



EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

FINANCIAL MARKETS

Asset management

CONSULTATION DOCUMENT

CMU ACTION ON CROSS-BORDER DISTRIBUTION OF FUNDS (UCITS, AIF, ELTIF, EUVECA AND EUSEF) ACROSS THE EU

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudice the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply **by 2 October 2016** at the latest to the **online questionnaire** available on the following webpage:

http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds-2016/index_en.htm

Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-cross-borders-investment-funds@ec.europa.eu.

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.**

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published unless respondents indicate otherwise in the online questionnaire.

Responses authorised for publication will be published on the following webpage: http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds-2016/index_en.htm#results

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INTRODUCTION

Creating a deeper single market for capital - a Capital Markets Union (CMU) which will strengthen Europe's economy and encourage investment in all 28 Member States is one of the European Commission's key priorities. The CMU is intended to mobilise capital in Europe and channel it to companies, including SMEs, and infrastructure projects that need it to expand and create jobs. By linking savings with growth, it will offer new opportunities for savers and investors.

Cross-border investment funds have an important role to play in achieving this aim. If funds can do business more easily cross border, they can grow and become more efficient, allocate capital efficiently across the EU, and compete within national markets to deliver better value and greater innovation for consumers.

The EU has a successful track of promoting the cross-border distribution of funds. The 1985 UCITS¹ Directive introduced a marketing passport for funds for the first time and a legislative regime where the most important aspects are now harmonised. Accordingly there should be no restriction on their sale across the European Union. Since then, and following several legislative updates, the UCITS market has grown to €8 trillion assets under management. Around 80% of UCITS funds are marketed cross-border². More recently, the Alternative Investment Fund Managers Directive (AIFMD), agreed in 2013, introduced a passport for non-UCITS funds. There are currently about €5 trillion of asset under management for AIFs, with 40% of funds marketed across border³. AIFs which are managed by authorised AIFM in accordance with AIFMD should, in accordance with that Directive, be freely available for sale to professional investors in the European Union. Overall, 57 % of the funds (UCITS and AIFs) are marketed on cross-border basis⁴.

However, there is more that can be done to deepen the single market for funds: one third of UCITS that are marketed cross-border are only sold in one Member State in addition to their home country, and mainly back to the Member State where the Asset Management Company is domiciled. Another third is not sold in more than four Member States outside of their home country. EU UCITS funds are also significantly smaller than US mutual funds. There are more than 30,000 UCITS funds available for sale in Europe in contrast to 7000 mutual funds in the US and while the average European mutual fund is valued at approximately €200 million, its counterparts in the US are almost seven times as large. This has consequences for the economies of scale these funds can reap and fund costs. The costs of marketing across borders may fall disproportionately on smaller, start-up or more specialised funds.

¹ [Directive 85/611/CEE](#)

² Source: European Commission staff calculation

³ Source: European Commission staff calculation

⁴ Source: European Commission staff calculation

The remaining barriers to cross-border distribution are varied – and may include the impact of concentrated fund distribution channels in individual member states, cultural preferences for funds managed in investors’ home states, and a lack of incentives for managers to compete cross-border. However, one obstacle that has been consistently cited, and which may be relatively more important for smaller managers, are the regulatory barriers to distribution. Regulatory barriers have been identified in response to the [Capital Markets Union⁵ green paper](#) and to the [Call for Evidence on the EU Regulatory Framework for Financial Services⁶](#) as including burdensome registration procedures, costly and diverse marketing requirements, inconsistent administrative arrangements and tax obstacles. Eliminating unjustified barriers would support fund managers to engage more in cross-border marketing of their funds, increase competition and choice, and reduce costs for investors.

The Commission is seeking further details and evidence from stakeholders including fund managers, investors and consumer representatives in order to understand where and how the cross-border distribution of funds could be improved. Input from distributors is also welcome in order to build a fuller picture of the barriers to distribution. In order to build upon earlier responses to the CMU consultation and to the Call for Evidence on the EU regulatory framework for financial services, specific examples and where possible quantitative and financial evidence on the financial impact of the barriers, would be welcome. This includes the impact of marketing rules, administrative arrangements imposed by host countries, regulatory fees and notification procedures and also the most pertinent features of the tax environment. The Commission will use this information in its assessment on taking action to address the barriers, supporting the development of the CMU and increasing choice.

This consultation seeks feedback in the following areas:

- **Marketing restrictions:** EU funds marketed cross-border are usually required to comply with national requirements set by host Member States, which differ across the EU. Significant costs can be incurred in researching each EU Member State’s financial promotion and consumer protection regime, and providing appropriate materials on an on-going basis.
- **Distribution costs and regulatory fees:** EU funds can be subject to regulatory fees imposed by home and host Member States that vary significantly in both scale and how they are calculated. The costs themselves and the need to research them are reported as acting as a barrier to cross-border distribution.
- **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. These are an additional burden that may not always be justified by the value added for local investors.

⁵ [Green Paper: Building a Capital Markets Union, COMM\(2015\)0633.10](#)

⁶ [Call for Evidence: EU Regulatory Framework for Financial Services, Commission Services, 2015](#)

- **Distribution networks:** With increasing use of online platforms to distribute funds, we want to understand the barriers that hinder the use of online and direct distribution across borders.
- **Notification processes:** Where funds are marketed on a cross-border basis and there is a need for documentation to be updated or modified, asset managers are required to give written notice to the competent authority of the host Member State. This can add cost and time to the process.
- **Taxation:** differential tax treatments can sometimes create barriers to cross border business. Feedback is sought on how best to promote best practice and avoid discriminatory tax treatment.

The Commission is grateful for the input of respondents informing the next stage of this work. The public consultation is open from 2 June 2016 to 2 October 2016.

This consultation complements other work by the Commission work seeking to improve the single market for investment products and asset management and improve outcomes for consumers and investors:

- As set out in the CMU action plan, the Commission will undertake a comprehensive assessment of European markets for retail investment products, including distribution channels and investment advice, drawing on expert input. The assessment will identify ways to improve the policy framework and intermediation channels so that retail investors can access suitable products on cost-effective and fair terms. The assessment will examine how the policy framework should evolve to benefit from the new possibilities offered by online based services and fintech.
- The Green Paper on retail financial services, which seeks to identify the specific barriers that consumers and firms face in making full use of the Single Market and ways in which those barriers could be overcome, including by making best use of new technology, subject to appropriate safeguards.
- The Call for Evidence (CfE) on the EU regulatory framework for financial services, which is assessing the evidence and feedback received on rules affecting the ability of the economy to finance itself and grow, unnecessary regulatory burdens, interactions, inconsistencies and gaps, and rules giving rise to unintended consequences.
- In parallel, following up on a call from the ECOFIN, the Commission has established a Member State Expert Group on barriers to free movement of capital, with the aim to map national barriers, identify the most damaging to the internal market and find the most efficient ways to remove them, including through voluntary commitments by Member States. National barriers to cross-border distribution of funds will also be discussed in that context. Through a collaborative process with Member States, a Report on barriers and a Roadmap for lifting or easing them is foreseen for adoption by end 2016.

In addition, the Commission has wider initiatives underway on the Single Market and Digital Single Market. The Single Market Strategy comprises targeted actions in three key areas: creating opportunities for consumers, professionals and businesses, encouraging modernisation and innovation and ensuring practical delivery that benefits consumers and businesses in their daily lives. It aims to facilitate cross-border provision of services and to

address key barriers for business services and construction. The Digital Single Market strategy intends to ensure, among other goals, better access for consumers and businesses to online goods and services across Europe. It also addresses the issue of the "level-playing field" between various service providers and envisages a comprehensive assessment of online platforms.

THE CONSULTATION – SUMMARY OF QUESTIONS

1. INFORMATION ABOUT YOU

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)

Question 1.1 – What types of funds do you market and to which types of investors do you market directly? [for each type of fund and investor]

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

Question 1.1b – 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?

Question 1.1c – Please expand upon your reply.

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

Question 1.3 – What is the sum of Assets under Management (€) of these funds? [for each type of fund and investor]

Question 1.4 – Where are your funds mainly domiciled (In % of the number of your UCITS and AIFs)? [for each Member State where your funds are domiciled]

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

Question 1.5a – If not, please explain why you do not use the passport.

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

Question 1.6a – If no, please explain why you do not use the passport.

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

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

Question 1.8 – In how many Member States do you market your funds (including sub-funds) on a cross border basis? (Please provide an aggregate figures or an estimate)

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

Question 1.9a – Please provide the UCITS allocation between Member States [number of UCITS funds / sub-funds & AuM]. If this is not straightforward to obtain, please provide an estimate.

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

Question 1.9b-e – [Please provide the details requested in 1.9a & 1.9aa for AIFs, EuVECAs, EuSEFs and ELTIFs]

Questions addressed to investors:

Question 1.10 – What type of investor are you?

Question 1.11 – Do you invest in investment products?

Question 1.11 a – Please expand upon your response.

Question 1.12 – Do you invest directly or indirectly in particular via an insurance wrapper such as unit linked insurance contracts in investment funds?

Question 1.12 a – Please expand on your reply.

Question 1.13 – In which type of fund(s) do you invest [domestic / overseas UCITS / AIFs, EuVECAs, EuSEFs and ELTIFs]?

Question 1.14 – What is the approximate allocation of your assets between funds [In % of your financial assets]?

Question 1.14a – If it is helpful, please expand upon your reply.

Question 1.15 – How do you inform yourself on available investment opportunities (e.g., investment advice, online information tools, face-to-face conversation with a bank staff or financial advisor, etc.)?

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? [for each host Member State - Regulatory costs and/or marketing requirements costs are too high, Lack of demand outside your home market, Host Market size is too small, Openness of the distribution network to third parties, Tax issues, Other]

Question 2.1a – Please expand upon and provide more detail on your response – 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.

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 [Different definitions across the EU of what marketing is, Marketing requirements imposed by host Member States, Regulatory fees imposed by host Member States, Administrative arrangements⁷ imposed by host Member States, Lack of efficiency of notification process, Difficult/cumbersome refund procedures for claiming relief from withholding taxes on distributions by the UCITS, AIFs, ELTIF, EuVECA or EuSEF, Higher taxation of investment funds located elsewhere in the EU/EEA than of domestic funds, 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, Differences between Member States in tax reporting, Other: Please specify]

⁷ See section 6 for further details on administrative arrangements

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.

Question 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 Directive⁹?

Question 3.1aa – Please explain your answer

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?

Question 3.1bb – Please explain your answer

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?

Question 3.1cc – Please explain your answer.

⁸ Marketing communications comprise an invitation to purchase investment funds that contains specific information about the funds. In other words, this includes all the marketing materials that are used in order to promote or advertise a specific investment fund. For the purpose of these questions, the prospectus and the Key Information Documents are not considered as marketing communications

⁹ Article 91 to 96 of the [Directive 2009/65/EC](#) of the European Parliament and of the Council of 13 July 2009

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

Question 3.2a – Please can you expand on this below.

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?

Question 3.3a – Please explain your reply and provide evidence.

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

Question 3.4a – If your answer is no, please provide details and specify in which Member State(s) the rules are not easily available and understandable and why.

Question 3.5 – When you actively market your funds on a cross-border basis to retail investors/High Net worth retail individuals/ Professional investors do you use marketing communications (Leaflet, flyers, newspaper or online advertisement, etc.)? Please provide the percentage of your funds marketed on a cross-border basis using marketing communications in the host country

Question 3.5a – 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

Question 3.6 – What types of marketing communication do you use for retail investors [leaflet / flyer, short booklet, newspaper advertisement, TV advertisement, radio advertisement, online advertisement, other (please specify)]

Questions addressed to distributors who market or advise investment funds to investors

Question 3.7 – When you market funds on a cross-border basis to **retail investors** do you use marketing communications (Leaflet, flyers, newspaper or online advertisement, etc.)? Please provide the percentage of funds marketed on a cross-border basis using marketing communications in the host country

Question 3.7a – To what extent are marketing communications important in marketing funds to retail investors? Please explain your answer.

Question 3.8 – When you market funds on cross-border basis to **high net worth retail individuals** do you use marketing communications? Please provide the percentage of your funds marketed on cross-border basis using marketing material in the host country

Question 3.8a – To what extent are marketing communications important in marketing funds to high net worth retail individuals? Please explain your answer.

Question 3.9 – When you market funds on cross-border basis to **professional investors** do you use marketing communications? Please provide the percentage of your funds marketed on cross-border basis using marketing communication in the host country

Question 3.9a – To what extent are marketing communications important in marketing funds to professional investors? Please explain your answer.

Questions addressed in particular to investors

Question 3.10 – To what extent is the UCITS Key Investor Information Document (KIID) useful in your investment decision? Is a KIID is always provided to you?

Question 3.11 – To what extent do marketing communications¹⁰ play a role in your investment decision? Do you consult marketing materials before making your investment decision?

Question 3.11a – Please expand upon your reply.

Question 3.12 – To what extent do you consider the marketing communications as providing a balanced views of the up-and downsides of a particular investment and do they contain meaningful information to assess risk and costs associated with the investment products?

Question 3.13 – To what extent is it important for you to have marketing communications in your national language?

Question 3.14 – How relevant is the disclosure of the following information in the marketing communications? [The asset management company, Price, Costs, Past performances, Scenario/ future potential performance, Performance of the benchmark, How to get additional information, Specific risks, How to make a claim, How to get your money back, Information on Tax treatment of income distributions by the fund, Other: Please specify]

Question 3.14a – Please explain the reasons for your response.

Question addressed to all respondents

Question 3.15 – Do you consider that rules on marketing communications¹¹ should be more closely aligned in the EU?

¹⁰ 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

¹¹ 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

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

Question 3.16– Is there a case for harmonising marketing communications for other types of investment products (other than investment funds)?

Question 3.16a – Please explain your reply and what should be the other products be?

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.

IF YES TO QUESTION 3.15

Question 3.18 – Do you consider that detailed requirements– or only general principles on marketing communications¹² should be imposed at the EU level when funds are marketed to retail investors?

Question 3.18a – Please explain your reply.

Question 3.19 – Do you consider that the requirements on marketing communications should depend on the type of funds or the specific characteristics of some funds (such as structured funds or high leverage funds) when those funds are marketed to retail investors?

Question 3.19a – Please describe the specific requirements.

Question 3.19b – Please describe the types of products which should have additional requirements on their marketing and their specific characteristics.

Question 3.20 – Do you consider that detailed requirements – or only general principles on marketing materials, at the EU level, should be imposed when funds are marketed to professional investors only?

Question 3.20a – Please explain your reply.

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

¹² 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

4. COSTS

Respondents to the CMU and CfE noted the relatively high cost of distributing funds – in terms of work to comply with regulation, fees charged by regulators and distribution costs. This section asks about the overall costs to asset managers wishing to market cross-border, and section 5 asks about fees charged by the regulatory authorities specifically.

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 4.1 – What proportion of your overall fund costs relate to regulation and distribution depending on the Member State where the fund is marketing regardless where it is domiciled? If this is not straightforward to obtain, please provide an estimate. Alternatively, please provide man hours spent on each. [Please answer for each relevant host Member State:

- **Regulatory costs** – Legal costs (Third party, Internal legal analysis) / Regulatory fees / Administrative arrangements / Marketing requirements / Others
- **Distribution costs** – Traditional Network distribution / Online distribution
- **Costs links to taxation system** – Costs in order to get the information / Costs to fulfil the obligation]

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?

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?

Question 5.2a – Please explain your reply and provide evidence.

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

Question 5.3a – Please explain your reply and provide examples.

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.

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.

Question addressed to National competent Authority

Question 5.6 – How much would it cost, in term of regulatory fees, to market a typical UCITS with 5 sub-funds to retail investors in your Member State? Please explain which fees are one-off and which are annual.

Question 5.7 – How much would it cost, in term of regulatory fees, to market a typical AIF with 5 sub-funds to retail investors in your Member State? Please explain which fees are one-off and which are annual.

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

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

Question 5.8 – Where ongoing fees are charged, are they related to use of the passport?

Question 5.9 – Do differing national levels of, and bases for, regulatory fees hinder the development of the cross-border distribution of funds?

Question 5.9a – Please explain your answer.

Question 5.10 – On who are regulatory fees are charged: managers or funds? Please describe if there are different practices across the EU.

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.

Question 6.2 – Do you consider that requirements imposed by host Member States, in relation to administrative arrangements, to be stricter for foreign EU funds than for domestic funds?

Question 6.2a – Please explain your reply.

Question 6.3 – What would be the estimated savings (in term of percentage of your overall costs) if you were no longer required to apply these administrative arrangements in the Member States where you market your units?

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?

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

Question 6.6 – What is the impact in term of costs of making these facilities available in each Member State? Please quantify them in relation to each measure and for each Member States where you distribute your funds.

Question 6.7 – Which alternative/additional administrative arrangements would you suggest in order to ensure greater efficiency in cross-border marketing and appropriate levels of investor protection?

Question 6.8 – Are there any measures you would suggest to improve the efficiency and effectiveness of administrative arrangements within and across Member States?

Questions addressed in particular to investors:

Question 6.9 – In general have you experienced any problems in being able to obtain information on, and invest, in foreign EU funds?

Question 6.9a – Please describe your experience.

Question 6.10 – Which facilities would you deem necessary to invest in EU funds domiciled in another Member State? Please explain.

Question 6.11 – What are your main problems when investing in funds domiciled in jurisdictions other than your jurisdiction of residence? Are differences in languages an important issue?

Question 6.12 – What is the best way to overcome such problems and facilitate your transactions?

Question 6.12a – Please clarify.

Question 6.13 – Which kind of information do you need when making transactions on EU funds domiciled in another Member State?

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? [Regulatory requirements – Marketing requirements, Administrative arrangements, Others: please specify / Regulatory fees imposed by host Member States / Tax rules (e.g. withholding taxes) / Income reporting requirements / Lack of resources / Others: Please specify]

Question 7.1a – Please expand on your reply.

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?

Question 7.3 – Are there aspects of the current European 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?

Question 7.3a – What are these aspects?

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?

Question 7.3c – What are they?

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?

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.

Questions addressed in particular to investors

Question 7.6 – Do you invest in funds via an on-line fund platform or a website?

Question 7.6a – Please expand upon your reply.

Question 7.6b – If you have invested in funds online, what kind of information on the suitability or appropriateness of the investment was made available to you?

Question 7.6c – If you do not invest in funds via fund platform or a website, why do you not do so?

Question 7.7 – What are your expectation when you invest via fund platform or a website?

Question 7.8 Do you invest in funds platform or a website domiciled in another Member State?

Question 7.9 – What do you consider to be the main reasons why EU citizens are unable to invest in platforms domiciled in another Member State?

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?

Question 8.2 – If yes, please describe those difficulties.

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

Question 8.3a – Please describe your experiences?

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

Question 8.4a – If yes, please describe these difficulties.

Question 8.5 – Have you experienced unjustified delay in the notification process before being able to market your AIFs in another Member State?

Question 8.5a – Please describe your experiences?

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

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?

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.

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.

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.

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?

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.

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?

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?

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?

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?

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.

Question addressed to investors

Question 9.9 – Have you experienced any difficulties relating to the taxation of investment in UCITS or AIF (including ELTIF, EuVECA and EuSEF)? Please describe those difficulties and provide examples.

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

Question 9.11 – To what extent are tax rules preventing you from investing across borders in UCITS or AIF (including ELTIF, EuVECA and EuSEF)?

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.

10. OTHER QUESTIONS

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)?