

Cross-border distribution of collective investment funds: pre-marketing and de-notification

2018/0041(COD) - 12/03/2018 - Legislative proposal

PURPOSE: to reduce regulatory barriers to the cross-border distribution of investment funds in the EU.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: this proposal should be seen in the broader context of the [Capital Markets Union \(CMU\) action plan](#) and the [CMU Mid-Term Review](#), to establish a genuine internal capital market by addressing fragmentation in the capital markets, removing regulatory barriers to the financing of the economy and increasing the supply of capital to businesses.

Investment funds are investment products created with the sole purpose of pooling investors' capital, and investing that capital collectively through a portfolio of financial instruments such as stocks, bonds and other securities. In the EU, investment funds can be categorised as undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs) managed by alternative investment fund managers (AIFMs).

While EU investment funds have seen rapid growth, with a total of EUR 14 310 billion in assets under management in June 2017, **the EU investment fund market is still predominantly organised as a national market:**

- 70 % of all assets under management are held by investment funds authorised or registered for distribution only in their domestic market;
- only 37 % of UCITS and about 3 % of AIFs are registered for distribution in more than three Member States.

Regulatory barriers, namely Member States' marketing requirements, regulatory fees and administrative and notification requirements represent a significant disincentive to the cross-border distribution of funds. These barriers were identified in response to the [Green Paper](#) on Capital Markets Union.

These new measures are expected to reduce the cost of going cross-border and should **support a more integrated single market for investment funds**. They should, in turn, should reduce market fragmentation, increase competition, and ultimately help to deliver greater choice and better value for investors in the EU.

This proposal is presented together with a [proposed dedicated Regulation](#) on facilitating cross-border distribution of collective investment funds and amending Regulations (EU) No 345/2013 and (EU) No 346/2013.

IMPACT ASSESSMENT: following the evaluation of the strategic options being considered, the policy choices are as follows:

- more transparent national marketing requirements at both national and EU level, harmonisation of the definition of pre-marketing in Directive 2011/61/EU and clearer guidance on the process of checking marketing material;
- greater transparency of regulatory fees at EU level, and the establishment of key principles to ensure greater consistency in the way these fees are determined;
- the choice of facilities to support local investors should be left to investment fund managers, with safeguards for investors;
- increased harmonisation of procedures and conditions for updating or withdrawing notifications on the use of the marketing passport.

CONTENT: this proposal amends certain provisions of [Directive 2009/65/EC](#) and [Directive 2011/61/EU](#) to **remove the current regulatory barriers to the cross-border distribution of investment funds** in order to make their cross-border distribution simpler, faster and cheaper.

Its main elements are:

Support for local investors (facilities): the proposal sets out rules to modernise and specify the requirements for providing facilities to retail investors, a **physical presence should not be required** by Member States. While requiring that facilities are established in each Member State where marketing activities are carried out and which serve situations such as making subscriptions, making payments or repurchasing or redeeming units, this proposal allows fund managers to use electronic or other means of distance communication with investors. The information and means of communication should be available to investors in the official languages of the Member State where the investor is located.

The requirements relating to facilities are also applied to AIFMs where Member States allow them to market units or shares of AIFs to retail investors in their territories.

De-notification of the use of the marketing passport: the proposed Directive harmonises the conditions under which investment funds may **exit a national market**. It creates the possibility for asset managers to stop marketing an investment fund in defined cases in one or several host Member States.

Asset managers are allowed to de-notify the marketing of their UCITS only if a maximum of 10 investors who hold up to 1 % of assets under management of this UCITS have invested in this UCITS in an identified Member State. The competent authorities of the home Member State of this UCITS will verify the compliance with this requirement, including the transparency and publication requirement for investors and the repurchase offer.

All obligations to inform will continue to apply to remaining investors after de-notification of the marketing activities in a Member State.

Pre-marketing: the proposal also allows European asset managers to engage in pre-market activities to test an investment idea or an investment strategy with professional investors.

Therefore, this proposal lays down clear conditions, including thresholds, under which deregistration could take place. The thresholds are indicative of when a fund manager may consider that its activities have become insignificant in a particular host Member State.