Council of the European Union
General Secretariat

PUBLIC

Interinstitutional files:
2025/0382 (COD)
2025/0383 (COD)

Brussels, 26 August 2026

WK 13087/2026 INIT

LIMITE

EF
ECOFIN
CODEC

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and Banking Union (MISP) Financial Services Attachés
Subject:	MISP - Asset Management - Presidency discussion paper for CWP on 1 September 2026

ÉIRE2026 EU
IRELAND2026.EU

PUBLIC

Asset Management Presidency Discussion Paper

Council Working Party

01 September 2026

1. Background

The Market Integration and Supervision Package (MISP) was adopted by the Commission on 4 December 2025. The Council has examined the asset management elements of the package on several occasions so far, most recently at a Council Working Party (CWP) meeting on 16 July 2026. Delegations have identified a number of issues requiring further consideration, notably in relation to depository passporting; the removal of the proposed annual review of asset managers and the introduction of the co-ordination colleges alternative; intra-EU group delegation; and under the Cross-Border Distribution Regulation (CBDR), where discussions have centred on proposed amendments aimed at eliminating host Member State requirements for prior approval of marketing communications, while maintaining ex-post supervisory powers and enhancing cooperation between national competent authorities and ESMA.

2. Objective of today's Working Party

The Presidency has prepared the attached compromise text with a view to getting an agreement on MISP at the October Ecofin. The compromise text seeks to reconcile the different positions expressed by delegations while preserving the overall objectives of the proposal.

Delegations are invited to examine the Presidency compromise text set out in the Annex and to provide their views on the proposed amendments, in particular on the issues identified in the accompanying comments.

3. Issues

3.1 Intra-EU Group Delegation

Master Directive: Relevant articles: Article 1 (8), Article 2 (10)
Master Directive: Relevant recitals: (5)

Background

The objective of this work is to facilitate the efficient sharing of resources, expertise and functions within asset management groups operating across the Union, while maintaining effective supervisory oversight and investor protection. Many asset management groups operate on an integrated cross-border basis, with functions and expertise concentrated in particular entities within the group.

In considering how best to address these concerns, Member States have also highlighted the importance of preserving supervisory visibility over delegation arrangements. In particular, concerns were raised that removing intra-group arrangements entirely from the delegation framework could make it more difficult for competent authorities to understand how key functions are organised and performed within a group, particularly where arrangements involve multiple entities, sub-delegation chains or third-country elements. The ability of competent authorities to maintain a clear view of delegation structures and associated risks was therefore identified as an important consideration.

Against this background, the Presidency has sought to develop an approach that delivers the operational efficiencies associated with intra-group resource sharing, while retaining the key benefits of the existing delegation framework. The objective is to provide a more proportionate regime for intra-group arrangements that reduces unnecessary regulatory burden and accommodates established group operating models, while ensuring that management companies and AIFMs remain responsible for delegated activities and that competent authorities continue to have appropriate visibility over delegation structures and associated risks.

Presidency Proposal

The compromise text seeks to achieve these objectives by retaining the existing delegation framework, which has operated effectively under both UCITS and AIFMD and provides competent authorities with visibility of delegation arrangements, while introducing targeted simplifications for intra-EU group structures.

Under the proposed approach, intra-group arrangements would continue to be treated as delegation and remain within the scope of the UCITS and AIFMD delegation frameworks. However, a lighter regime would apply where both the management company or AIFM and the delegate are established within the Union and belong to the same group. This would allow firms to benefit from more proportionate requirements while preserving the core principles of responsibility, oversight and supervisory transparency.

The compromise text also accommodates the reality of modern group operating models by permitting sub-delegation and further sub-delegation within EU groups under the simplified framework. This recognises that expertise and operational resources are often distributed across multiple entities within large groups and allows firms to continue to organise their activities efficiently across the Union.

Where delegation, sub-delegation or onward delegation involves a third-country entity, however, the simplified regime would no longer apply and the existing UCITS and AIFMD delegation requirements would continue to apply in full. This ensures that the established safeguards applicable to third-country arrangements, including the relevant supervisory and cooperation requirements, remain fully preserved.

The text also maintains the principle that the management company or AIFM remains fully responsible for the activities carried out on its behalf. Managers would continue to be subject to the core oversight, governance and monitoring requirements of the delegation framework, and competent authorities would retain the ability to assess delegation structures and intervene where concerns arise regarding governance, substance, concentration of activities or other supervisory risks.

In this way, the compromise text seeks to preserve the benefits of the existing delegation framework, maintain supervisory visibility and accountability, and provide greater flexibility for intra-EU group operating models while avoiding unnecessary regulatory burden. Importantly, it aims to deliver the efficiencies associated with intra-group resource sharing without reducing the ability of competent authorities to understand and supervise delegation arrangements across asset management groups.

Delegations are invited to examine the suggested amendments and provide their views.

3.2 Annual Review and Co-ordination Colleges

Master Directive: Relevant articles: Article 1 (47), Article 2 (21)
Master Directive: Relevant recitals: (14) and (15)

Background

The objective of this proposal is to improve supervisory understanding of the largest cross-border asset management groups operating within the Union and to support greater supervisory convergence across Member States. Given the scale, complexity and increasingly cross-border nature of these groups, it is important that competent authorities have a shared understanding of group structures, governance arrangements, business models and risk profiles. The proposal is intended to provide a structured framework for cooperation and information exchange between supervisors, allowing authorities to compare approaches, identify areas of divergence and promote more consistent supervisory outcomes across the Union. It also seeks to identify unnecessary duplication, regulatory gaps and other barriers to the effective functioning of the Single Market.

At the same time, any framework designed to achieve these objectives should be proportionate, make maximum use of existing supervisory information and cooperation arrangements, and respect the current allocation of supervisory responsibilities between national competent authorities and ESMA.

Presidency Proposal

The compromise text seeks to achieve these objectives through the establishment of a single co-ordination college for each large cross-border asset-management group meeting specified Level 1 criteria. The colleges would provide a structured forum through which ESMA, and the relevant competent authorities can exchange information and supervisory experience, develop a common understanding of the group's activities and cross-border operations, and identify material divergences, duplication, inconsistencies or gaps in supervisory approaches.

The framework is targeted at the largest and most significant cross-border groups, based on an assets-under-management threshold and cross-border activity criteria. ESMA would identify the groups falling within scope and support the consistent establishment and operation of the colleges through technical standards and operational guidelines.

The co-ordination college would be chaired by the competent authority responsible for supervising the management company or AIFM to which the largest proportion of the group's aggregate value of assets is attributed. Membership would comprise ESMA, the competent authorities responsible for supervising management companies or AIFMs

belonging to the group, and the competent authority of each host Member State in which the group carries out material cross-border activities.

ESMA would participate as an equal member of each college and contribute its Union-wide supervisory perspective to its work. It would be able to raise questions, request that relevant matters be considered and prepare analysis on issues falling within the college's remit for discussion and exchange among its members. Its participation should facilitate comparison of supervisory approaches and help identify issues that may arise across several groups or Member States.

The chair could also invite additional participants, including depositary supervisors, other Union or national authorities, the European Systemic Risk Board and, subject to appropriate safeguards, relevant third-country authorities. Representatives of the group could be invited where their participation would assist the college in understanding practical supervisory issues or barriers affecting the group's cross-border activities. This broad participation is intended to ensure that the college has access to the perspectives relevant to the matters under consideration.

The colleges would facilitate the exchange of supervisory information, analysis and experience, allowing their members to develop a more comprehensive understanding of how supervisory requirements and practices operate across jurisdictions. Their work would help identify supervisory divergences, unnecessary duplication, regulatory gaps and other cross-border issues affecting the effective functioning of the Single Market.

As a member of every college, ESMA would also be well placed to develop a horizontal view of recurring or cross-cutting issues. It could use that insight to identify areas in which greater supervisory convergence may be required and, where appropriate, inform the use of its existing supervisory-convergence tools.

The colleges would not exercise supervisory or decision-making powers or alter the respective responsibilities of competent authorities and ESMA. Their observations and findings would be non-binding. The proposed model is intended to strengthen information-sharing, supervisory co-ordination and convergence while relying, as far as possible, on existing information and avoiding unnecessary reporting or duplication of supervisory activity.

Delegations are invited to examine the suggested amendments and provide their views.

3.3 Marketing and Advertisement Materials

Master Regulation: Relevant articles: Article 6 (4) & (7)
Master Regulation: Relevant recitals: 63

Background

The objective of the proposed amendments is to facilitate the cross-border marketing of UCITS and AIFs by establishing a more harmonised framework for marketing communications across the Union. In particular, the amendments seek to ensure that the exercise of passporting rights is not delayed by divergent national notification, review or approval processes, while maintaining appropriate investor protection safeguards.

The proposed framework is designed to limit the scope for additional national requirements relating to marketing communications and to promote a common set of standards across the Union. At the same time, Member States have emphasised the importance of ensuring that host competent authorities retain an appropriate role in relation to marketing communications distributed within their territory. Host authorities often possess a detailed understanding of local market practices, investor behaviours, language and cultural factors that may influence how marketing materials are interpreted by investors. They have also highlighted the value of maintaining the ability to engage directly with firms where concerns arise regarding communications targeted at investors within their jurisdiction. Accordingly, Member States have sought a framework that reduces barriers to cross-border distribution while preserving the ability of host competent authorities to contribute to investor protection through effective supervision, engagement and cooperation with home competent authorities and ESMA.

Presidency Proposal

The compromise text seeks to remove any requirement for prior notification, review or approval of marketing communications by host competent authorities, thereby ensuring that the exercise of the fund passport is not delayed and that marketing communications may be used immediately in accordance with the harmonised Union framework.

At the same time, the text preserves the ability of host NCAs to supervise, on an ex-post basis, marketing communications distributed to investors within their jurisdiction. To ensure the proportionate use of supervisory resources, the systematic monitoring arrangements would focus on marketing communications targeted at retail investors. This limitation would apply only to the monitoring arrangements and would not affect the application of the harmonised requirements to marketing communications addressed to professional investors or other investor categories. This is intended to ensure that investor-protection concerns can continue to be addressed at national level while avoiding the reintroduction of barriers to cross-border distribution.

To facilitate that monitoring, firms would be required to submit the relevant marketing communications to the ESMA data platform once those communications are ready for use, identifying the Member States in which they are to be used. This would give the relevant competent authorities direct access to the materials used in their territories without creating a prior notification or approval process.

Where a host NCA identifies marketing communications that are inaccurate, unfair, unclear or misleading, the compromise text provides for proportionate corrective action to be required. To support consistent supervision across the Union, any such action taken by a host NCA would be notified to the relevant home NCA and ESMA, with appropriate arrangements for information-sharing and cooperation between authorities.

The text further seeks to provide greater legal certainty by clearly defining the range of corrective measures available to host NCAs and by establishing harmonised standards against which marketing communications should be assessed. The objective is to ensure that host-country supervision remains focused on investor protection and compliance with Union requirements, while avoiding the development of divergent national marketing regimes or the re-emergence of regulatory gold-plating that could undermine the effective operation of the Single Market.

3.4 Depositary Passport

Master Directive: Relevant articles: Article 1 (16) Article 2 (11)
Master Directive: Relevant recitals: (10)

Background

The objective of MISP proposal is to improve access to depositary services across the Union by enabling funds, where appropriate, to appoint a depositary located in another Member State. This is intended to support market integration, increase competition in the provision of depositary services and alleviate capacity constraints in markets where the availability of depositary services is limited.

At the same time, the framework should preserve effective supervisory oversight and investor protection, while ensuring clear cooperation between competent authorities. It should also avoid introducing unnecessary regulatory burdens that could diminish the benefits of greater market integration.

Presidency Proposal

The compromise text seeks to achieve these objectives by introducing an optional framework under which Member States may permit the appointment of a depositary established in another Member State, without creating a mandatory EU-wide depositary passport.

Under this approach, Member States may choose to permit funds established in their territory to appoint a depositary established in another Member State. Member States that do not exercise that option would continue to apply their existing national rules for the appointment of depositaries.

The text preserves the current allocation of supervisory responsibilities. The depositary's home competent authority would remain responsible for the supervision of prudential and organisational requirements applicable to the depositary, while the competent authority of the UCITS/AIF home Member State would continue to oversee compliance with fund-specific obligations and investor protection requirements. Before appointing a depositary established in another Member State, the management company or AIFM, as applicable, shall satisfy itself that the depositary is eligible for appointment and capable of performing its duties in accordance with the legal and regulatory requirements. To ensure effective supervision in a cross-border context, the compromise text introduces enhanced cooperation, information-sharing and escalation arrangements between the relevant competent authorities on relevant issues.

The proposed framework also ensures that depositaries appointed on a cross-border basis comply with the laws and regulatory requirements applicable to the fund in its home Member State, including any lawful directions issued by the fund's competent authority. At the same time, the text avoids the introduction of additional authorisation layers or duplicative regulatory requirements.

To support investor protection and supervisory effectiveness, the compromise text includes provisions relating to information-sharing, reporting, incident notification, supervisory cooperation, inspections and escalation procedures. It also provides a mechanism enabling the competent authority of the fund's home Member State to take

PUBLIC

proportionate measures where serious concerns arise and, where appropriate, to refer disputes to ESMA.

Delegations are invited to examine the suggested amendments and provide their views.

3.5 Funds Managed Relative to Index

Master Directive: Relevant articles: Article 1 (24)
Master Directive: Relevant recitals: (12)

Background

The Commission proposal sought to extend the higher 20% issuer-concentration limit available to index-tracking UCITS to actively managed UCITS managed by reference to an ESMA-recognised index. The objective was to create a more level playing field and avoid requiring an actively managed UCITS to reduce exposure to an outperforming issuer solely because its weighting exceeded the ordinary limit.

Presidency Proposal

The suggested approach raises a range of complex and interrelated technical and supervisory questions, including the definition of index-referenced active management, the criteria for recognising eligible indices, and the implications for concentration, diversification, market behaviour and investor protection. Given the breadth of those issues and their potentially significant consequences for UCITS investment strategies and supervision, the Presidency considers that further detailed examination is required to avoid unintended consequences and therefore does not propose to proceed with the approach at this stage.

PUBLIC

PUBLIC

3.5 All Relevant Changes

UCITS Changes

Master Directive

These references are to Article 1 of the amending Directive, which amends Directive 2009/65/EC.

Amending Provision	Underlying UCITS Provision	Function
Article 1(2)(c)	Article 2(1), point (v), opening wording	Editorial insertion Inserts "of" in the Directive 2013/34/EU citation
Article 1(2)(c)	Article 2(1), point (v), credit-institution limb	Correction and replacement Replaces Article 2(1)(b) CRD with Article 4(1) CRR.
Article 1(3), Article 5 amendment	Article 5(8), first subparagraph, point (a)	Deletion and insertion Deletes "the details of" so the RTS specify the information itself.
Article 1(3), Article 5 amendment	Article 5(8), first subparagraph, point (b)	Text inserted Adds procedural and timing conditions and the definition of a complete application.
Article 1(3), Article 5 amendment	Article 5(8), first subparagraph, point (c)	Text replaced Confines delivery arrangements to point (a) information and deletes the broader wording.
Article 1(3), Article 5 amendment	Article 5(8), second subparagraph	Text inserted Preserves NCA power to request additional case-specific information.
Article 1, Article 7 amendment	Article 7, proposed paragraph 1a	Text deleted Deletes the authorisation-stage EU-group information exemption and shared-resource rules.
Article 1, Article 7 amendment	Article 7(1a), proposed new paragraph	Entire proposal struck out Deletes the authorisation-stage EU-group information exemption and shared-resource rules.
Article 1, Article 7 amendment	Article 7(6), first subparagraph, point (a)	Deletion and insertion Deletes "the details of".
Article 1, Article 7 amendment	Article 7(6), first subparagraph, point (b)	Text inserted Adds procedural and timing conditions and a complete-application definition.
Article 1, Article 7 amendment	Article 7(6), new subparagraph	Text inserted Preserves NCA power to seek additional information.
Article 1, Article 7 amendment	Article 7(6), IT-solutions subparagraph	Insertion and deletion

		Inserts “standard” and deletes “formats”.
Article 1, Article 13 amendment	Article 13(1), proposed point (k)	Entire proposal struck out
Article 1, Article 13 amendment	Article 13(1), new subparagraph	New text inserted Disapplies points (f), (g), (h) and (j) for qualifying same-EU-group delegation.
Article 1, Article 13 amendment	Article 13(4), new subparagraphs	New text inserted Introduces express sub-delegation.
Article 1, Article 13 amendment	Article 13(4), EU-group sub-delegation	New text inserted Requires prior management-company consent. Requires prior home-NCA notification.
Article 1, Article 13 amendment	Article 13(2), proposed replacement	Entire proposal struck out Deletes amended liability and letter-box wording for EU-group reliance.
Article 1, Article 13 amendment	Article 13(3), proposed new subparagraph	Entire proposal struck out Deletes the Commission non-delegation carve-out.
Article 1, Article 18 amendment	Article 18(2)	Clarifying insertion Inserts “working” before days.
Article 1(16)	Article 23(1), second subparagraph	Substantially amended Recasts passport as a UCITS-home Member State option and changes location wording to “another Member State”.
Article 1(16)	Article 23(1), further subparagraph	New text inserted Adds notification to the Authority and Commission and an Authority list.
Article 1(16)	Article 23(1), non-discrimination subparagraph	New text inserted Prevents more onerous depositary-home requirements for an incoming depositary.
Article 1(16)	Article 23(1), applicable-law subparagraph	New text inserted Adds compliance with fund-home law and lawful fund-specific directions while preserving depositary-home law.
Article 1(16a)	Article 26a, first subparagraph	New text inserted Prevents more onerous depositary-home requirements for an incoming depositary.
Article 1(16a)	Article 26a, second subparagraph	New text inserted Adds UCITS and management-company authorities as direct information recipients.
Article 1(16a)	Article 26a, inspection provisions	New text inserted Adds prompt notification of material breaches.
Article 1(16a)	Article 26a, notification provisions	New text inserted Replaces one-way sharing with reciprocal necessity-limited exchange.
Article 1(16a)	Article 26a, final subparagraphs	New text inserted
Article 1(16aa)	New Article 26aa	New Article inserted

PUBLIC

		Adds authority cooperation and information exchange. Adds referral of suspected breaches to the depositary authority. Adds ESMA referral under Article 110c and Article 19 ESMAR.
Article 1, Article 31 amendment	Article 31(b), new subparagraph	Editorial corrections Adds "sub", deletes paragraph number 2 and replaces "paragraph 1" with "the first subparagraph".
Article 1, Article 45	Article 45(2)	Text amended Replaces "may require or allow" with a power to "require or permit" and recasts the investor-protection condition.
Article 1, Article 53 amendment	Article 53(1), introductory wording	Text inserted Deletes the proposed index-reference reform.
Article 1, Article 53 amendment	Article 53(1), following subparagraphs	Editorial and substantive insertions Deletes the proposed index-reference reform.
Article 1, Article 55 amendment	Article 55(2), second subparagraph	Text recast Recasts the look-through rule so UCITS assets need not be combined with underlying fund assets.
Article 1, Article 56 amendment	Article 56(2) and (3)	Entire amendment struck out Deletes the proposed 15% securitisation limit.
Article 1, Article 57 amendment	Article 57(1), second subparagraph	Text replaced Deletes the consequential amendment.
Article 1, Article 108 amendment	Article 108(6)	Text replaced Replaces authorisation date with first-investment date.
Article 1, Article 110b amendment	Article 110b	Original annual review text deleted
Article 1, Article 110b amendment	Article 110b	New Co-ordination text inserted
Article 1, Article 110c insertion	Article 110c	Changed wording from "ESMA" to the Authority in para 1 and to "the Executive Board" in para 2; In para 3, EB given ability to submit a reasoned proposal to the BoS for the exercise of its powers under ESMA Reg. New text added to part (b) of para 3. Para 4 deleted and amended

AIFMD Changes

Master Directive

These references are to Article 2 of the amending Directive, which amends Directive 2011/61/EU.

Amending Provision	Underlying AIFMD Provision	Function
Article 2(1)	Article 4(1), point (av), credit-institution limb	Correction and replacement Replaces Article 2(1)(b) CRD with Article 4(1) CRR.
Article 2(1)	Article 4(1), point (aw)	Cross-reference corrected Corrects UCITS management-company definition from point (c) to point (b).
Article 2, Article 7 amendment	Article 7(6), opening wording	Editorial corrections Changes plural “paragraphs are inserted” to singular and deletes “to” before “specifying”.
Article 2, Article 7 amendment	Article 7(6), first subparagraph, point (a)	Deletion and insertion Deletes “the details of”.
Article 2, Article 7 amendment	Article 7(6), first subparagraph, point (b)	Text inserted Adds procedures, timelines and complete-application definition
Article 2, Article 7 amendment	3), Article 7(6), new subparagraph	Text inserted Preserves NCA power to seek further case-specific information.
Article 2, Article 7 amendment	Article 7(6), IT-solutions subparagraph	Text inserted Inserts “standard” before templates.
Article 2, Article 18 amendment	Article 18(1)	Description corrected Corrects “introductory wording” to “first subparagraph”.
Article 2, Article 20 amendment	Article 20(1), new subparagraph	New text inserted Disapplies points (a) and (f) for same-EU-group delegation.
Article 2, Article 20 amendment	Article 20(4), new subparagraph	New text inserted Disapplies points (a), (b) and (f) for same-EU-group sub-delegation.
Article 2, Article 20 amendment	Article 20(4), successive delegation	New text inserted Extends simplification through wholly qualifying EU-group chains and restores full requirements when a third-country entity enters the chain.
Article 2, Article 20 amendment	Article 20(6a), proposed subparagraph	Entire proposal struck out Deletes the Commission non-delegation carve-out.
Article 2, Article 20 amendment	Article 21(3)(c)	Entire proposal struck out

PUBLIC

		Deletes the proposed replacement and retains existing point (c).
Article 2, Article 20 amendment	Article 21(3), professional depositary subparagraph	Entire proposal struck out Deletes the five-year no-redemption-rights condition, widening the category by reference to investment policy.
Article 2, Article 21 amendment	Article 21(5), second subparagraph	Substantially amended Recasts the passport as an AIF-home Member State option.
Article 2, Article 21 amendment	Article 21(5), notification subparagraph	New text inserted Adds notification to the Authority and Commission and an Authority list.
Article 2, Article 21 amendment	Article 21(5), non-discrimination subparagraph	New text inserted Prevents more onerous depositary-home requirements for incoming depositaries.
Article 2, Article 21 amendment	Article 21(5), further subparagraph	New text inserted Adds compliance with AIF-home law and lawful fund-specific directions while preserving depositary-home law.
Article 2, Article 21 amendment, point (ca)	Article 21(11), new subparagraphs	New text inserted
Article 2, Article 21 amendment, point (ca)	Article 21 ca	Text amended
Article 2, Article 21 amendment, point (cb)	Article 21 cb	New text added; prompt notification of material breaches. Adds reciprocal necessity-limited information exchange.
Article 2, Article 33 amendment	Article 33(4), first subparagraph	Clarifying insertion Inserts “working” before days.
Article 2, Article 47a–47b insertion	Amending instruction	Editorial correction Corrects the proposed range from 47a–47e to 47a–47b.
Article 2, Article 47 amendment	Article 47a	Entire proposal struck out Deletes annual ESMA review model in full.
	Article 47b	References to ESMA are replaced with “the Authority” or “the Executive Board”, as appropriate. ESMA’s duty to exercise at least one intervention power without undue delay is replaced by discretion for the Executive Board to submit a reasoned proposal to the Board of Supervisors.

PUBLIC

		The references to Articles 17, 17aaa, 19 and 19aa are deleted. 3 (b): A depositary appointment may be challenged only on objective and duly substantiated grounds concerning the depositary's eligibility or capacity, or where the appointment otherwise breaches the Directive. ESMA's standalone power and related procedure to suspend the cross-border activities of an AIFM or depositary are deleted.
Article 2, Article 50 amendment	Article 50(5g), opening wording	Substantially amended Replaces appointment by an AIFM with permission by the AIF home Member State.
Article 2, Article 50 amendment	Article 50(5g), second part	New text inserted Adds temporary protective action and ESMA referral where depositary-home action is inadequate.
Article 2, Article 50 amendment	Article 50(5g), final sentence	Text struck out Deletes the general savings clause preserving notifying-authority competences.

Footnotes Changed

Footnote associated with Article 1(2)(c), point (v), credit institutions; source marker 24
Footnote associated with Article 2(1), point (av), credit institutions; footnote [10] / source marker 32
Footnote associated with Article 2(1), point (aw); source marker 30
Footnote associated with Recital 23, Regulation (EU) No 1095/2010; footnote [5]

Cross-Border Distribution of Funds Regulation (CBDR)

Recital numbering follows the continuing numbering in the Master Regulation.

Amending Provision	**Underlying CBDR Provision**	**Function**
Recital 61	Scope	Adds that marketing-communication rules apply to all UCITS and AIFs, including ELTIFs, EuVECAs and EuSEFs; excludes Article 43 AIFMD national private-placement marketing from the cross-border rules.
Recital 63	Prior notification	Deletes the recital statement that the Regulation prohibits host-NCA prior notification as a marketing condition.
Recital 63	Post-authorisation trigger	Adds that the fund must be authorised before the host authority engages on marketing communications.
Recital 63	Direct engagement	Deletes the requirement to request action from the home NCA and permits the host authority

		to request the AIFM, EuVECA/EuSEF manager or UCITS to act.
Recital 63	Corrective action	Adds correction of existing irregularities, as well as prevention or penalisation of further irregularities.
Recital 63	Platform notification	Recasts the notice obligation so host authorities communicate measures to ESMA and other authorities through the platform; deletes escalation merely because dissatisfied with home-NCA action.
Recital 63	Home-NCA action	Adds reciprocal platform communication where the home authority acts regarding a cross-border distributed fund.
Recital 65	Report-once principle	Adds the report-once principle for information and documents received by ESMA through the platform, including use for wider regulatory or supervisory purposes.
Recital 66	Share classes	Adds removal of the one-month notification requirement for a new UCITS share class.
Recital 68	New authorisation/material-change recital	Inserts a full recital on UCITS authorisation documents, translation rules, material-change notifications and an indicative, CBDR-only materiality concept, extended similarly to AIFMs, EuVECA and EuSEF managers.
<u>UCITS Related Changes</u>		
Article 6	(15), Article 14a(1)	Recasts the provision to state that the UCITS home authority supervises UCITS compliance with the CBDR and UCITSD, including Article 19 UCITSD.
Article 6	(15), Article 14a(2), first subparagraph	Adds Article 4 to the provisions supervised by the UCITS host authority.
Article 6	(15), Article 14a(3), third subparagraph	Deletes the mandatory Article 14c(4) referral before the host authority prevents further UCITS marketing.
Article 6	(16), Article 17c(3)	Deletes “whether” and “is complete” from home-authority verification of the initial UCITS passport documentation.
Article 6	(16), Article 17c(9)	Replaces 15 working days with 10 working days.
Article 6	(16), Article 17d(2), first subparagraph	Deletes “whether” and “is complete” from verification of the UCITS de-notification.
<u>AIFMD Related Changes</u>		
Article 6	(15), Article 14b(2), first subparagraph	Adds Article 4 to the CBDR provisions supervised by the AIFM host authority.
Article 6	(15), Article 14b(3), third subparagraph	Deletes the mandatory Article 14c(4) referral before preventing further AIF marketing.
Article 6	Article 14c(1)	Replaced “ESMA” with “The Authority”
Article 6	Article 14c(2)	Replaced “ESMA” with “the Executive Board”
Article 6	Article 14c(3)	Replaces ESMA’s mandatory, immediate exercise of at least one specified intervention power with discretion for the Executive Board to submit a reasoned proposal to the Board of Supervisors for the Authority to exercise one or more powers under Regulation (EU) No 1095/2010; the express references to Articles 17, 17aaa, 19 and 19a are deleted.
Article 6	Article 14c4	Paragraph deleted
Article 6	(16), Article 17f(2)(f)-(h)	Adds “and”, adjusts punctuation, and deletes the marketing-communication submission and

		Article 4 attestation from the AIFM home-marketing application.
Article 6	(16), Article 17f(3)	Deletes “whether” and “is complete” from verification of the initial Article 17f documentation.
Article 6	(16), Article 17f(8), second subparagraph	Deletes “whether” and “is complete”.
Article 6	(16), Article 17f(10)	Replaces 15 working days with 10 working days.
Article 6	(16), Article 17g(2)(h)-(j)	Adds “and”, changes punctuation, and deletes the marketing-communication submission and Article 4 attestation.
Article 6	(16), Article 17g(3)	Deletes “whether” and “is complete” from initial host-marketing documentation verification.
Article 6	(16), Article 17g(8), second subparagraph	Deletes “whether” and “is complete”.
Article 6	(16), Article 17g(9)	Replaces 15 working days with 10 working days.
Article 6	(16), Article 17h(2), first subparagraph	Deletes “whether” and “is complete” from AIF de-notification verification.
<u>Common CBDR Changes</u>		
Article 6	(3), Article 3(i)	Inserts point label “(i)” for “UCITS home Member State”, correcting the proposed numbering.
Article 6	(4)(c), Article 4(3)	Inserts paragraph number “3.”.
Article 6	(4)(f), Article 4(6a), insertion instruction	Inserts a new enforcement paragraph 6a.
Article 6	(4)(f), Article 4(6a), first subparagraph	Adds power for a competent authority with reasonable grounds to suspect non-compliance to act under Articles 14a and 14b; deletes the narrower references to paragraphs (5) and (7).
Article 6	(4)(f), Article 4(6a), second subparagraph	Provides that host authorities may exercise the paragraph only from the date on which the UCITS or AIF is authorised.
Article 6	(4)(f), Article 4(6a), third subparagraph	Requires communication without undue delay after adopting a measure, including reasons and effective date, through the Article 12 platform.
Article 6	(6), Article 7 heading	Replaces “Verification” with “Monitoring of marketing communications by competent authorities”.
Article 6	(6), Article 7(1)	Deletes “host Member State” and corrects “the competent authorities”, broadening the no-prior-notification rule to competent authorities generally.
Article 6	(6), former Article 7(2)	Deletes the former host-authority enforcement paragraph following relocation to Article 4(6a).
Article 6	(6), Article 7(2), first subparagraph	Adds NCA monitoring of Article 4 compliance for communications used in their territories and targeted at PRIIPs retail investors.
Article 6	(6), Article 7(2), second subparagraph	Excludes retail AIFs marketed under Article 43 AIFMD national private-placement regimes.
Article 6	(6), Article 7(3)	Requires UCITS to submit marketing communications, once ready for use, to the Article 12 platform and identify relevant Member States.
Article 6	(6), Article 7(4)	Makes UCITS responsible for reliability and usability of submitted information and documentation.

Article 6	(11), Article 12(2), new subparagraph	Requires the platform to permit UCITS submissions for Article 7 NCA monitoring.
Article 6	(14), Article 14(2)	Replaces “as regards the field covered by” with “in relation to matters governed by” the Regulation.

Footnotes Changed

Article 6	Article 4(4) / footnote [6]	Adds the citation to Regulation (EU) 2017/1129 for AIFs publishing a prospectus.
Article 6	Article 4(4) / footnote [7]	Adds the citation to Regulation (EU) No 1286/2014 for AIFs required to produce a KID.

4. Annex

Master Directive and CBDR PCY compromise text

PUBLIC