regulators could prove fruitful for all concerned, particularly for the regulators whereby additional outsourced work could be eliminated/reduced resulting in cost savings and also the generation of additional interest accruals if payment was received more efficiently. This would mean less chance of penalty fees being applied to asset managers and also a saving on time and effort in the regulators (and asset managers) initiating and chasing up late fee payments.

6. As noted in the responses to 3 above, there are very inconsistent views of what constitutes marketing and what constitutes reverse solicitation. As noted in 3.1 above, Sweden is particularly conservative in this regard; simply having the name of the fund or a price on a data provider can constitute marketing even if this is at the request of the client to facilitate ongoing data reporting.

7. An area where a centralised reporting platform would be beneficial is in the area of AIFMD reporting where there is a potential for significant cost benefits in making reports to a single platform. One manager noted that for them alone it would mean a cut in the number of separate reports by 80-90% if there was a single platform – probably an extreme example but even a smaller manager submitting reports in two jurisdictions could cut their reports by 50%.

In respect of the notification process, it is cumbersome to have to file updated fund documents with your home state regulator as well as with the host state regulator in each jurisdiction into which you market. In order to boost the development of cross-border distribution of funds, it would be more efficient to have a process in place whereby the home state regulator immediately sends out revised documentation to the host state regulators on receipt: this would avoid an additional layer of administration.

Furthermore, it would particularly beneficial if a central online repository was available, containing details of the notification process in each Member State and up-to-date documents which are translated into English. In particular, such a repository could set out (i) the fees and requirements relating to the appointment of local agents / third party service providers; and (ii) the specifics of any disclosure / publication in respect of the notification process.

9. Taxation

Many respondents to the CMU Green Paper pointed to tax issues as impeding the cross-border sale of funds. The issues seem to range from lack of access to tax treaties to difficulties in obtaining refunds of withholding taxes to discrimination of funds established in other Member States.

Provided that their approach is in accordance with EU rules, Member States are free to choose the tax systems that they consider most appropriate. However, in addition to assisting Member States to tackle tax avoidance and evasion, the Commission is seeking to identify and promote best practices around preventing double taxation/double non-taxation and to address any unjustified discrimination. This complements the multinational work underway, in particular at OECD level, in the same areas.

Questions addressed in particular to asset managers and where appropriate, distributors (professional associations are invited in addition to consolidate information on behalf of their Members).

Other respondents are welcome to respond to some or all of the questions below.

Question 9.1 – Have you experienced any difficulties whereby tax rules across Member States impair the cross–border distribution and take–up of your UCITS or AIF or ELTIF or EuVECA or EuSEF?

UCITS	X
AIF	X
ELTIF	
EuVECA	
EuSEF	

Question 9.1a – Please describe the difficulties, including whether they relate to discrimination against UCITS or AIF (including ELTIF, EuVECA or EuSEF) sold on a cross–border, and provide examples. Please cite the relevant provisions of the legislation concerned.

The use of Collective investment Undertakings is faced with significant tax challenges when being sold on a cross border basis within the EU. The lack of consistent treatment of CIUs within Member States creates complexity and uncertainty for CIUs seeking to distribute throughout the EU, including inconsistencies in the taxation of income and gains, the tax rates applied and in the tax relief process. As a result, from a tax perspective, the use of CIU's in cross border investments within European Member States is not generally encouraged.
Investment funds distributing and investing across Europe encounter **enormous challenges with the management of withholding tax** and in providing appropriate investor tax documentation to ensure that investors do not suffer potentially significant additional taxes, were such information not to be provided.

In the case of withholding taxes the issues can range from the **lack of access to tax treaties** for investment funds generally (including the need to make annual repayment claims through lack of relief at source) as well as the inequity of treatment, particularly in the area of withholding taxes, applied by Member States to non-resident investment funds, in contrast to the position of domestic funds in such Member States. This is discussed in more detail below.

In the case of tax reporting the following **countries apply local tax reporting obligations**:

- Austria, Belgium, Denmark, Finland, Germany, Italy, UK

Significantly the requirements are based on local legislation and are not harmonised on an EU basis. For funds being distributed widely in the EU this requires investment (by the service providers) in complex system solutions, the cost of which is ultimately passed on to investors in such a fund. In some countries, foreign domiciled funds are even required to appoint a local tax representative to the extent that the fund is being marketed to the public. This creates additional complexity and costs for such non-domestic funds. As a result, there is a need for foreign funds to meet these local requirements, (if the fund is to remain competitive from a tax perspective with competitor domestic and other foreign funds). This requirement is effectively an impediment to the development of cross border distribution of funds within the EU.

The **legal nature of investment funds** used often leads to different tax consequences for residents of Member States. In some cases, funds can be regarded as a taxable person in their own right, while in others, the fund may be regarded as tax transparent and therefore the investors in the fund would be regarded as the investor of the underlying assets of the fund.

Question 9.2 – Have you experienced any specific difficulties due either to the absence of double taxation treaties or to the non–application of treaties or to terms within those treaties which impede your ability to market across borders?

For example: difficulties in determining the nationality of your investors or difficulties in claiming, or inability to claim, double tax relief on behalf of your investors.

Yes

Question 9.2a – Please, describe those difficulties, and if applicable, how these can best be resolved – for example through amendments to double taxation treaties. Please share any examples of best practice that could help to address these issues.

In the case of investment funds, and in particular widely-held funds distributed on a cross-border basis, the ability to claim treaty benefits is applied on a very inconsistent basis across the EU as a result of a wide range of issues, discussed below

- There is inconsistency among Member States on the qualification of investment funds to qualify for treaty benefits. Some do not permit funds outright to qualify under their treaties, while others (such as Austria) require confirmation of meeting an appropriate good ownership test. The ability of funds to be able to confirm good ownership is further complicated by the fact that, in many cases, investors invest in funds through local intermediaries, such as local bank networks, brokers, Central Securities Depositories (CSDs), etc. In addition, there is the added difficulty of the unwillingness on the part of the intermediaries concerned to share that information to the fund concerned (for commercial and legal reasons), to facilitate its ability to meet relevant good ownership tests.

- While a number of Member States facilitate withholding tax relief at source, others (such as Germany) require the processing of physical repayment claims to achieve lower appropriate rates and even when funds make appropriate treaty claims, the likelihood of success is undermined where investors are resident in jurisdictions other than the domicile of the fund.

- Some Member States persist with discriminatory treatment for withholding taxes with regard non-domestic funds, when compared with local funds. While the EC has made much progress in dealing with discrimination issue, there are still instances whereby claims have to be made to obtain non-discriminatory treatment, which are detailed, inconsistently applied across affected Member States and involve protracted engagement with the local tax authorities and advisors.

Irish Funds strongly believe that widely held funds should be considered a qualifying resident for the purposes of tax treaties. As part of the OECD's BEPS Action 6 (Treaty Abuse) debate We also welcome the opportunity to comment on the 2010 OECD report "*The Granting of Treaty Benefits with Respect to the Income of Collective Investment Vehicles*" (the "**2010 CIV Report**") dealing with collective investment vehicles that are widely-held, hold a diversified portfolio of securities and are subject to investor-protection regulation in the country in which they are established (which has been endorsed in subsequent updates on Action 6 by the OECD).

The importance for CIVs of entitlement to treaty relief has not changed since the publication of the 2010 CIV Report. As recognised in the 2010 CIV Report, CIVs offer small investors increased liquidity, risk diversification and economies of scale that they would not otherwise be able to achieve. It is important for those investors that the CIV should be entitled to receive income at reduced withholding tax rates that would be available to the investor on a direct investment. In

addition, it is important for the CIV (which often performs daily net asset value calculations) to have certainty on when it will be granted treaty benefits. We welcome the results of the 2010 CIV Report and continue to believe that the recommendations remain the best solution in practice for CIVs.

From a practical perspective consideration should be given to introducing a standard rate of withholding for funds in an EU context. For example, from 2018 Germany are moving to a 15% withholding tax rate on German dividends for foreign investment funds. Applying this on an EU-wide basis would mean that the need for treaty claims would be reduced or even eliminated, given that most double tax treaties operate on a standard 15% rate for treaty claimants with non-significant holdings.

Similarly, withholding tax on debt should be eliminated to ensure effective financing both from a governmental and business perspective.

The 2010 CIV Report considered whether treaties should permit treaty relief on a proportionate basis by reference to the location of the investors. Under such an approach, the CIV would be required to confirm who its investors are and their treaty status. As noted in the 2010 CIV Report, this is not a straightforward task given that shares in CIVs are generally held through intermediaries and that the interests held by investors frequently fluctuate. However, the Treaty Relief and Compliance Enhancement ("**TRACE**") project seeks to offer a solution to the problem of identifying investors for treaty purposes. It may be the case that in the future TRACE will provide a solution to enable CIVs and tax authorities identify the location and treaty status of investors. However, that project is not yet at a stage where it will enable CIVs or tax authorities to confirm the proportion of investors in a CIV that are entitled to claim treaty relief. In practical terms, we believe that an approach which permits CIVs to claim treaty benefit on a proportionate basis cannot be adopted until the TRACE project is fully implemented. Irish Funds fully endorses the implementation of TRACE-like framework.

The European Commission has long been an advocate for appropriate withholding for CIVs and in applying an effective method such as TRACE to improve the efficiency in the treaty claim process as well as how the information gathered under the Common Reporting Standard can be used to support such a process (without the need to provide detailed information on beneficial owners up the chain of ownership).

Question 9.3 – Feedback to earlier consultations has suggested that the levying of withholding taxes by Member States has impeded the cross–border distribution of UCITS or AIFs (including ELTIF, EuVECA and EuSEF).

Withholding taxes are usually reduced or even eliminated under double taxation treaties. But in practice it has been claimed that it is difficult for non-resident investors to collect any such withholding tax reductions or exemptions due under double taxation treaties. Have you experienced such difficulties?

Yes

Question 9.3a – Please provide examples of the difficulties with claiming withholding tax relief suggest possible improvements and provide information on any best practices existing in any Member States. Please cite the relevant provisions of the legislation concerned.

As outlines above, CIUs experience significant challenges in making claims for withholding tax relief across Member States.

The British Bankers Association Custody Tax Liaison Group "Summary of Tax Reclaim Market Standards for UK Institutional Claimants as at 24 June 2015"provides an EU-wide summary of withholding taxes on dividends and interest, including relevant domestic tax exemption treaty relief at source/reclaim processes. The summary demonstrates the substantial diverging practices between Member States in this area. We can provide a copy of this report, if required.

Rather than dwell on the significant local challenges in this area (which are well documented in the submission made by EFAMA in this consultation process, to which we have contributed) we would like to focus on potential good practices, which might be fostered or championed on an EU-wide basis. In this regard we would like to highlight the benefits of the Irish Dividend Withholding Tax regime, which affords domestic tax exemptions at source to foreign CIUs (including EU domiciled CIUs) funds meeting good residence and/or ownership tests once appropriate documentation is in place.

In addition to the above documentation process, Ireland has successfully operated a Qualified Intermediary (QI) process for custodians, etc., whereby the QI is permitted to provide information of underlying customer entitlement on a pooled basis (including through a chain of Qis) which is ultimately provided to the dividend paying agent. The process involves the maintenance of an exempt pool as well as a taxable pool by the QI, changes to which are monitored and passed up the chain by the QI. The regime, which has been referenced in the TRACE debate, demonstrates where a TRACE-like solution can work effectively on a cross-border basis and which we believe can be applied on an EU-wide basis on investment income returns, advocated in the 2010 CIV report, discussed above. The Irish Revenue Commissioners provide appropriate guidance for Qualified Intermediaries and on dividend withholding tax in general (see link http://www.revenue.ie/en/practitioner/tech-guide/dwt-guide.pdf).

Question 9.4 – What are the compliance costs per Member State (in terms of a percentage of assets under management) of managing its withholding tax regimes (fees for legal and tax advisers, internal costs, etc.)? Do they have a material impact on your UCITS or AIF (including ELTIF, EuVECA and EuSEF) distribution strategy?

Funds may sign up to tax service provided by the custodian at a pre-determined cost to the fund. However the nature of the service may vary from custodian to custodian.

Additionally to the extent that local tax and legal advisers are required to make a claim for recovery of tax under treaty or local tax discrimination claims, costs will inevitably be incurred. These vary from country to country both in complexity and administration, which leads to additional and inconsistent costs being incurred by funds across markets.

As a result of the above it is not straightforward to provide appropriate cost estimates.

Question 9.5 – What if any income reporting or tax withholding obligations do you have in the Member States where the UCITS or AIF (including ELTIF, EuVECA and EuSEF) is located and what if any difficulties to you have with reporting formats?

What kind of solutions and best practices, if any, would you suggest to overcome these difficulties?

If a single income reporting format were to be introduced across the EU, what would be the level

of costs saved?

Would this have a material impact on your UCITS or AIF (including ELTIF, EuVECA and EuSEF) distribution strategy?

Irish CIUs do not have income reporting obligations similar to the specific investor tax reporting obligations for Austria, Belgium, Denmark, Finland, Germany, Italy and the UK, outlined at 9.1a above. Introducing a single EU-wide reporting format would reduce complexity (which would result in cost reductions). However, this may be difficult given that the local tax reporting legislation is based on local rules. Ultimate harmonisation of local rules across such Member States may be required before tax reporting formats can be harmonised, otherwise this may lead to unintended discrimination between domestic and cross-border CIUs.

Question 9.6 – Are there any requirements in your Member State that the UCITS or AIFs (including ELTIF, EuVECA and EuSEF) need to invest in assets located in that Member State in order to qualify for preferential tax treatment of the proceeds of the UCITS or AIF (including ELTIF, EuVECA and EuSEF) received by the investors in the UCITS or AIFs?

No

Question 9.7 – Have you encountered double taxation resulting from the qualification of the UCITS or AIF (including ELTIF, EuVECA and EuSEF) as tax transparent in one Member State and as non–tax transparent in another Member State?

Double taxation can happen from a shareholder perspective, to the extent that income is already subject to withholding (often at the non-treaty rate of tax for such income) within the CIU. When the CIU subsequently distributes that after-tax income to the investor, the investor suffers tax on the distributed income (or deemed distributed income) normally without any credit for the withholding tax suffered by the fund on its investment income, for which investors would have been entitled had they invested directly in the underlying securities.

Question 9.8 – Have you encountered difficulties in selling a UCITS or AIF cross–border because your UCITS or AIF (including ELTIF, EuVECA and EuSEF) or the proceeds produced by the UCITS or AIF (including ELTIF, EuVECA and EuSEF) would not receive national (tax) treatment in the Member State where it was sold? Please provide a detailed description, including quotes of the national provisions leading to the not granting of national treatment.

We understand that in the case of France credit for foreign withholding tax on foreign dividends earned through a fund can only be achieved if an investment is made through a domestic fund. Similarly, credit for local Dutch tax can only be achieved by a Dutch investor if the investment is made through a domestic fund.

Question addressed to investors

Question 9.10 – Are you worse off tax–wise if you invest in a UCITS or AIF (including ELTIF, EuVECA and EuSEF) sold from another Member State than if you invest in a comparable domestic UCITS or AIF? What is the reason for this higher tax burden? Please cite the relevant provisions of the national legislation.

CIUs who do not meet the local investor tax reporting requirements in the jurisdictions already outlined above run the risk of less favourable treatment to the extent that they do not meet the relevant annual reporting obligations.

Question 9.12 – Do you see any other tax barriers to investment in cross–border UCITS and AIFs (including ELTIF, EuVECA and EuSEF)? Please specify them and cite the relevant provisions of the national legislation.

Yes

UCITS IV requires all EU countries to allow cross-border mergers of CIUs from a legal and regulatory perspective. However, no provision was made within UCITS IV to provide for effective tax relief on a cross border basis and what we see is the tax treatment of fund mergers varying from country to country. While some countries allow tax neutrality for domestic merges, many countries impose tax (including transactions taxes) on foreign and cross-border fund reorganizations at the level of the fund and/or at level of the investors. In practice, this prevents fund providers obtaining the efficiencies that UCITS IV espouses.

Consideration should be given to the introduction of appropriate EU legislation to promote appropriate tax relief (deferral) for investors whereby tax is deferred until the replacement CIU shares/units are disposed of.

10. Other questions and additional information

Question addressed to all respondents

Question 10.1 – Are there any other comments or other evidence you wish to provide which you consider would be helpful in informing work to eliminate barriers to the cross–border distribution of UCITS or AIFs (including ELTIF, EuVECA and EuSEF)?

Please see response at 8.6 above.

In line with Capital Markets Union Action Plan, increased transparency and consolidation of the registration and marketing rules would benefit the cross border distribution of UCITS and Alternative Investment Funds. Ultimately this would be positive for the end investors - increasing competition and product options.

We would like to see the following enhancements which could add transparency and ease for fund managers to distribute funds cross border.

• Information regarding fund registration and marketing requirements in all EU countries to be maintained online in a central location.

• A uniform registration and annual maintenance process such as an EU standardised registration form with specific market appendices.

• Removing the requirement for a local paying agent/information agent when funds are being distributed/marketed to institutional investors.

At present although it may be advantageous to market throughout the EU the cost/compliance requirements to initiate, register and maintain registration in each country can be a considerable burden.