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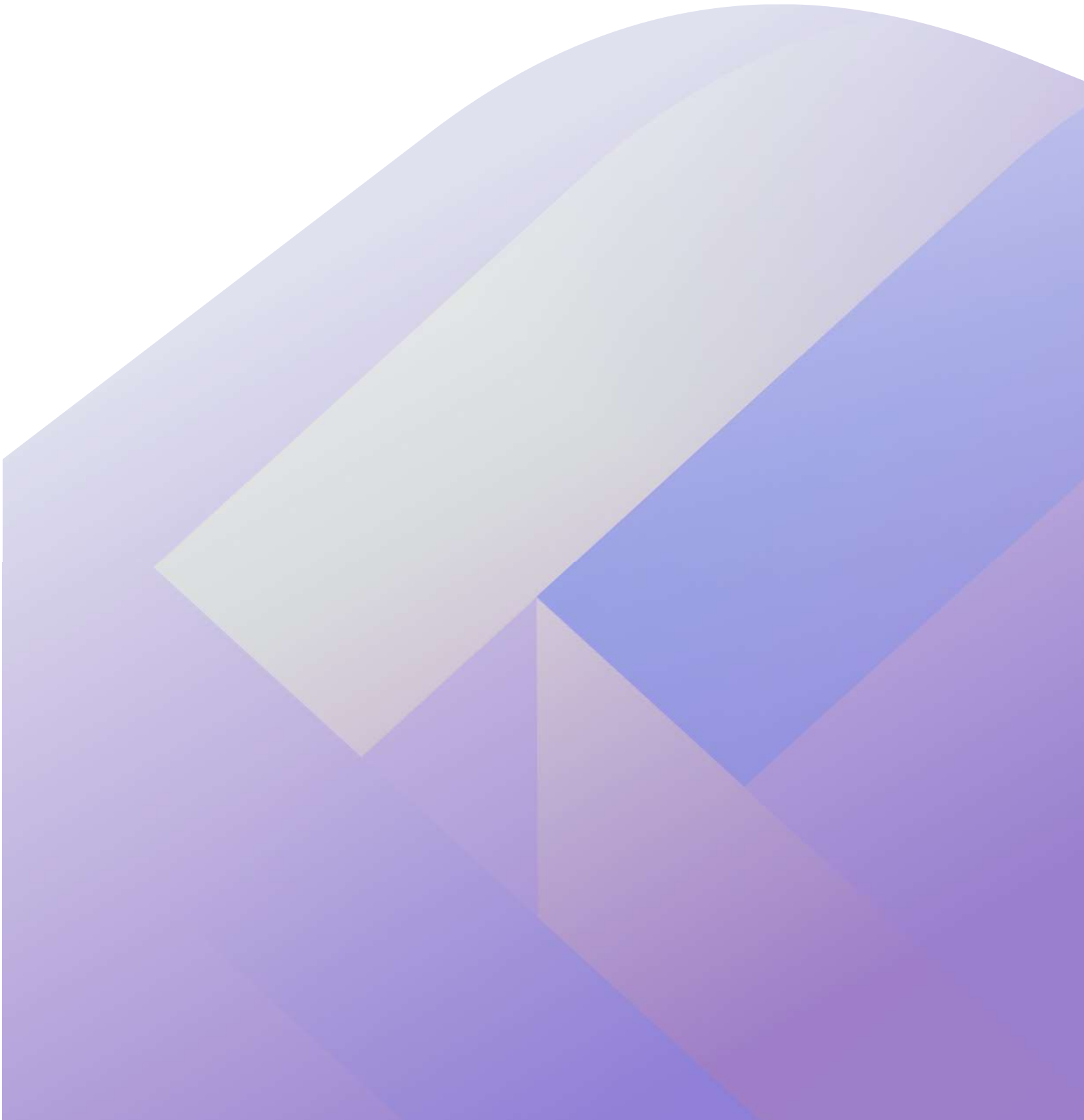
ESMA34-45-1747

Opinion

On undue costs of UCITS and AIFs



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1 Executive Summary

Reasons for publication

In January 2021, ESMA launched a Common Supervisory Action (CSA) with NCAs on the supervision of costs and fees of UCITS across the EU/EEA. The CSA's aim was to assess, foster and enforce the compliance of supervised entities with key cost-related provisions in the UCITS framework, in particular the obligation of not charging investors with undue costs.

The outcome of the CSA on costs and fees showed divergent market practices as to what industry reported as "due" or "undue" costs and it evidenced that further legislative specification of the notion of "undue costs" would provide more convergence and a stronger legal basis for NCAs to take supervisory and enforcement actions against the relevant market participants in many cases.

The present opinion sets out suggestions to the European Commission for possible clarifications of the legislative provisions under the UCITS Directive and the AIFMD relating to the notion of "undue costs".

Contents

Section 2 explains the legal basis, Section 3 sets out the background, as well as the policy objective and Section 4 the proposed policy approach.

Next Steps

The European Commission is working on policy proposals in the context of the Retail Investment Strategy (RIS) to empower retail investors and enhance their participation in the capital markets. ESMA welcomes the Commission's initiative and is confident that the present Opinion can be taken into consideration in the upcoming Commission's legislative proposals on the RIS.

2 Legal basis

1. ESMA's competence to deliver an opinion to the institutions is based on Article 16a of Regulation (EU) No 1095/2010 (the 'Regulation'). In accordance with Article 44(1) of the Regulation, the Board of Supervisors has adopted this opinion.

2. In this opinion, ESMA sets out its views on how to clarify the notion of undue costs under the UCITS Directive and AIFMD.

3 Background

3. The topic of costs and performance of retail investment products was identified by ESMA as one of the Union Strategic Supervisory Priorities in 2020. Under this priority, it was agreed that NCAs undertake supervisory action in 2021, coordinated by ESMA, on costs and fees charged by fund managers.[1]

4. In June 2020, ESMA published a supervisory briefing on the supervision of costs in UCITS and AIFs (supervisory briefing).[2] This initiative was prompted by ESMA's annual statistical report on costs and performance of retail investment products, which showed, in its various iterations, the significant impact of costs on the final returns for investors, as well as by the results of a survey (ESMA survey[3]) among NCAs on national approaches to the supervision of the cost-related provisions under the UCITS and AIFMD frameworks. In this context, the ESMA survey identified a lack of convergence on the way the notion of "undue costs" is interpreted across the EU and on the supervisory approach to the cost-related provisions. Furthermore, all NCAs that participated to the survey considered the concept of "undue cost" as a transversal one and equally applicable to both UCITS and AIFs.[4]

5. In January 2021, ESMA launched a Common Supervisory Action (CSA) with NCAs on the supervision of costs and fees of UCITS across the EU/EEA.[5] The CSA's aim was to assess, foster and enforce the compliance of supervised entities with key cost-related provisions in the UCITS framework, in particular the obligation of not charging investors

[1] ESMA identifies costs and performance and data quality as new Union Strategic Supervisory Priorities (europa.eu)
[2] esma34-39-1042_supervisory_briefing_on_the_supervision_of_costs.pdf (europa.eu). To promote convergence in relation to the supervision of costs in UCITS and AIFs, the supervisory briefing set out criteria to support NCAs in:
a) assessing the notion of "undue costs";
b) supervising the obligation to prevent undue costs being charged to investors.
[3] See Annex II to this opinion.
[4] All NCAs that participated to the ESMA survey considered that the concept of "undue cost", whether or not this is defined in the national framework, is a transversal one and is not linked to the type of fund (UCITS or AIFs). In that context, only one NCA mentioned that an AIF may have some types of costs which are not contemplated under the UCITS framework, given the different strategies pursued. For more information, see Annex II to this opinion.
[5] ESMA launches a Common Supervisory Action with NCAs on the supervision of costs and fees of UCITS (europa.eu)

with undue costs. For this purpose, it was agreed to take into account the supervisory briefing and monitor its application.

6. As part of the CSA exercise, NCAs were asked to assess and report to ESMA, inter alia, on:

    a) the most common approaches followed by UCITS managers to prevent that investors are charged with undue costs and, where present, provide a list of costs that they consider as "undue" and "due"; and

    b) what UCITS managers take into account when setting the pricing level of the fund.

7. In this context, many NCAs reported that identifying clear-cut regulatory breaches that could be enforced proved to be challenging given the lack of specificity of the legislative (Level 1/Level 2) requirements on costs and fees[6] and the fact that the supervisory briefing constitutes non-binding guidance rather than binding regulatory provisions.

8. The CSA evidenced that further legislative specification of the notion of “undue costs” would promote more convergence and offer a stronger legal basis for NCAs to take supervisory and enforcement actions against the relevant market participants in many cases.[7]

9. Moreover, many NCAs noted difficulties with requiring fund managers to compensate investors in case of undue costs charged as they are lacking a sufficiently sound legal basis for this. In light of the high investor protection relevance of this issue, there is merit in clarifying in the legal text that fund managers are obliged to compensate investors in case of costs that have been unduly charged and also provide NCAs with an explicit legal basis to require and enforce this requirement, where this is not done by the fund manager at its own initiative.

Policy objective

10. Against this background, the present opinion (Section 4 below) pursues the policy objective of clarifying the notion of due/undue costs for UCITS and AIFs and providing NCAs with a stronger legal basis to take supervisory and enforcement actions.

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[6] More specifically, Article 22(4) of Commission Directive 2010/43/EU (UCITS Level 2 Directive) provides that Member States shall require management companies to act in such a way as to prevent undue costs being charged to the UCITS and its unit-holders without providing a definition of what is an “undue” cost. Similarly to Article 22(4) of the UCITS Level 2 Directive, Article 17(2) of Commission Delegated Regulation (EU) No 231/2013 (AIFMD Level 2 Regulation) provides that AIFMs shall ensure that the AIFs they manage or the investors in these AIFs are not charged undue costs.

[7] See Section IV of the Final Report on the 2021 CSA on costs and fees available at esma34-45-1673_final_report_on_the_2021_csa_on_costs_and_fees.pdf (europa.eu)

4 Opinion

11. The present opinion sets out suggestions to the European Commission for possible clarifications of the legislative provisions under the UCITS Directive and the AIFMD relating to the notion of "undue costs".

12. Apart from the high investor protection relevance of this matter, ESMA deems that a lack of supervisory convergence on this topic leaves room for regulatory arbitrage and risks hampering competition in the EU market. Furthermore, it may lead to different levels of investor protection depending on where a fund or fund manager is domiciled and jeopardise the Capital Market Union (CMU) objective of promoting retail investor participation in capital markets.

13. ESMA's proposal is to take as a basis the supervisory expectations enshrined in the supervisory briefing. This would allow NCAs to build on the supervisory efforts already deployed to ensure a correct application of the briefing, without prejudice to more specific national requirements applicable to the fund or fund manager[8].

4.1 Legislative background

14. Based on Article 14(1)(a) and (b) of Directive 2009/65/EC (UCITS Level 1 Directive), each Member State shall draw up rules of conduct to ensure that a management company: (a) acts honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market; (b) acts with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market.

15. Article 22(4) of the Commission Directive 2010/43/EU (UCITS Level 2 Directive) provides that Member States shall require management companies to act in such a way as to prevent undue costs being charged to the UCITS and its unit-holders.

16. Article 12(1) of Directive 2011/61/EU (AIFMD Level 1) provides that Member States shall ensure that, at all times, AIFMs: (a) act honestly, with due skill, care and diligence and fairly in conducting their activities; (b) act in the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market; (f) treat all AIF investors fairly.

[8] For the purpose of the Opinion, the term "manager" refers to: (a) in relation to a UCITS, the UCITS management company or, in the case of a self-managed UCITS, the UCITS investment company; (b) in relation to an AIF, the AIFM or an internally-managed AIF.

17. Furthermore, Article 17(2) of the Commission Delegated Regulation (EU) No 231/2013 (AIFMD Level 2 Regulation) provides that AIFMs shall ensure that the AIFs they manage or the investors in these AIFs are not charged undue costs.

4.2 Proposed approach

18. Taking all the above into consideration, ESMA deems that a further specification of the notion of undue/due costs in the UCITS Directive and AIFMD should provide market participants with more clarity and NCAs with a clearer legal basis to take supervisory and enforcement actions where needed to protect investors.

19. Annex VI Part 1.I "List of costs" of Commission Delegated Regulation (EU) 2017/653 ("PRIIPs Regulation")[9] already provides for a list of costs of investment funds (AIFs and UCITS) that should be disclosed.[10]

20. ESMA is of the view that, as a first step, the Commission should clarify the eligibility of costs in light of the list of costs included in the PRIIPs Regulation. This will not only have the benefit of providing clarity on the topic but will also ensure that all costs charged to the fund and its investors will be appropriately disclosed.

21. The assessment regarding the eligibility of the cost ("eligibility test") should also take into account the type of fund, as there are some costs that can be borne by some types of AIFs and their investors, but not by UCITS and their investors. For this reason, and to ensure that the eligibility test is meaningful, it is important for the fund manager to assess the appropriateness of the costs on a case-by-case basis in light of the (i) type of fund and (ii) its investment policy.

22. Furthermore, as the PRIIPs list is very broad, and in order to ensure legal certainty on what should be considered as an undue cost and provide NCAs with a stronger legal hook to undertake enforcement actions, ESMA could be empowered to develop draft regulatory technical standards in order to:

    a) specify the circumstances in which the costs included in the PRIIPs list should be considered as undue/not eligible, also taking into account the investment policy of the funds; and

[9] Commission Delegated Regulation (EU) 2017-653 as amended by the Commission Delegated Regulation 2021/2268 available at Publications Office (europa.eu)
[10] The relevant Annex to the PRIIPs Regulation is included in Annex I to this Opinion.

b) specify under which conditions NCAs may authorise on a case-by-case basis additional cost categories which are not included under Annex VI Part 1.I of the Commission Delegated Regulation (EU) 2017/653.

ESMA is of the view that the Commission should consider introducing the notion of undue cost in the UCITS Directive and AIFMD and clarifying this notion as follows:

- **in Article 14 of the UCITS Directive**

Current formulation:

1. Each Member State shall draw up rules of conduct which management companies authorised in that Member State shall observe at all times. Such rules shall implement at least the principles set out in this paragraph. Those principles shall ensure that a management company:

(a) acts honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market;

(…)

Proposed addition:

3. Member States shall require management companies to act in such a way as to prevent undue costs being charged to the UCITS and its unit-holders.

4. Member States shall require management companies to assess the eligibility of costs by way of referring to the categories of costs set out under Annex VI Part 1.I of the Commission Delegated Regulation (EU) 2017/653, taking into account the investment policy of the UCITS.

5. ESMA shall develop draft regulatory technical standards to:

i. specify the circumstances in which costs should be considered as undue/not eligible, also taking into account the investment policy of the UCITS, for the purpose of implementing paragraph 4; and

ii. specify under which conditions NCAs may authorise on a case-by-case basis additional cost categories which are not included under Annex VI Part 1.I of the Commission Delegated Regulation (EU) 2017/653.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

- **in Article 12 of the AIFMD**

Current formulation:

1. Member States shall ensure that, at all times, AIFMs:

(a) act honestly, with due skill, care and diligence and fairly in conducting their activities;

(…)

Proposed addition:

4. Member States shall require AIFMs to ensure that the AIFs they manage or the investors in these AIFs are not charged undue costs.

5. Member States shall ensure that AIFMs assess the eligibility of costs by way of referring to the categories of costs set out under Annex VI Part 1.I of the Commission Delegated Regulation (EU) 2017/653, taking into account the investment policy of the AIF.

6. ESMA shall develop draft regulatory technical standards to:

i. specify the circumstances in which costs should be considered as undue/not eligible, also taking into account the investment policy of the AIF, for the purpose of implementing paragraph 5; and

ii. specify under which conditions additional cost categories which are not included under Annex VI Part 1.I of the Commission Delegated Regulation (EU) 2017/653 are permissible.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

23. The assessment regarding whether a cost is due/undue should also consider the amount of the cost as there can be cases where a cost meets the eligibility test, but it is “undue” in terms of its *quantum*. As shown by the results of the 2021 CSA on costs and fees, the risk that investors are “overcharged” is particularly relevant in case of related-party

transactions.[11] To avoid that investors are overcharged, bearing in mind that NCAs are not price regulators, it is important from an investor protection perspective not only that the cost is eligible, but that the transaction takes place at prices or at conditions equal to or better than market standards.

24. To this end, ESMA deems important to refer to the supervisory briefing as it provides useful indications on the criteria against which to assess the notion of undue costs. More specifically, the supervisory briefing assists NCAs in assessing whether a cost which has successfully passed the eligibility test is undue in terms of its *quantum*.

25. Against this background, ESMA is of the view that there could be benefit for the Commission to make legislative proposals to clarify what should be taken into account for the purpose of the assessment under paragraph 23.

26. ESMA considers that specific attention should also be given to the role and responsibilities of the compliance function of the fund manager to ensure stringent internal controls and adequate reporting to competent authorities and investors of detected deficiencies and the actions taken or envisaged to address them.

27. ESMA deems appropriate to ensure that fund managers reimburse or indemnify investors without undue delay where undue costs have been charged, including cases where costs have been wrongly calculated to the detriment of investors.

28. Lastly, ESMA is of the view that where a manager has intentionally or negligently committed an infringement, the manager should be sanctioned with a fine that is proportionate to the harm caused to investors. In this context, ESMA is of the view that Member States shall empower NCAs to impose sanctions of a minimum given percentage which should be proportionate to the unduly charged fees.[12]

ESMA is of the view that the Commission should consider introducing obligations for managers to develop a pricing process as follows:

- **in Article 2(1) (“Definitions”) of the UCITS Directive**

[11] See, in particular, Section V of the Report on the 2021 CSA on costs and fees, available at esma34-45-1673_final_report_on_the_2021_csa_on_costs_and_fees.pdf (europa.eu)

[12] Similar requirements, e.g. expressed in terms of x% of the amount of costs that were unduly charged, could be introduced in the AIFMD and UCITS frameworks, taking as an example the provisions under Chapter 5 of Regulation (EU) No 596/2014 (“Market Abuse Regulation”).

Proposed addition

"(u) 'related-party transactions' means transactions with an investor, initiator, promotor, group entity or another entity with which management companies have close links or significant business relationships."

- **in Article 14 of the UCITS Directive**

Proposed addition:

6. Member States shall require management companies to develop and periodically review a structured pricing process that (i) clearly demonstrates that all charged costs are due and (ii) allocates clear responsibilities to the management body of such management companies for determining and reviewing the costs charged to investors.

7. Member States shall require management companies to ensure, as part of their pricing process, the following:

(i) due diligence is performed and, upon request, made available to investors to ensure that all charged costs are equal to or better than market standards, taking into account the nature and type of the relevant service or activity;

(ii) in case of related-party transactions, conflicts of interest are appropriately identified, prevented, managed and monitored to avoid investor detriment, taking into account in particular the risk of the related party charging costs higher than market standards;

(iii) costs do not exceed the figures disclosed to investors in the pre-contractual documentation;

8. Member States shall require management companies to reimburse or indemnify investors without undue delay, where undue costs have been charged including cases where costs have been wrongly calculated to the detriment of investors.

9. Member States shall require the compliance function to perform ongoing monitoring and regular evaluations of the adequacy and effectiveness of the measures, policies and procedures put in place to comply with the requirements set out in paragraphs 3 to 4 and 6 to 8 of this Article. Deficiencies detected by the compliance function and the actions taken or envisaged to address them shall be reported to the competent authority on at least an annual basis and disclosed to investors in the annual reports of the UCITS.

- **in Article 98(2) of the UCITS Directive**

Proposed addition

"(n) require the timely reimbursement or indemnification of investors where undue costs have been charged including cases where costs have been wrongly calculated to the detriment of investors."

- **in Article 4(1) ("Definitions") of the AIFMD**

Proposed addition

"(ap) 'related-party transactions' means transactions with an investor, initiator, promoter, group entity or another entity with which AIFMs have close links or significant business relationships"

- **in Article 12 of the AIFMD**

Proposed addition:

" 7. Member States shall require AIFMs to develop and periodically review a structured pricing process that (i) clearly demonstrates that all charged costs are due and (ii) allocate clear responsibilities to the governing body of the AIFM for determining and reviewing the costs charged to investors.

8. Member States shall require AIFMs to ensure, as part of their pricing process, the following:

(i) due diligence is performed and, upon request, made available to investors to ensure that all charged costs are equal to or better than market standards, taking into account the nature and type of the relevant service or activity;

(ii) in case of related-party transactions, conflicts of interest are appropriately identified, prevented, managed and monitored to avoid investor detriment, taking into account in particular the risk of the related party charging costs higher than market standards;

(iii) costs do not exceed the figures disclosed to investors in the pre-contractual documentation.

9. Member States shall require AIFMs to reimburse or indemnify investors without undue delay, where undue costs have been charged including cases where costs have been wrongly calculated to the detriment of investors.

10. Member States shall require AIFMs to ensure that their compliance function performs ongoing monitoring and regular evaluations of the adequacy and effectiveness of the measures, policies and procedures put in place to comply with the requirements set out in paragraphs 4 to 5 and 7 to 10 of this Article. Deficiencies detected by the compliance function and the actions taken or envisaged to address them shall be reported to the competent authority on an at least annual basis and disclosed to investors in the annual reports of the AIF.

- **In Article 46(2) of the AIFMD**

Proposed addition

"(n) require the timely reimbursement or indemnification of investors where undue costs have been charged or costs including cases where costs have been wrongly calculated to the detriment of investors."

5 Annexes

5.1 Annex I

ANNEX VI[13]

METHODOLOGY FOR THE CALCULATION OF COSTS

PART 1

List of costs

I. LIST OF COSTS OF INVESTMENTS FUNDS (AIFs AND UCITS)

Costs to be disclosed

One-off costs

1. A one-off cost is an entry or exit cost which is either:

(a) paid directly by the retail investor; or

(b) deducted from a payment received by or due to the retail investor.

2. One-off costs are costs borne by the retail investor that are not deducted from the assets of the AIF or UCITS.

3. One-off costs include, but are not limited to, the following types of up-front initial costs that shall be taken into account in the cost amount to be disclosed in the key information document:

(a) distribution fee, to the extent that the amount is known to the management company. If the actual amount is not known to the management company, the maximum of the possible known distribution costs for the specific PRIIP shall be shown;

(b) constitution costs (up-front part);

(c) marketing costs (up-front part);

[13] Commission Delegated Regulation (EU) 2017-653 as amended by the Commission Delegated Regulation 2021/2268 available at Publications Office (europa.eu)

(d) subscription fee including taxes.

Recurring Costs

4. Recurring costs are payments deducted from the assets of an AIF or UCITS,

and represent the following:

(a) expenses necessarily incurred in their operations;

(b) any payments, including remunerations, to parties connected with the

AIF or UCITS or providing services to them;

(c) transaction costs.

5. Recurring costs include, but are not limited to, the following types of costs that are deducted from the assets of the AIF or UCITS, and shall be taken into account in the cost amount to be disclosed in the key information document:

(a) all payments to the following persons, including any of the following

persons to whom they have delegated any function:

(i) the management company of the fund;

(ii) directors of the fund if an investment company;

(iii) the depositary;

(iv) the custodian(s);

(v) any investment adviser;

(b) all payments to any person providing outsourced services to any of the above, including:

(i) providers of valuation and fund accounting services;

(ii) shareholder service providers, such as the transfer agent and broker dealers that are record owners of the fund' shares and provide sub-accounting services to the beneficial owners of those shares;

(iii) providers of collateral management services;

(iv) providers of prime-brokerage services;

(v) securities lending agents;

(vi) providers of property management and similar services;

(c) registration charges, listing fees, regulatory charges and similar charges, including passporting fees;

(d) provisioned fees for specific treatment of gain and losses;

(e) audit fees;

(f) payments to legal and professional advisers

(g) any costs of distribution or marketing, to the extent that the amount is known to the management company. If the actual amount is not known to the management company, the maximum of the possible known distribution costs for the specific PRIIP shall be shown;

(h) financing costs, related to borrowing (provided by related parties);

(i) costs of capital guarantee provided by a third party guarantor;

(j) payments to third parties to meet costs necessarily incurred in connection with the acquisition or disposal of any asset in the fund's portfolio (including transaction costs as referred to in points 7 to 23 of this Annex);

(k) the value of goods or services received by the management company or any connected person in exchange for placing of dealing orders;

(l) where a fund invests its assets in UCITS or AIFs, its summary cost indicator shall take account of the charges incurred in the UCITS or AIFs.

The following shall be included in the calculation:

(i) if the underlying is a UCITS or AIF its most recently available summary cost indicator figure shall be used; this may be the figure published by the UCITS or AIF or its operator or management company, or a figure calculated by a reliable third-party source if more up-to-date than the published figure;

(ii) the summary cost indicator may be reduced to the extent that there is any arrangement in place (and that is not already reflected in the fund's profit and loss account) for the investing fund to receive a rebate or retrocession of charges from the underlying AIF or UCITS;

(iii) where the acquisition or disposal of units does not occur at the mid price of the UCITS or AIF, the value of the difference between the transaction price and the mid price shall be taken into account as transaction costs, to the extent that this is not included in the summary cost indicator;

(m) where a fund invests in a PRIIP other than UCITS or AIFs, its summary cost indicator shall take account of the charges incurred in the underlying PRIIP. The following shall be included in the calculation:

(i) the most recently available summary cost indicator of the underlying PRIIP shall be included in the calculation;

(ii) the summary cost indicator may be reduced to the extent that there is any arrangement in place (and that is not already reflected in the fund's profit and loss account) for the investing fund to receive a rebate or retrocession of charges from the underlying PRIIP;

(iii) in cases where the acquisition or disposal of units does not occur at the mid price of the underlying PRIIP, the value of the difference between the transaction price and the mid price shall be taken into account as transaction costs, to the extent that this is not included in the summary cost indicator;

(n) where a fund invests in an investment product other than a PRIIP its summary cost indicator shall take account of the charges incurred in the underlying investment product. The PRIIP manufacturer shall either use any published information that represents a reasonable substitute for summary cost indicator or else shall make a best estimate of its maximum level based on scrutiny of the investment product's current prospectus and most recently published report and accounts;

(o) operating costs (or any remuneration) under a fee-sharing arrangement with a third party to the extent that they have not been already included in another type of cost mentioned above;

(p) earnings from efficient portfolio management techniques if they are not paid into the portfolio;

(q) implicit costs incurred by structured funds as referred to in section II of this Annex, and notably points 36 to 46 of this Annex;

(r) dividends served by the shares held in the portfolio of the funds, shall the dividends not accrue to the fund.

Incidental costs

6. The following types of incidental costs shall be taken into account in the amount to be disclosed:

(a) a performance–related fee payable to the management company or any investment adviser, including performance fees as referred to in point 24 of this Annex;

(b) carried interests as referred to in point 25 of this Annex

5.2 Annex II

Summary of the responses to the ESMA survey on the supervision of costs[14]

Q1: What do you consider to be an "undue cost" under the UCITS framework?

1. No respondent to the survey provided a regulatory definition of the concept of "undue cost".

2. One NCA indicated that in its jurisdiction an undue cost is considered to be any transaction cost (other than "pure" transaction costs such as "soft commissions") which is not linked to a material benefit for the fund, and/or is not properly separated and accounted for. Another NCA also highlighted that a cost is undue when it is not proportionate to the service or benefit received by the unitholders.

3. In the view of five NCAs, this notion should be assessed against what should be considered the best interest of the UCITS or its unit holders. Accordingly, every cost which is not in the best interest of the investor could be considered as "undue cost". Nevertheless, the notion of what is the "interest" of investors was not further specified. To this respect, only one NCA specified that their Handbook "*requires an AFM [Authorised Fund Manager] to ensure that the unitholders of the scheme are treated fairly, to act in such a way as to prevent undue costs being charged to the scheme and its unitholders, and to carry out its functions solely in the interests of the UCITS scheme and its unitholders*".

4. Some respondents considered costs to be undue when excessively high or disproportionate compared to the average rates of market standards, the fund size or the activities of the fund, or when they are "unnecessary". Two NCAs stressed the impact of costs over the performance of the fund, highlighting that undue costs are those that have an inadequate impact on the performance of a fund (e.g.: costs are so high that for the fund it would be impossible to have a positive return) or excessively remunerating the manager for its work.

5. Six NCAs, stressed the link between chargeable costs and the "activities" performed by the management company. To them, any cost that is not necessary to implement and to achieve the UCITS investment strategy or fulfilling the regulatory requirements (e.g.: cost of annual audit), or not in connection with the "operations" of the fund, or not strictly functional to the ordinary activity of the fund. Two NCAs suggested assessing the

[14] The survey was run in 2019 and 23 NCAs participated (including the UK FCA).

consistency between costs and the investment policy and consider the extent and complexity of activities of a management company.

6. One respondent highlighted the potential link between an unreasonably high cost and a conflict of interest arising between the management company and a third party, in relation to a legal or other type of professional consultancies.

7. For one NCA a Total Expense Ration (TER) > 5% would trigger some questioning/action during the authorisation phase; the same respondent, during its on-going supervision, would check those costs which are charged separately in order to verify whether they are not already included and paid in another cost category.

8. In some jurisdictions, there is a closed list of costs that can be charged to the UCITS; some of those respondents suggested that an "undue cost" should be considered as a cost which is not included in those lists.

9. Many NCAs highlighted the link between the concept of "undue cost" and transparency, stating that, in their supervisory activity, they would assess the transparency of such costs to investors and whether all fees are properly disclosed in the prospectus, KIID, constitutional documents/fund documentation/fund rules. One respondent stated that, based on their national rules, all costs should be disclosed in the fund rules, prospectus and KIID and should be reported yearly and half yearly in the annual report and in the half annual report.

Q2: What do you consider to be an "undue cost" under the AIFMD framework?

10. All NCA provided the same answer for UCITS (see Q1) and AIFs, suggesting that the concept of "undue cost", whether or not this is defined in the national framework, is a transversal one and is not linked to the type of fund.

11. Just one NCA mentioned that an AIF may have some types of costs which are not contemplated under the UCITS framework, given the different pursued strategies.

Q3: Is there any national guidance in your jurisdiction on the notion of "undue cost"?

12. Fourteen NCAs do not have any national guidance on the notion of "undue costs" and one of them indicated that, in their jurisdiction, they do not undertake any type of supervision over the "adequacy" of the amount of the fees.

13. Two respondents stated that they have a list of "permissible costs" and one that permissible costs are the ones provided for by laws or regulations. As already mentioned under Q1,

three NCAs indicated that in their jurisdiction all the costs other than the “permitted” ones should be seen as “undue costs”.

14. One jurisdiction provided for a template, approved by the NCA and applied by all management companies, which includes the categories of costs. The same NCA also specified that different costs than those included in the template would have to be justified to the supervisory authority and that the introduction of this template has led to convergence in fee structure. As a general rule, they would check that funds’ costs are in line with market practices and conduct cost analyses on an annual basis.

15. In one jurisdiction all costs permitted by the national regulation should be transparently included in the management fee; any other cost should be covered by the management company and not by the fund. In the same jurisdiction, there are also specific provisions relating to the “extraordinary costs” which may be covered by the fund.

16. One respondent stated that their national rules regarding the types of permitted costs aim at avoiding the rise of conflicts of interest; also, no fees can be charged by an investment management company to a UCITS in relation to any loan contracted for liquidity management purposes.

Q4: Are there any specific rules/regulations in your jurisdiction on the way costs should be charged to investors considering, inter alia, the managers’ duty to act in their best interest?

17. In twelve jurisdictions there are rules/regulation on the way costs should be charged to investors, while in the other eleven there are no applicable rules.

Q4.a What are the main features?

18. Among the twelve NCAs which have positively responded to the previous question, two NCAs indicated that in their jurisdiction investors pay subscription and/or redemption fees directly to the management company. The first NCA specified that subscription and/or redemption discounts are charged to the fund, while the management company charges the management fees (which include administration and accounting costs) and the depositary charges the depositary fees. This NCA also pointed out that costs linked to the functioning of the fund can be charged to the UCITS, as long as they are disclosed in the prospectus and they are not already covered by other costs connected to the duty of the management company (e.g.: transaction and settlement costs, audit fees, taxes, the NCA’s fees, some types of costs linked to research, and financial charges due to loans or bank overdrafts). The other NCA highlighted that management fees and/or performance fees are charged to the UCITS and that this information should be included in the prospectus together with the indication of what would be their impact over the return to the investor.

Furthermore, the management company should apply the best execution when trading on behalf of the fund and in the best interest of the unitholders; the amount of costs which can be charged to the UCITS should be expressed as a TER and should not exceed 3,5% of the average annual net asset value of the UCITS – all costs exceeding this threshold should be borne by the management company. The same NCA indicated that for AIFs, all fees charged directly by the management company or to the fund should be disclosed in the prospectus, based on a list of permissible costs which is reviewed and updated based on market and industry information.

19. In one jurisdiction, an NCA reported a high-level rule whereby the only payments that may be recovered from the scheme property of an authorised fund are those remunerating the parties operating the fund, the administration of the fund and the investment or safekeeping of the scheme property. The rule further specifies that no payment may be made if it is unfair to, or materially prejudices the interests of, any class of unitholders or potential unitholders.

20. One NCA indicated that in its jurisdiction all costs have to be mentioned in the fund rules, in prospectus and in KIID and actual costs have to be reported yearly and half yearly in the annual report and in the half-annual report.

21. In one jurisdiction, entry and/or exit fees should be disclosed in the fund rules together with the maximum amount which can be charged, expressed as a percentage of the NAV, together with the information on whether the fees accrue to the investment fund or to the company conducting fund operations. The fund rules should also report the maximum amount of the “fixed” annual management fee which may be debited to the investment fund together with the costs for safekeeping, supervision and auditors, expressed as a percentage of the fund’s value. Where a performance-based management fee is debited from the investment fund, the fee model shall be specifically stated in the fund rules. The fund rules shall state the conditions for the fee as well as the methodology to compute and charge the fees to the fund.

22. One respondent highlighted that only costs included in the list of permissible costs and appropriately disclosed in the funds' prospectus can be charged to investors and the ongoing charges should be consistent with the maximum fee level provided in the prospectus.

23. One NCA responded that its national legislation requires asset managers to indicate in a complete and analytical way the costs that can be charged to the funds and the calculation methodology. As those rules are not harmonised at EU level, they also highlighted the risk of regulatory arbitrage.

24. One NCA indicated that in its jurisdiction redemption fees should be determined as a percentage of the assets of the fund based on its characteristics, investment policy, type of management (active or passive) and they should not undermine the interests of the unit-holders.

25. One respondent highlighted the role of proactive supervisory engagement, coupled with communication of good and poor practices, which assists in acting as a deterrent against investors being charged undue costs. Their national guidance doesn't include the notion of undue costs, but rather focuses on the role of disclosure, especially during the authorisation phase. Also, the maximum fee that may be charged by a management company or an investment manager shall not be increased without approval of the unit-holders of the UCITS on the basis of a simple majority of votes cast in general meeting or such other majority as is specified in the constitutional document of the relevant UCITS or with the prior written approval of all unit-holders of the fund (in accordance with the constitutional documents). Under their authorisation policy for UCITS and open-ended retail AIF, they also apply a cap on redemption fees (of 3%), on the basis that these are not consistent with a fund which is required to be open-ended.

26. One NCA pointed out that costs shall be determined in a way that they correspond to market practices, can be calculated in an objective manner, and do not favour any investment or transaction behaviour that contradicts the interests of the investors.

5. Do you have a closed list(s) of permissible costs that can be charged to investors (either binding for the application of fees by the manager or used as an internal reference by your authority for supervision purposes)?

27. Fifteen NCAs reported that they do not have a closed list of permissible costs that can be charged to investors, while the other eight do.

5.a Do you have a list of permissible costs and corresponding ranges against which to compare the compliance with applicable rules by managers?

28. One NCA indicated that in its jurisdiction there are no prescribed corresponding ranges for these costs, aside from the TER which should be max. 3.5% of the average annual NAV of the UCITS.

29. Seven NCAs indicated that they do not have a list of "ranges" for the permissible charges.

6. Is there any cap on investment funds' costs/fees in your jurisdiction?

30. Eight NCAs reported a cap on investment costs/fees, while in the remaining fifteen did not report any cap. One NCA indicated a cap only on redemption fees.

6.a Do you have specific regulatory/supervisory requirement regarding this cap (e.g. max 3%) or do you leave its determination up to the management company? Please provide details, including on how these limits apply (e.g. a percentage of the NAV/AuM).

31. Some NCAs reported a "regulatory" caps for UCITS and AIFs marketed to retail investors; others highlighted that they would leave this determination to the management company or to the results of their supervisory activity.

32. One NCA mentioned that a cap on fixed management fees for UCITS and open-ended AIFs would enter into force by 2022 and, during the transitional period, the maximum management fees would be reduced every year by 0,5 % (i.e. 2019 - 3,5%: 2020 - 3%, 2021 – 2,5%). The new rules would also provide for a "soft" cap, whereby fees would have to be justified in the view of investment policy and risk profile of this fund and the maximum amount of the other costs would be left to the management company determination. AIFs should disclose the maximum amount of fees in the funds' rules and only some types of costs can potentially be "unlimited".

33. One NCA reported the following caps for UCITS and AIF marketed to retail investors : management fees should be max 2,25% a year if the fee is based on the fund's NAV, max 18% a year in case of performance fees or, when both methods are used, max 1,35% over NAV and 9% in case of performance fees; depositary fees should be max 2 per thousand of NAV (although in case the depositary performs part of its activity in a foreign country, the cap can be exceeded). The same NCA highlighted that for real estate funds the following caps should apply: management fees should not exceed 4% a year if the fee is based on the fund's NAV, 10% a year in case of performance fee or, when both methods are used, 1,5% over NAV and 5% in case of performance fee; the depositary fees should be max 4 per thousand of NAV (although in case the depositary performs part of its activity in a foreign country, the cap can be exceeded). Furthermore, the sum of subscriptions and redemption fees may not exceed 5% and, when the fund invests in another fund managed by the same operator (or by an operator of the same group), fees are not allowed. For investment companies, hedge funds and private equity no cap is established by regulation.

34. Another NCA reported an "informal" cap of 5%, developed over time through the supervisory practice of the authority. Cost levels above 5% would be permissible but the management company might be required to provide further explanation. In most cases, costs above 5% are not considered as justifiable.

35. One NCA indicated that there is no cap on fees but, for retail funds, those are assessed on a case-by case basis within the approval process of the fund rules.

36. Two respondents indicated that the maximum amount of the management fee is reported in the fund rules, expressed as a percentage of assets under management or of the NAV,

but there is no regulatory/supervisory requirement regarding the maximum amount, which is up to the decision of the management company. This also includes performance fees.

7. Is there any additional element related to your national provisions on the supervision of costs which is not covered by the previous answers that you would like to mention?

37. One NCA highlighted that investment funds may apply different fees to different share classes issued by the same fund; in any case, the same management and depositary fees apply to all shares of the same class. The subscription and redemption fees of units of the same class can be distinguished only for objective and non-discriminatory terms to be included in the prospectus of the fund.

38. In one jurisdiction, if there are indications that the interests of the unit-holders are likely to be prejudiced, the NCA may request the management company to revise its fee policy.

39. One NCA highlighted that, in addition to the prescribed information reported in the KIID, the UCITS management company is required to publish the monthly report on its website containing, *inter alia*, the information on all the fees and costs incurred by the UCITS fund and their impact at the UCITS fund performance. Also, the same NCA publishes on its website an annual statistical report which also provide the information of the total expense ratio for all UCITS funds, with the aim of making this type of information more accessible to investors and prospective investors in UCITS funds.

40. One respondent also highlighted the importance of the role of the depositary/custodian bank which monitors, on a daily basis, the management company eligibility to charge certain types of costs and their amount. In the case of non-compliance with applicable rules, the depositary/custodian bank shall report this to the NCA.

41. Another NCA indicated that, in the context of its supervisory duty, distributors also have a responsibility in the level of costs paid by investors, whether directly (when advising on more expensive funds) or indirectly (where the cost of the distribution infrastructure is bundled into the ongoing costs charges). The same respondent mentioned to have recently conducted thematic reviews on performance fees, securities lending and remuneration of third-party advisers for real estate funds.

42. One NCA highlighted how its supervisory work is also complemented by the role of the external auditor which, as provided by its national legislation, performs an assessment of costs.

43. Lastly, one NCA also highlighted the importance of the applicability of the distributor's product governance requirements to the UCITS management company and the AIFM directly marketing funds.

8. How do you prevent UCITS/AIFs' investors being charged undue costs?

44. All respondents indicated that case-by-case analysis in relation to fees and charges is undertaken at the authorisation phase.

45. One NCA highlighted that this analysis includes complaints, special scrutiny for the level of operational costs and equal treatment of investors (at fund or share class level); another NCA would check that the costs disclosed in the KIID/prospectus comply with the list of permissible costs in their national law. Lastly, the same respondent also highlighted that the calculation of the ongoing charges is validated by the audit of the investment fund on a yearly basis.

46. Eleven respondents reported to assess that investors are not charged with undue costs during the authorisation phase and highlighted that costs are assessed during on-site inspections. Three NCAs would examine the cost structure and the types of fee, while others would rather focus on disclosure. Two NCAs highlighted that any change to a fund's fee structure would be considered as a material change requiring prior authorisation, prior information to investors, as well as allowing investors the possibility to redeem their investment with no additional costs. During its on-going supervision, one NCA would examine the correct cost calculation on an annual basis and highlighted that high-cost levels or unusual cost attributions would be the basis for further investigations by the authority. For one NCA the supervisory engagement on this topic would usually take the form of thematic reviews or follow-up on issues identified through other supervisory work or investor complaints.

47. Two respondents highlighted that controls over the cost structure (i.e.: the way the costs and charges are allocated to different items) and its transparency towards the investors are performed during the authorisation stage and any subsequent modification of the cost structure or of the costs and charges in the prospectus are then approved by the NCA, as well as the prior information provided to investors and their ability to redeem their investment at no additional charge.

48. One NCA would prevent UCITS/AIFs' investors being charged with undue costs during the authorisation phase by means of reviewing whether the level of fees is consistent with the market standards and if all the costs and fees are disclosed clearly and accurately and would the funds' costs with respect to their type and size on an ongoing basis.

49. One NCA indicated that they review costs and charges within off-site reviews and on-site inspections.

50. Another respondent highlighted the importance of the information disclosed in the fund's prospectus, which they would carefully monitor in the authorisation phase of both UCITS

fund and AIF, with the view of assessing whether all the necessary information on fees and costs are appropriately disclosed and inviting management companies to provide justification in case costs are too high. The same NCA also indicated that the information on the total costs is a mandatory part of the audited annual reports which are also subject to regular off-site supervision of the UCITS. Another NCA highlighted the importance assessing the prospectus of the UCITS during the authorisation phase, as well as the depositary/custodian contracts.

51. The importance of supervising the oversight role of the depositary (ensuring that funds are managed in accordance with the applicable national law and the fund rules) was also mentioned by another respondent, in addition to the direct supervision of the management company's compliance with applicable laws and fund rules.

52. The role of transparency and cost presentation was also highlighted by another NCA, both when authorising new funds and during the ongoing supervision of existing funds. The same respondent would also look at the equal treatment of the unit-holders (e.g.: exit or entry fees should not favour existing clients over new clients or vice versa).

53. One NCA indicated that they approach this issue directly from two main angles. The first is via the fund authorisations team who would authorise new funds and approve material changes to existing funds. The second is via work undertaken on existing funds, either through the fund supervision team or via wider asset management department projects. At the fund authorisation stage, the NCA would analyse the annual management fee and accompanying projected ongoing charges figure to first ascertain that these comply with applicable rules (e.g.: only parties applicable to the fund are receiving fees). They would also challenge the fees if they are deemed obviously excessive for the strategy employed or might make the fund unviable. If these charges are deemed excessive, the NCA would challenge the management company as to why they think they are appropriate and how they are justifying them. To do this, they would understand what typical fee structures exist for similar funds in the industry and look for how stock lending revenue is split between the fund and other parties.

9. How has your NCA incorporated the review of costs and charges of a fund into its supervisory activity? What is your main area of focus when investigating the cost related issues?

54. Two respondents indicated that costs are reviewed at the fund's authorisation stage and off-site/on-site supervision. Almost all respondents indicated that they perform an assessment on costs during on-site inspections.

55. One of the above NCAs flagged that during the authorisation phase they would check whether the TER percentage included in the KIID and prospectus matches with the fees

expressed in the prospectus – such as management and depositary fees – and would require additional information on the composition of the TER. During off-site supervision, they would carry out thematic analysis. In the context of on-site supervision, they would assess that all the fees are within average industry rates and that charged in line with applicable rules.

56. Another NCA reported that, during the authorisation phase of new funds or amendments of existing funds, they would foresee an assessment of the appropriateness of the costs charged to the fund and its unit-holders by way of comparing it with peer funds, based on the type of fund, investment policy/strategy, service providers. This NCA would also assess whether there is adequate disclosure to investors on the nature, structure and impact of the costs.

57. Many respondents highlighted the importance of the role of disclosure and transparency, checking the cost structure (i.e. the way the costs and charges are allocated to different items), and its transparency towards the investors at the authorisation stage, as well as compliance with fund rules, distribution documents, key investor documents and marketing material.

58. One NCA reported that they would consider costs-related issues mainly when assessing the strategic and the reputational risk, while another NCA would focus not only on the disclosure, but also on the business conduct, using a rating system based on a risk-based approach.

10. Do you compare funds' fees with market standards (e.g. the average of fees charged by similar funds in the same category) and/or check their alignment?

59. Eighteen NCAs confirmed that they would compare funds' fees with market standards, either on a regular basis or on an *ad-hoc* basis. Five NCAs reported that they would undertake this control during the authorisation phase, one within the annual cost analysis of the fund and another one in the context of risk assessments. One NCA would perform the assessment through the analysis of the TER and two other NCAs would check the outliers when analysing the cost structure of the fund from a transparency perspective or during their supervisory activity.

60. One respondent highlighted the importance of ensuring that the fund's strategies are clearly disclosed, to help investors making an informed choice. The same NCA would also monitor price trends over time for both active and passive funds

61. Four NCAs flagged that they would not perform such assessment.

11. Do you consider the level of fees applied by the management company in the context of other type of assessments (e.g. when assessing the business/strategic risk of the fund, when dealing with investors complaints etc.)?

62. Four NCAs highlighted that they would not consider the level of fees in the context of other type of assessments. Seventeen NCAs indicated that they would consider the cost related issues also in other type of assessments and two of them mentioned the closet-indexing work, as an example.

63. Six respondents highlighted the importance of such assessment when analysing complaints from investors, while others when analysing passive vs active fund management.

64. Three NCAs would focus on the analysis undertaken at the fund's authorisation phase and one of them would check that the cost structure and the level of fees of the fund would be in line with its investment objective. They also specified that any change to a fund's fee structure would be deemed as a material change and would therefore be subject to the NCA's prior authorisation, as well as mandatory information to investors to allow them to redeem their shares at no additional charge.

12. Do you check the cost structure of the fund only from a transparency perspective (e.g. clear disclosure in the KIID/prospectus/fund documents in compliance with relevant legislation) or do you also assess the actual pricing level of the fund (e.g. the fee is too high/the nature of the fee is not justified/the fee is not in line with market standards, services provided etc.)?

65. Ten NCAs indicated that they would carry out both type of assessments, while thirteen NCAs indicated that they would check costs mainly from a transparency perspective. Five NCAs, while mainly focusing on transparency, highlighted that in case of outliers or where the fee has the potential to materially impact the strategy of the fund (e.g.: fund targets benchmark +1% but charges 1.5%) they would challenge the fund manager on the cost structure.

66. One respondent indicated that they would primarily ensure that costs are justified, appropriately disclosed to the investor and would not hinder the realisation of the investment objective of the fund.

13. At which point of a fund's lifecycle do you undertake an assessment/revision of the fees charged to investors (e.g.: authorisation phase/on an ongoing basis/on-site inspections etc)?

67. All respondents reported that they would undertake an assessment of the fees charged during the authorisation phase. Nine NCAs also highlighted that they would assess costs through on-site supervision and seventeen NCAs on an ongoing basis, but one of them only if a complaint is received or if a problem is detected by the audit in the calculation of the ongoing charges rate. The role of complaints/requests from consumers was also highlighted by four other NCAs.

68. Three NCAs indicated such assessment is also done when the fund requests any modification to the cost structure, which requires the prior authorisation by the NCA. Two NCAs conducted a thematic review on the topic.

14. Did you ever find a fund in breach of applicable rules in terms of preventing undue costs being charged to investors?

69. Thirteen NCAs reported funds in breach of applicable rules, while ten NCAs have never spotted any regulatory breach.

14.a What were the actions required by your NCA as a result of your investigations (e.g.: clarify/reduce fees/sanction/investor compensation/remediation)?

70. Six NCAs highlighted that, in case of breach of applicable rules, the follow-up action would consist in asking for clarification to the management company and, where appropriate, to require investors' compensation or to enhance disclosure to investors.

71. Among those NCAs, one mentioned some illustrative examples of cost issues / breaches, together with the remedial actions that they would take in each case:

    - if the authorisation process shows a fee level (e.g.: investment management fee) above market standard they would ask a reduction of the fee before authorising the product;

    - if a fee (e.g.: administration fee) exceeds the level disclosed in the constitutional documents, the NCA would ask for compensation of the fund/investors;

    - if a fee is not adequately disclosed to investors (e.g.: performance fee – calculation method), a compensation of the fund / investors and an adequate disclosure is required by the NCA.

72. One NCA indicated that they have experienced three cases of breach, two of which related to the management company charging to a UCITS a cost which was not disclosed in the prospectus. In this case the management company of the UCITS, whose investment strategy was to replicate the index, charged the cost of using the index data to the funds. In the view of this NCA this cost was admissible, but it should have beed appropriately

disclosed in the fund prospectus. The other case related to a TER exceeding the threshold of 3,5% of the average annual NAV, as reported in the annual financial report. The NCA did not impose any sanction as the management company would compensate the amount exceeding the maximum permitted TER to the UCITS in the following financial year. The NCA also asked the management company to monitor the TER periodically (and at least on a quarterly basis), in order to ensure that the ratio for the financial year would not exceed 3,5% of the NAV, or if that situation occurs, to ensure that the necessary amount is compensated to the fund in that financial year and not later. Following this case, the national regulation was updated to include the obligation of the management company to monitor periodically, at least on a quarterly basis, the changes of total cost indicators.

73. One NCA reported a case where the TER exceeded the threshold of 5% for a number of funds managed by the same management company. As in its jurisdiction there is no legally binding cap and hence no formal enforcement proceeding was deemed viable, the management company was ordered to present an action plan to address the fee levels: investigation and request for further information and explanation of the fees; request for a plan to remedy several supervisory issues (among which were costs); monitoring of implementation of remediation actions over several months. As a result, the management company lowered the fees and implemented a threshold (in terms of fund size/TER) under which it would renounce to charge its own costs to the fund until the fund size reaches that threshold and the TER would be at an acceptable level again.

74. One NCA mentioned the case where they requested changes to the fee structure of a performance fee model and two NCAs referred to the work done in respect of fees for closet indexing. One of them indicated that, in this case, they required the management company to either bring the management fee of the fund in line with the characteristics of active management, as reflected in the fund's prospectus and the management fee, or to adjust the pricing of the fund to the management strategy, but no investor compensation was requested.

75. One NCA reported three cases of breaches on the topic of undue costs. In the first case, they detected not only disclosure shortcomings but also a level of costs that would make impossible for investors to make a positive return; the reduction of fees was requested by the NCA. In the second case the manager of a fund of fund charged double entry fees for both funds; in this case the NCA asked to cease this practice and to compensate investors. In the last case, a fund manager was generating additional income (aside from the management fee) by charging fixed entry and exit fees, where the difference between the actual costs for entry and exit and the charged costs for entry and exit - when positive - was paid to the manager instead of being paid to the fund. The manager was summoned to stop this practice and from that moment on to attribute any differences (positive or negative) between actual and charged costs to the fund.

15. Do you have any "Value for Money" framework in your jurisdiction? If so, please provide details.

76. Among the respondents, only one NCA reported to have a Value for money Framework in its jurisdiction.

77. One NCA mentioned that in the context of the application of product governance rules, asset management companies are expected to assess the sustainability of the costs charged to funds against the expected returns.

16. Do you think that a "Value for Money" (VfM) framework could be used as a basis to develop more consistent approaches at EU level on, for instance, the way the notions of 'undue costs' or the duty to act in the best interest of the investors in relation to costs are applied at national level?

78. The only NCA which has developed a VfM framework highlighted that the new value assessments will improve transparency for investors, and intermediaries acting on their behalf, and thus enhance competition among asset managers, to the benefit of their customers. Twelve NCAs flagged that it would be useful and interesting to develop such a framework, but some of them also highlighted some limitations. While recognising the value of such a framework, one NCA considered that national rules are sufficient to tackle the cost-related issues, two NCAs highlighted how such approach should be principle-based and allow for flexibility, one NCA saw limited practical merit because the interpretation of value remains subjective and, among the same respondents, one highlighted that a VfM framework should be used in addition to more consistent rules on the calculation of costs. Two NCAs highlighted that it would help increase convergence among different jurisdictions.

79. Six NCAs would not consider useful or are sceptical about developing a VfM framework. One of them thought that another policy tool would be better placed in order to develop a more consistent approach at EU level on this topic (such as Q&As or guidelines) and another one deemed to be too costly to build such a framework for small jurisdictions and small asset managers.

80. One NCA considered developing a VfM framework too ambitious and complex and argued that possible regulatory measures could include procedural arrangements aimed at increasing the internal checks of asset management companies and ensure that their decisions take into consideration VfM issues. This could have the consequence of adding a further layer of organisational requirements on top of those already requested by the current regulation and could be perceived very burdensome by the industry. A more pragmatic approach could aim at defining harmonised criteria for defining the list of costs that can be charged on funds.