

# Harmonisation of cross-border distribution of UCITS and AIFs

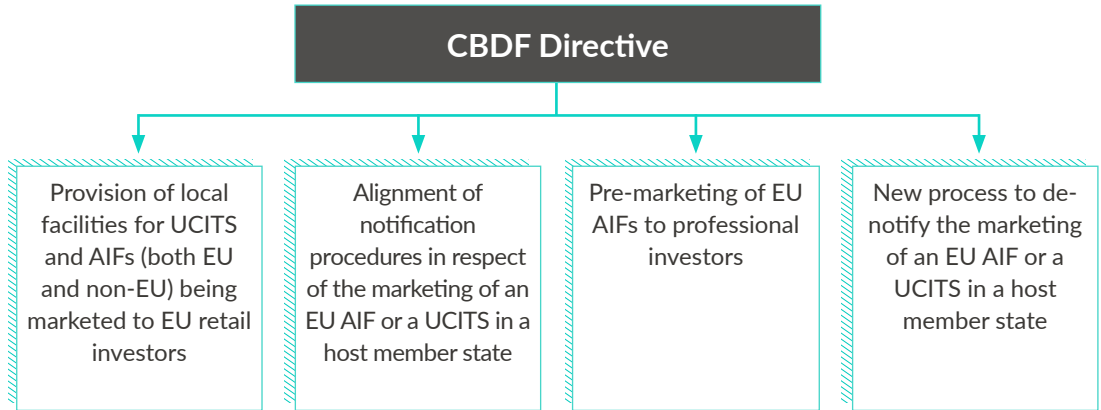
## A European Directive and Regulation on cross-border distribution of funds (CBDF) came into force on 1 August 2019.

The CBDF Directive amends relevant provisions of the UCITS Directive and AIFMD. The CBDF Directive is to be transposed by 2 August 2021 and the substantive provisions of the CBDF Regulation are to apply from the same date.

### Some key observations

- The new CBDF rules seek to address the barriers to the efficient cross border marketing of UCITS and AIFs, increase harmonisation of the cross border marketing requirements and align the different practices adopted by member states.
- The new CBDF rules will not completely align the UCITS and AIF foreign marketing requirements. The UCITS Directive gives a passport to the UCITS. The AIFMD gives the passport to the AIFM. This can be a reason for practical differences in the application of the passport.
- Local service providers will no longer need to be appointed in a host member state and facilities can be provided online. This will benefit UCITS and while it is a new requirement for AIFs which market to retail investors, the requirements should not be onerous as no physical presence in the host member state will be required.
- There will be increased transparency requiring NCAs to publish details of their marketing requirements and fees and for ESMA to maintain and publish a master data base with hyperlinks to the websites of the NCAs.
- The introduction of a de-notification requirement will, on balance, be helpful as, currently, different practices are applied in relation to a UCITS across a number of member states.
- The pre-marketing initiative and associated definition, which will apply to all AIFs, is an interesting development. Any investment by professional investors in an AIF within 18 months of the commencement of the pre-marketing of that AIF will be deemed to be a result of marketing. In other words, it will not be regarded as reverse solicitation. It is possible that this may promote clarity and harmonise the concept of what constitutes 'marketing' under AIFMD.
- There is a provision to extend the pre-marketing concepts to UCITS after 2 years.
- On a separate topic from the cross border distribution provisions, the expected amendments to the PRIIPs Regulation are legislated for in the CBDF Regulation. The PRIIPs Regulation is amended so that the deadline for the PRIIPs review is extended by one year to 31 December 2019 and the date of the UCITS exemption to produce and provide a PRIIPs KID is extended by 2 years to 31 December 2021.

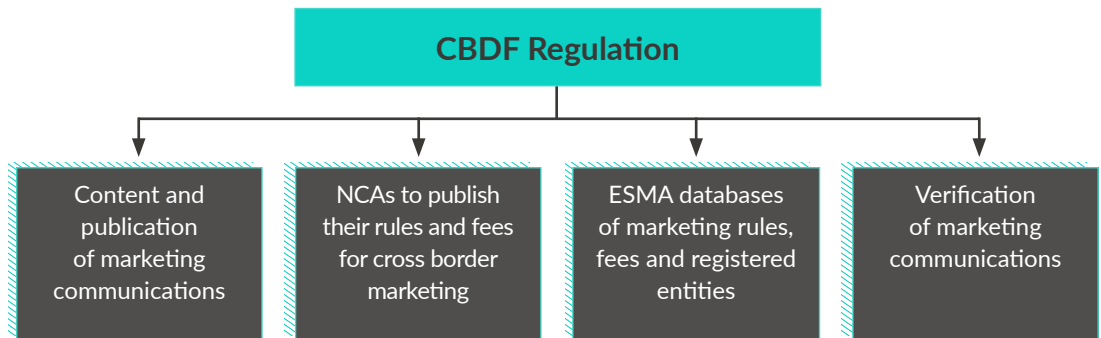
Overview of new CBDF requirements



Pre-marketing of AIFs - definition

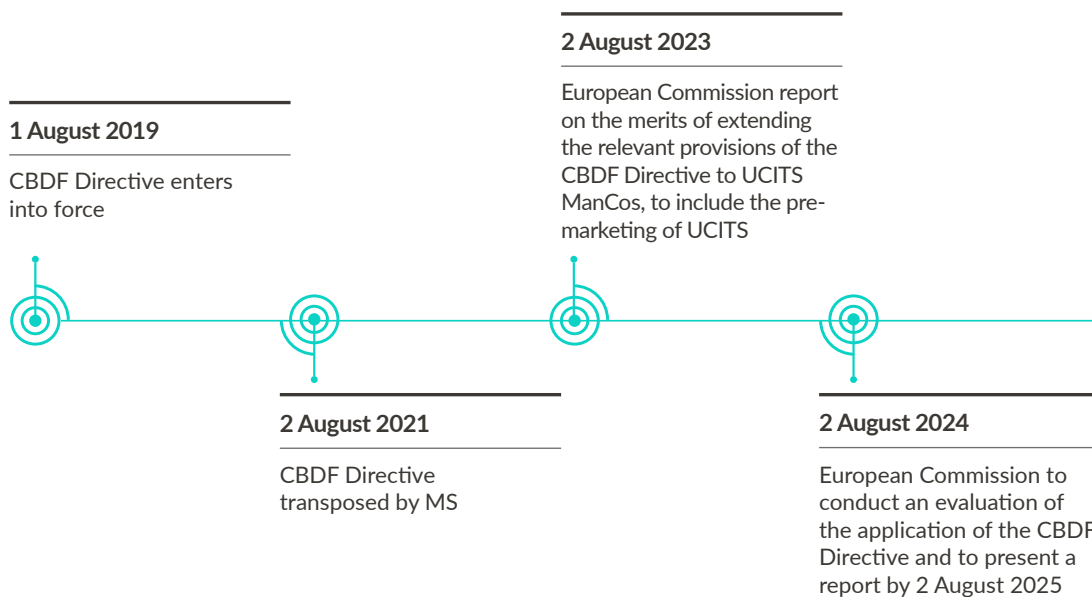


The provision of information or communication, direct or indirect, on investment strategies or investment ideas by an EU AIFM or on its behalf, to potential professional investors domiciled or with a registered office in the Union in order to test their interest in an AIF or a compartment (i.e. a sub-fund) which is not yet established, or which is established, but not yet notified for marketing in accordance with Article 31 or 32 (both of which relate to the marketing of EU AIFs only), in that member state where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF or compartment



The CBDF Directive and Regulation applies to EU AIFMs, AIFs (which include EuVECs, EuSEFs and ELTIFs) and UCITS management companies which include self-managed UCITS. The CBDF Regulation excludes non-EU AIFMs from its application and additionally applies to EuVECA managers and EuSEF managers.






**Key dates - CBDF Directive**



**Key dates - CBDF Regulation**

Activity	1 Aug 2019	2 Feb 2020	2 Feb 2021	31 Mar 2021	30 June 2021	2 Aug 2021	2 Feb 2022	2 Aug 2024
CBDF Regulation applies: the provisions relating to marketing communications and pre-marketing by managers of EuVECAs and EuSEFs will apply from 2 August 2021.	🎯					🎯		
NCA's to publish and maintain online complete and up to date information on their marketing requirements (to include fees and charges) for AIFs and UCITS and to send hyperlinks to ESMA from 2 August 2021.		🎯				🎯		
ESMA to develop and send to the EU Commission draft implementing technical standards to determine standard forms, templates and procedures for publishing the information and notifications to be provided to it by the NCA's in relation to their national marketing requirements.			🎯					
NCA's to report to ESMA on breaches of their local marketing communication requirements and to provide examples of such breaches (and report every second year after this).				🎯				

**CBDF Regulation contd.**

Activity	1 Aug 2019	2 Feb 2020	2 Feb 2021	31 Mar 2021	30 June 2021	2 Aug 2021	2 Feb 2022	2 Aug 2024
ESMA to send a report to the EU Parliament, Council and Commission containing an overview and analysis of the operation of the local marketing requirements of member states based on the reports submitted to it by the NCAs (and report every second year after this).								
ESMA to issue guidelines (to be updated periodically) in relation to the issue of marketing communications to investors by AIFMs, UCITS ManCos (to include self managed UCITS) EuSEF managers and EuVECA managers and taking into account the online aspect of the marketing communications.								
EU Commission (following consultation with NCAs, ESMA and other stakeholders) to report on reverse solicitation and its impact on the passporting regime and on whether the notification portal established by ESMA, as part of its central database, should be developed so that all notifications submitted to a NCA by an AIF or UCITS to market in a host member state and all transfers of documents between NCAs as part of such marketing notification (to include any amendments to such notifications/documents) should take place through the portal.								
ESMA to establish (and maintain up to date) a centralised data base containing all of the information and hyperlinks provided to it by the NCAs in relation to their marketing requirements and which will include details of all AIFs and UCITS marketed within the EU and their managers, details of all fees and charges applied by NCAs and an interactive tool which provides an indicative calculation of the fees and charges applied by NCAs.								
EU Commission to conduct an evaluation of the application of the CBDF Regulation by means of a public consultation and through discussions with ESMA and NCAs.								

The above is an overview of the new CDF rules and there will be differences in application depending on whether your fund is a UCITS or an AIF. Please contact a member of the [A&L Goodbody Asset Management and Investment Funds team](#) for more information about the cross-border distribution rules or specific advice in relation to your fund.

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