



AUTORITÉ  
DES MARCHÉS FINANCIERS

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## **Transposition of the directive on the cross-border distribution of collective investment undertakings: the AMF amends its General Regulation and its policy**

The Autorité des Marchés Financiers (AMF) has amended its General Regulation and updated three policy documents in order to transpose into French law Directive (EU) 2019/1160 of 20 June 2019 on the cross-border distribution of collective investment undertakings (the "CBDF Directive").

### **Amendment of the UCITS and AIFM directives**

On 20 June 2019 the European Parliament and the Council of the European Union enacted a new Directive (EU) 2019/1160 (the "CBDF Directive") on the cross-border distribution of collective investment undertakings. This amends Directives 2009/65/EC of 13 June 2009 (the "UCITS Directive") and 2011/61/EU of 8 June 2011 (the "AIFM Directive") in order to further coordinate the conditions for managers of undertakings for collective investment in transferable securities ("UCITS") and alternative investment funds ("AIFs") operating in the European Union market and facilitate cross-border distribution of UCITS and AIFs within said market.

### **The new provisions of Regulation (EU) 2019/1156**

The directive is supplemented by Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019, which is directly applicable. This Regulation contains in particular (i) provisions concerning the marketing communications of UCITS and AIFs,

including with regard to the ex ante verification of said marketing communications, (ii) the obligation for the competent authorities to publish the national provisions on marketing requirements applicable to UCITS and AIFs and the fees and charges that they collect, and (iii) the publication by ESMA of a central database on the cross-border marketing of AIFs and UCITS.

## **Transposition on the national level**

Order No. 2021-1009 and Decrees No. 2021-1011 and No. 2021-1012 of 31 July 2021 transpose the CBDF Directive into the Monetary and Financial Code. Ministerial Order of July 23 2021 creates new provisions and amends certain current provisions in titles I (Undertakings for Collective Investment in Transferable Securities) and II (AIFs) of Book IV of the AMF General Regulation.

## **Details concerning the facilities made available to investors**

The amendments made to the AMF General Regulation and policy (AMF instructions DOC-2011-19 and DOC-2014-03 and AMF Position DOC-2014-04) specify several measures introduced by the aforementioned Order and Decrees.

This concerns primarily the requirements applicable to French UCITS regarding investors in the host States where they undertake marketing activities and those for foreign UCITS and AIF managers regarding investors in France. They stipulate that these market participants shall provide facilities to allow the processing of investors' subscription, repurchase and redemption orders and to ensure that said investors have access to the information to which they are entitled, while noting that the CBDF Directive prohibits Member States from impeding marketing on their territory by demanding a local physical presence or the appointment of a third party. Hence, the appointment of a correspondent by foreign UCITS and AIFs marketed in France to perform these tasks and pay the fixed annual fee due to the AMF is no longer an obligation but a faculty.

## **Recommendation for foreign UCITS and AIFs**

However, with a concern for investor protection, the AMF recommends that, for their marketing in France, foreign UCITS and foreign AIFs, when the latter are managed by an EU management company or a third-country manager, should appoint a correspondent established in France and belonging to one of the categories mentioned in Article 1 of the Order of 6 September 1989 to perform these tasks and pay said fixed fee.

## European harmonisation of the rules regarding cessation of the marketing of UCITS and AIFs

These amendments specify the conditions for de-notification of the arrangements for marketing a French UCITS in other States and those for de-notification of the arrangements for marketing AIFs in France or in other States when the latter are managed by a French asset management company. Three new annexes to AMF instructions DOC-2011-19 and DOC-2014-03 have been created to provide de-notification form templates.

### The new pre-marketing regime

The CBDF Directive consecrates and regulates in European law the conduct of activities for pre-marketing of AIF units or shares to professional clients.

The amendments to the AMF General Regulation and AMF position DOC-2014-04 supplement the existing provisions regarding the information that a French asset management company must send to the AMF when it performs pre-marketing of an AIF in France or in another Member State. A standard pre-marketing form has been created.

Position 2014-04 is also amended to clarify the concept of marketing, and more specifically pre-marketing activities which do not constitute an act of marketing, while maintaining the possibility already existing since 2016 of performing activities of pre-marketing in France of units or shares in:

- UCITS;
- AIFs to potential retail clients whose initial subscription would be greater than or equal to €100,000.

#### Learn more

AMF Instruction DOC-2011-19: Authorisation procedures, preparation of a KIID and a prospectus and periodic reporting for French and foreign UCITS marketed in

↳ France


AMF Position DOC-2014-04: Guide to UCITS, AIF and other investment fund

↳ marketing regimes in France

AMF Instruction DOC-2014-03: Procedures for pre-marketing or marketing units or shares of AIFs

Ministerial Order of 23 July 2021 approving amendments to the General Regulation of the Autorité des Marchés Financiers

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