



Dear Sir/Madam,

With this service information, we would like to inform you about current upcoming regulatory changes.

A. Changes in Luxembourg

A few days ago, the Luxembourg legislature adopted **amendments to the national fund laws affecting the (cross-border) distribution of UCITS and AIFs** resulting from a transposition of the CBDF Directive (EU) 2019/1160 ("cross-border distribution of collective investment funds - directive"), which has in turn resulted in amendments to the existing UCITS and AIFM Directives.

The amendments to the Directives will be relevant to cross-border marketing and also pre-marketing activities from the transposition deadline of 02 August 2021, even if they have not yet been transposed in every member state of the European Union or the European Economic Area.

What are the key points?

1. Pre-marketing

A central change is the **introduction of the "pre-marketing" of AIFs**. This has already been the subject of much discussion in specialist circles, and there are still questions of detail that have not been unambiguously clarified in legal terms with regard to their effects at the above-mentioned time of application.

According to this change, in the future, regulations will be imposed on market participants in advance of a possible sales decision, which will result in a **pre-marketing notification procedure by the authorities**. This applies both to the **run-up to the fund launch**, if applicable, and in particular if the AIF has already been launched but has not yet been notified for marketing in another relevant EU/EEA member state and corresponding **upstream market targeting activities** are nevertheless being considered there. In these cases, the legal requirements for (non-formal) notification, the details of which can be found in the legislation, must be observed if the relevant activities are intended to be carried out. In particular, the notification period of 2 weeks from the start of pre-marketing activities should be taken into account, which implies, inter alia, the obligation to provide notification of the location of the activities and the time period and scope of the AIF structure(s) concerned.

Both questions concerning the **scope of the application instruction** to be taken into account and the individual case-related **limits of the obligation to notify** can be associated with considerable grey areas and uncertainties. The wording of the definition given for the application instruction is based on the direct or indirect provision by or on behalf of an AIFM of information or communications on investment strategies or investment concepts to potential professional (or semi-professional) investors domiciled or having their registered office within the EU or another member state of the EEA.

We recommend that, from 02 August 2021, if you intend to carry out such activities, you seek expert legal advice in advance and contact **the AIFM involved or that is to be involved** prior to implementation. In the current legal situation, **not every fund service manager involved in marketing** who is authorised to perform marketing activities is simultaneously and automatically authorised on the basis of its marketing authorisation to **perform pre-marketing activities** within the meaning of the new pre-marketing definition. In case of doubt, please inform yourself about the scope of your current authorisation level **prior to undertaking any such activities**.

Your known contact persons in our company will be pleased to be at your disposal and will work with you to clarify open questions before taking up corresponding activities - taking into account the joint business relationship - in order to achieve a legally justifiable solution that will stand up to the interests of both parties. For the sake of good order, we would like to point out that we assume and would like to ask that the new legal requirement is respected in all marketing and pre-marketing activities.

2. Other changes with relevance for marketing

Furthermore, the new legislation provides for procedural **changes for the deregistration of (cross-border) UCITS/AIFs** or their unit classes in transposition of the Directive requirements. In this regard, it should be noted in particular that even after deregistration has been completed, notification obligations must continue to be taken into account vis-à-vis any remaining investors domiciled in the relevant target distribution country. This will likely mean an immediate obligation to engage in attentive monitoring, where careful tracking of the status quo will be required after the deregistration process has been carried out.

Changes to existing distribution authorisations will also lead to procedural changes in the future. Accordingly, in future, lead times of at least one (1) month will have to be taken into account. This applies in particular in the event of changes to the information in the notification letter sent or a change in the unit classes to be distributed.

According to the provisions requiring transposition, local facilities in target distribution countries no longer have to be maintained in the form of a physical on-site presence, as was previously obligatory in some cases, in order to serve investors locally (**waiver of any obligatory facilities such as paying and information agents in the respective target distribution country**). Whether this will result in a trend towards "self-sufficiency" by market participants or the concentrated exercise of functions by a mandated institution that looks after the interests of all target distribution countries in a single place remains to be seen at present. Such tendencies are currently discernible in various directions; ultimately, the individual focus of the distribution structure will certainly be decisive in determining which direction appears to make economic sense.

In this respect, DZ PRIVATBANK S.A., IPConcept (Luxemburg) S.A. and its affiliated partners will remain available to you as trusted partners for the **provision of a corresponding facility** for the funds administered by our bank and authorised for distribution **in Luxembourg and/or Germany**.

The extent to which further cooperations with facilities and the supplying of local retail investors in other target distribution countries will be maintained, newly entered into or even completely concentrated at one location in the medium term will be reviewed on an ongoing basis against the background of an economically reasonable approach. A change in handling also depends on the future requirement profiles of the authorities involved in the target distribution country (e.g. with regard to mandatory language(s)), which are not yet fully transparent.

Finally, the above-mentioned legislative initiative also has implications for the **handling of marketing materials or advertising**. In this context, reference should also be made to EU Regulation 2019/1156, which describes **general requirements for marketing communications** in terms of content and also allows competent authorities to require prior notification of marketing communications in order to comply with the law. This was already the case in some EEA/EU member states, both in the past and at present.

The corresponding **ESMA guidelines** ("ESMA Guidelines on marketing communications under the Regulation on cross-border distribution of funds") and their publication will presumably be expected in a final version (that is also translated into German) in **the course of the year**, contrary to original intentions.

The changes described above will also be accompanied by any adjustments to existing contracts and/or other relevant legal documents. Our company's specialists from our funds legal unit will come back to you with the necessary amendments in due course.

B. Changes in Germany too – Attention: New possibilities within the German fund product range!

As already indicated, the above-mentioned changes have also been taken into account in Germany. The German legislature has used the opportunity of the amendment of the Directive to provide for further national innovations within the framework of the German Fund Location Act [Fondsstandortgesetz – FoStoG] by amending the German Investment Code [Kapitalanlagegesetzbuch – KAGB].

In particular, we would like to point out that, in order to strengthen Germany as a fund location, further **(new) fund vehicles** have also been taken into account in the KAGB, such as the introduction of open-ended special AIFs with a permissible investment quota of up to 20% in crypto securities, infrastructure funds as open-ended or closed-ended public and special funds, development promotion funds as open-ended or closed-ended special funds to achieve sustainability goals in developing countries, as well as an expansion of the product range within the framework of real estate funds (special assets or companies).

If you are interested in the implementation of corresponding innovations in the German product range, please do not hesitate to contact your sales contact partners in our company or your account manager.

Your contact partners are already prepared for corresponding inquiries and look forward to realising the products made possible by the legal changes with you as soon as possible.

We will be happy to answer any questions you may have and also send our best wishes for the upcoming summer holiday season!

Best regards

DZ PRIVATBANK S.A. IPConcept (Luxemburg) S.A.

Disclaimer:

Please note that this service information is merely a general notice on certain aspects of the new legal situation. This document is neither conclusive nor can it imply any obligation to act with regard to you on the part of DZ PRIVATBANK S.A., 4, rue Thomas Edison, L-1445 Strassen, Luxembourg and IPConcept (Luxemburg) S.A., 4, rue Thomas Edison, L-1445 Strassen, Luxembourg