

Cross-border distribution and marketing of foreign funds: hot topics, latest trends and new opportunities, and Brexit

# Getting Started

## Here with you today

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## Agenda

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- 1 United Kingdom: Overseas Funds Regime and Consumer Composite Investments
- 2 AIFMD: Marketing beyond the passport and increasing distribution opportunities
- 3 Gulf Cooperation Countries: Implementation of a new passporting framework
- 4 Marketing materials: Increased regulatory scrutiny

# United Kingdom

## Overseas Funds Regime and Consumer Composite Investments

Eligibility for recognition of foreign funds under the OFR is a two-step process: first, equivalence at the jurisdiction level, and second, recognition of the individual fund.

So far only EEA UCITS have been granted equivalence under the OFR (except for money market funds).



There must be **adequate arrangements for co-operation** between the FCA and the financial regulator of the jurisdiction.



HM Treasury has the power to **impose additional requirements on funds recognised under the OFR** to ensure comparability and consistency with the regulation of UK funds.

Update 30 January 2024:

HM Treasury announced that following its assessment, **it has deemed EEA UCITS (that are not MMF) equivalent under the OFR.**

HM Treasury has the power to grant equivalence to a retail fund from an overseas **jurisdiction** if it meets the **“equivalent investor test”** and if there are **adequate arrangements for co-operation** between the FCA and the financial regulator of the country.

**Foreign funds**, which are eligible to benefit from an equivalence, can apply to the Financial Conduct Authority (“FCA”) for recognition. Once recognised by the FCA, they can be able to be marketed to UK retail investors.



The FCA must grant recognition under the OFR **within two months** of the FCA receiving a complete application.

Investment fund managers face regulatory and operational constraints when marketing UCITS in the UK  
Deloitte observes a growing interest the OFR, with most fund managers intending to transition their UCITS to the OFR



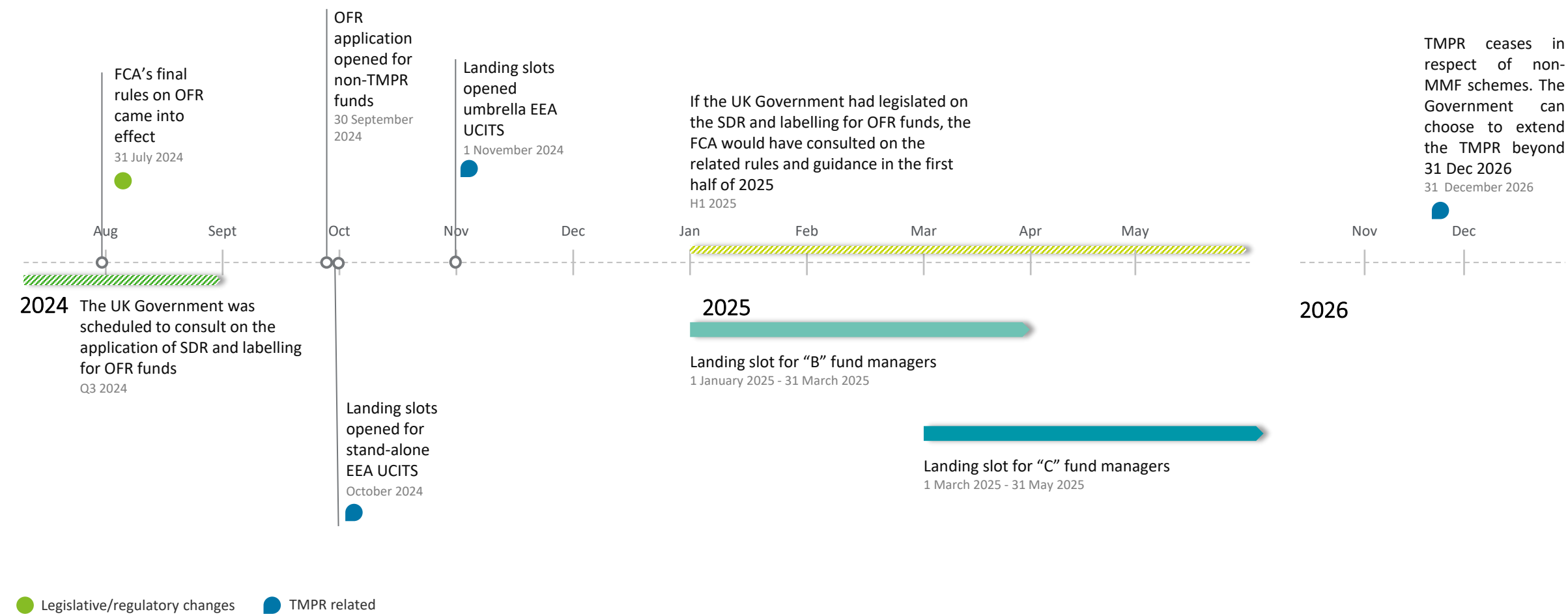
# OFR funds must comply with additional disclosure requirements in comparison to TMPR funds

Not only must OFR funds comply with OFR-specific disclosures but also with disclosures applicable to UK-domiciled funds.



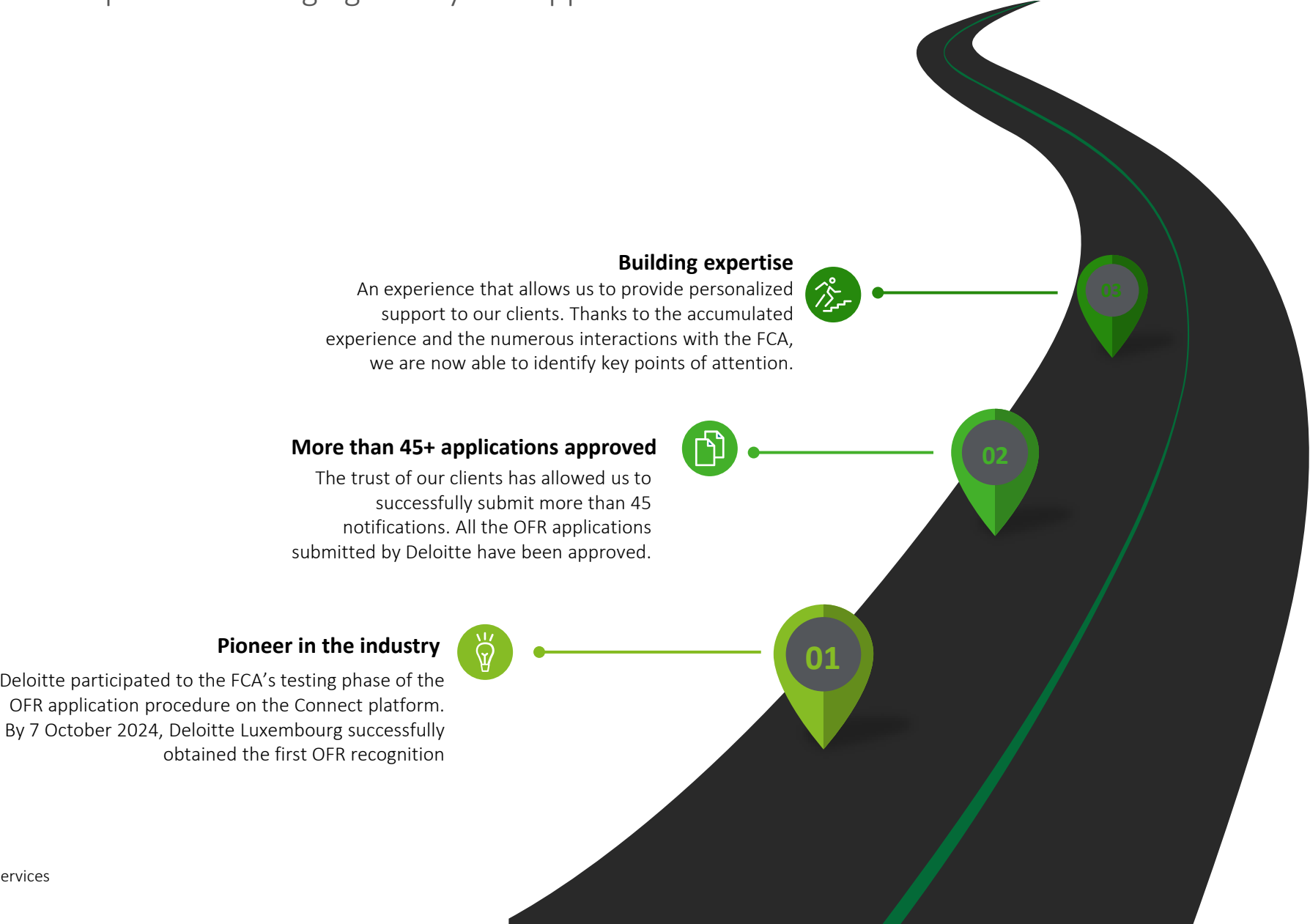
# Overseas Funds Regime timeline

HM Treasury and the FCA published a joint roadmap to implement the OFR for EEA UCITS in May 2024. The consultation process of the extension of the UK SDR to OFR recognised funds has been delayed.



# Overseas Funds Regime

Deloitte’s practical Experience: bridging theory and application





# OFR Application Form

The FCA has mainly focused on promotional payments and fees/charges in its questions during the application process so far

## Promotional Payments and Fees/Charges

- The FCA ensures **promotional payments** are not from fund's property.
- Inquiry on management fee consistency regardless of **promotional payments**.
- Details on whether **redemption charges** are intended to be permanent and whether UK investors will be subject to them.
- Clarification on the allocation of the remaining percentage of the **annual management charge** if the operator retains only a portion thereof.

## Investment objective

- FCA inquiry on the consistency of investment objectives across different share classes.



## Institutional share classes

- The FCA usually questions the minimum level of investment and measures in place to prevent retail investors from investing.

## UK Entity Approving Financial Promotions

- The FCA has raised the question once of how the designated UK entity approving financial promotions satisfies the approval requirement.

# CCI Regulations to replace PRIIPs in the UK

With the CCI, the FCA aims to move away from a prescribed format and in favour of flexibility



- Two possibilities
  1. **Tailored solution** : customisable, digital-friendly disclosures
  2. **Align with EU PRIIPs KID** to the extent possible to maintain a similar disclosure format between the UK and the EU.



- The CCI will replace UCITS KIID & PRIIPs KID with a **flexible "product summary"**.
- The CCI will be **flexible, proportionate, and technology neutral**, allowing firms to **customise** their representation of product information to consumers.



- The **Consumer Composite Investments (Designated Activities) Regulations 2024** (CCI Regulations), published in November 2024, will replace the UK PRIIPs Regulation.
- The CCI Regulations provide a framework and the FCA will set the rules.
- On 19 December 2024, the FCA **launched a consultation on the CCI** which will close on 20 March 2025.



- The CCI applies to **all funds marketed to retail investors in the UK**, including UCITS recognised under the OFR, the TMR and funds recognised under section 272 of the Financial Services and Markets Act 2000.

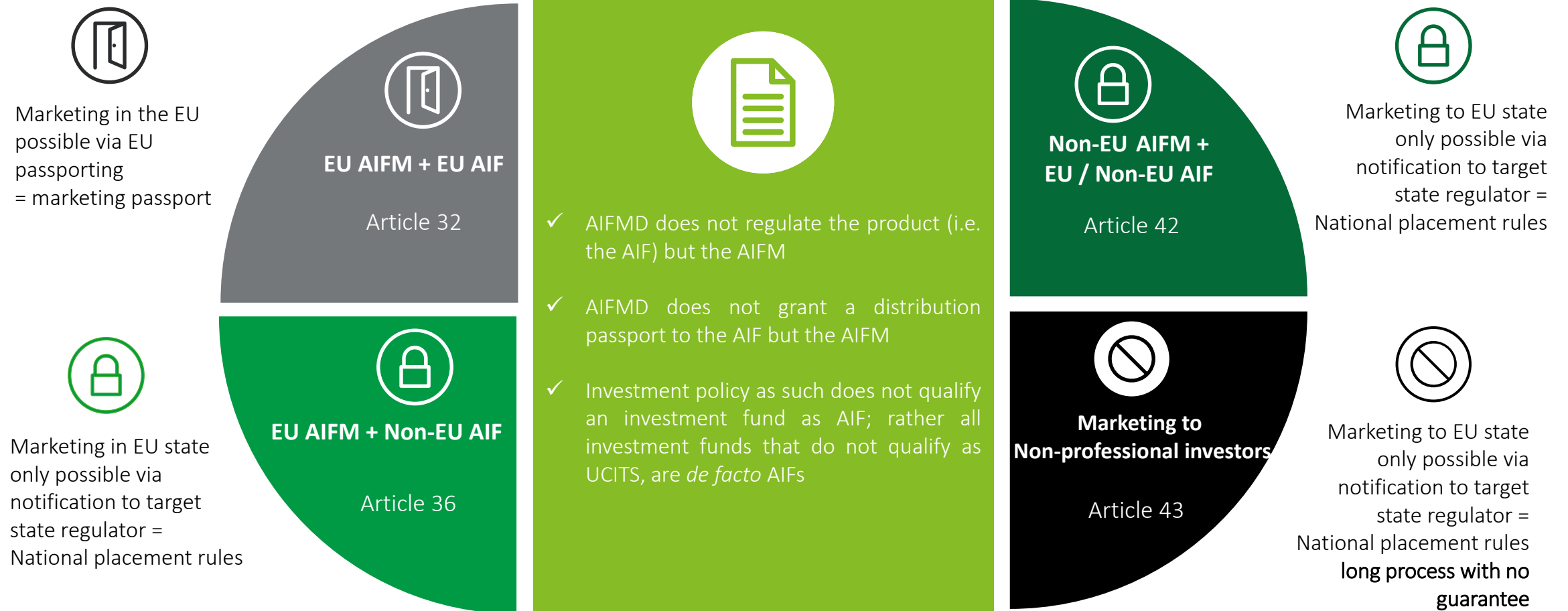
# AIFMD

Marketing beyond the passport and increasing distribution opportunities

# AIFMD\* Notification

## Scope and marketing options

### AIFMD scope: professional investors



\* "AIFMD" refers to Directive 2011/61/EU of 8 June 2011 and its associated Commission Implementing Regulations

# AIFMD non-passporting

## In practice

Whether they target professional or retail investors, managers who wish to register AIFs outside the AIFMD passport face several challenges, especially at the regulatory level.



### Articles 36 & 42

- Not authorized in all countries, even when targeting only professional or institutional investors
- National placement rules: specific requirements, sometimes longer processes, longer review and approval time from local authorities



### Article 43

Despite the growing demand for retailisation, various regulatory challenges continue to hinder the widespread distribution of private assets to retail investors:

- Local authorities usually want to maximize their local investors' protection (disclosure requirements, specific marketing materials, etc.)
- Regulatory approval processes: the process for obtaining the approval under Art. 43 is often lengthy and complicated and not even possible in some countries



Managers are now considering other options to circumvent certain regulatory limitations:

- Targeting other types of non-professional investors, such as well-informed or semi-professional investors: less regulatory constraints and possibility to be marketed under Art. 32 in some countries
- ELTIFs: can be marketed to retail investors under Art. 32, without any additional requirements

# Gulf Cooperation Council

Implementation of a new passporting framework

# Gulf Cooperation Council (“GCC”)

## Funds passporting Framework



GCC Passporting Framework

### Background

The Gulf Cooperation Council (“GCC”) aims at achieving unity among its members: **the State of Kuwait, State of Qatar, Sultanate of Oman, Kingdom of Saudi Arabia, Kingdom of Bahrain, and the United Arab Emirates**. The council mainly takes care of the coordination, integration and interconnection between member states in fields such as but not limited to, economic and financial affairs, commercial affairs. The Council is working on a unified **framework for the Passporting of funds** between the member countries.

### Key Objectives

- A unified registration and promotion process and a harmonisation of market practices;
- Simplified processes and expediency;
- High standards of transparency and governance;
- Investor protection measures;
- Enhancing GCC’s investment appeal; and
- Implications for Cross-Border investments in the GCC

### Impact on Foreign funds

The GCC Passporting Framework applies exclusively to funds domiciled in the GCC countries. However, its implementation in local regulations could potentially impact the distribution of foreign funds in those jurisdictions.

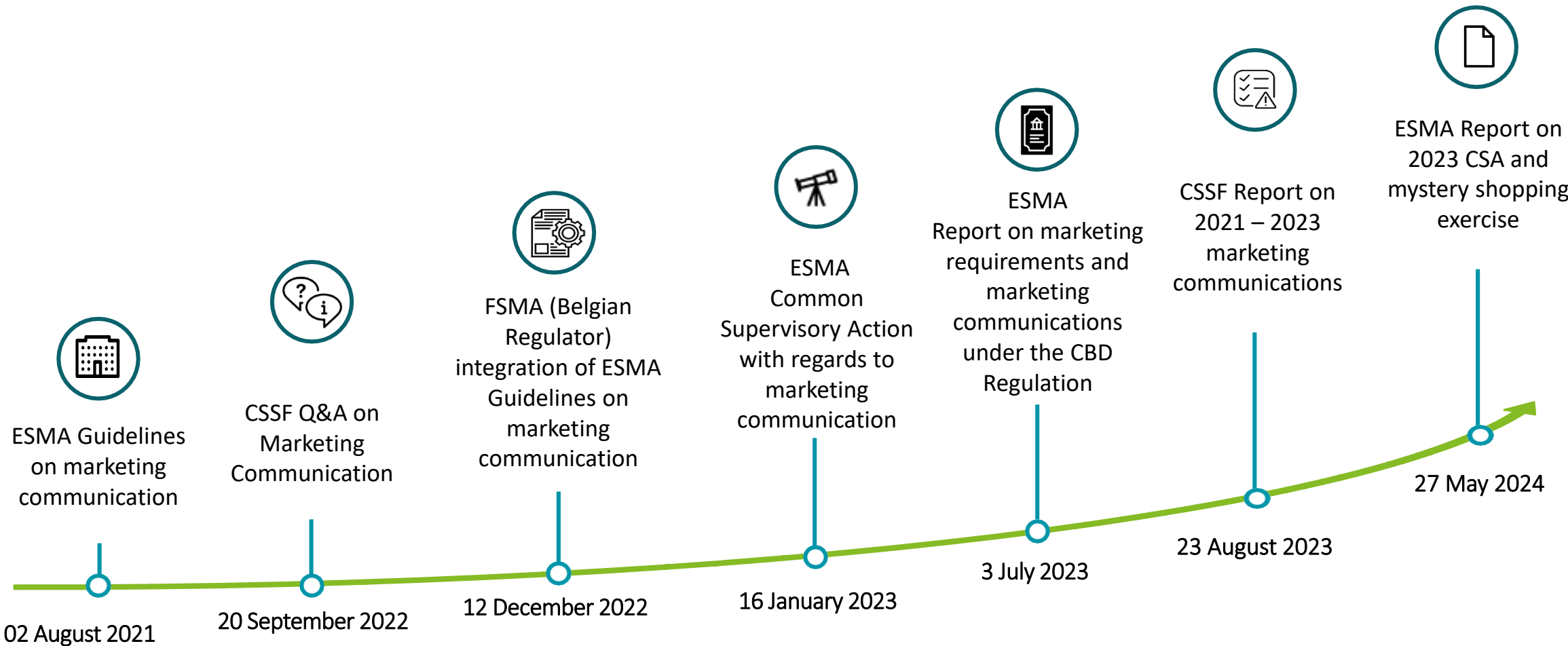
# Marketing materials

Increased regulatory scrutiny



# Marketing Compliance

A trend towards reinforced controls on marketing communications



# ESMA Report on marketing requirements and marketing communications under the CBD Regulation

## ESMA Methodology for the report

As per CBD Regulation, every second year, ESMA shall submit a report to the European Parliament presenting an **overview of marketing requirements** in all Member States and an **analysis of their effective impacts**.

ESMA submitted its first report to the co-legislators on 30 June 2021. The 2023 report is therefore the **second ESMA's report** under the Regulation.

ESMA **sent two questionnaires** to each NCAs of all EU and EEA Member States.

The first one aimed at receiving a summary of the national laws, regulations and administrative provisions governing marketing Requirements **for UCITS and AIFs** and identify **potential changes or amendments** compared to provisions provided in the scope of the 2021 ESMA Report.

The second questionnaire aimed at **identifying the impacts** of these laws on regulations by collecting quantitative information on the number of requests for amendments of marketing communications and qualitative information on the reasons for such requests

ESMA led a review of the questionnaires and summarized the finding within a **report published on 3<sup>rd</sup> July 2023**.

### Analysis on the effects of these local requirements.

- Existence of request for amendment made on an ex-ante basis in (BE, FR)
- Existence of request for amendment made on an ex-post basis (BG, DE, FR, HR, IE, IT, LU, PT, PL, SK, ES)
- Identification of decision taken following request for amendment in (BE, DE, FR, IE, PL, PT)
- Examples of breaches identified:
  - ✓Fair, clear and not misleading
  - ✓How and in which language additional information can be provided
  - ✓Identification of the communication as being for marketing purpose
  - ✓Risks, costs or returns not sufficiently explained
  - ✓Inconsistencies with regulatory documents

# ESMA Report On the 2023 Common Supervisory Action and Mystery Shopping Exercise on marketing

## Compliance assessment of marketing communications with MIFID II disclosure requirements

### Context and background

The assessment was carried out by ESMA together with the National Competent Authorities (“NCAs”) based on the identification of diffuse aggressive marketing practices inappropriately addressed to retail investors, in violation of MIFID II requirements.

Unclear, unfair, and misleading marketing communications represent a risk from an investor protection perspective, even when the products’ regulatory documents include correct information about the promoted instruments.

Several areas for improvement have been defined.

### Key areas for improvement

✓ Marketing materials must be clearly **identifiable** as such

✓ Marketing materials must be transparent about the **costs** of a service or product

✓ Risks **warnings** cannot be omitted, and must be placed prominently, in balance with the benefits

✓ Internal systems and **controls** should be in place to ensure marketing communications are compliant and up to date

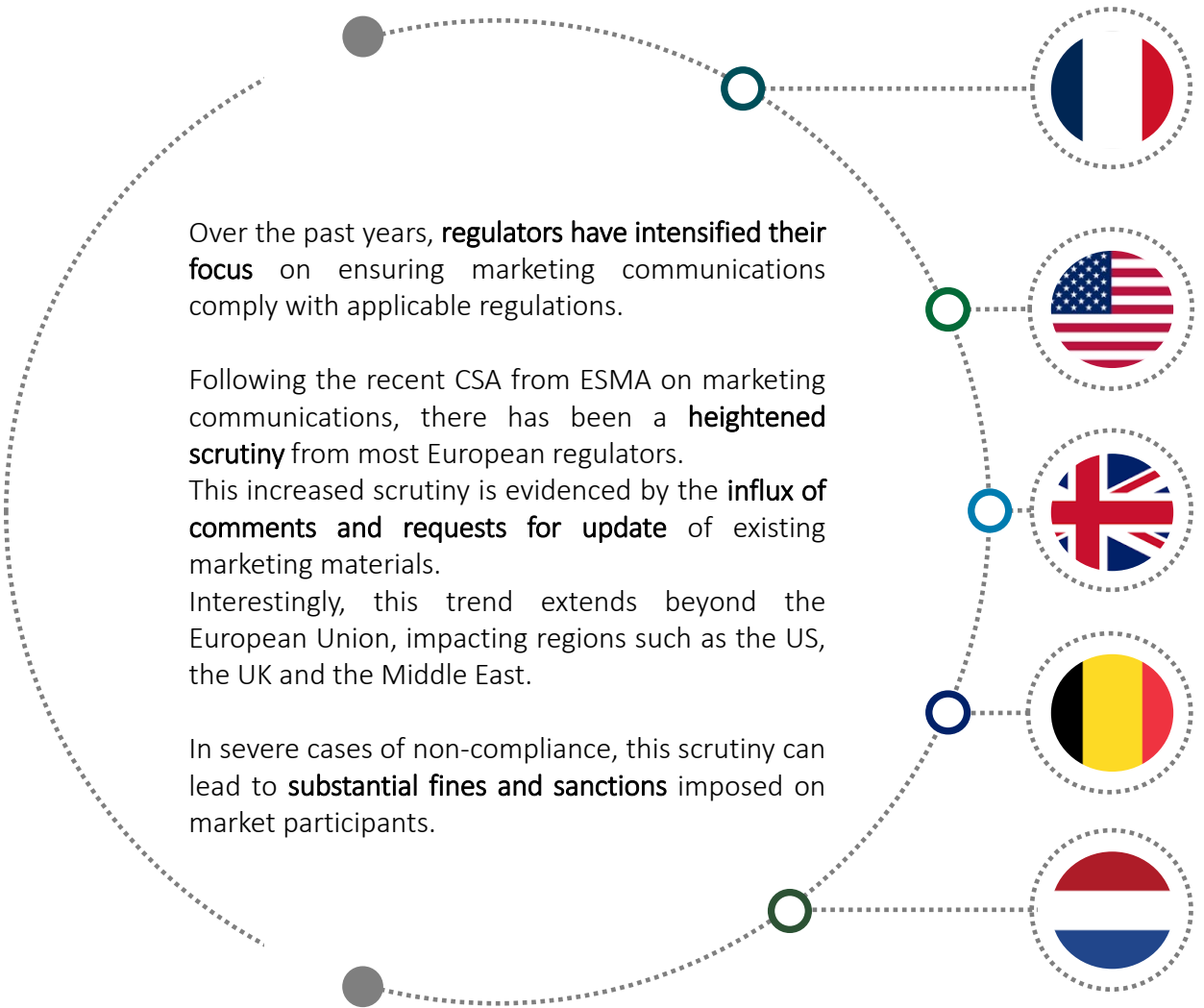
✓ Marketing material provided by **third parties** should be properly approved and reviewed

### What comes next

- ESMA encourages NCAs to use **effective, proportionate, and dissuasive sanctions** in case of infringements of marketing communications disclosure requirements
- ESMA will keep liaising with **NCAs** and exchange on their planned **follow-up actions**
- Potential development of **supervisory convergence tools** for a stronger supervision at European level

# Marketing communication – Impacts of non-compliance

## Illustration of the increased scrutiny & its consequences



### €5,6070,000 fine from the AMF

Imposed in December 2024 on 2 assets managers and their Directors for breach of their professional obligations including not providing investors with clear, accurate and non-misleading information.

### \$ 4,000,0000 fine from the SEC

Imposed in October 2024 on an asset manager for falsely advertising the investment strategy of their funds to have considered ESG factors.

### £ 31,800 fine and ban from the FCA

Imposed in February 2024 on a director who signed of hundreds of financial promotions which contributed to mislead thousands of investors.

### € 1,000,000 fine from FSMA

Imposed in September 2024 on a bank for marketing of bonds without receiving prior approbation of the marketing communication from the FSMA

### Pursuit from the AMF and the AFM

Against a Cyprus investment firm who targeted consumer by issuing false advertisement

# Next Link'n Learn webinar

*Date: 2/04/2025*

**Topic: Investment Funds |  
Getting ready for T+1  
Settlement in the EU**





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