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

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The Committee on Economic and Monetary Affairs adopted the report by Wolf KLINZ's (ALDE, DE) on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/65 /EC of the European Parliament and of the Council and Directive 2011/61/EU of the European Parliament and of the Council with regard to cross-border distribution of collective investment funds.

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

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows.

Support for local investors (facilities): the proposal establishes rules to modernise and specify the requirements for providing facilities to retail investors.

Under the amended text, Member States shall ensure that the UCITS management company offers, in each Member State where it intends to market units of a UCITS, facilities to perform the following tasks: process subscription; repurchase and redemption orders and make other payments to unit-holders relating to the units of the UCITS; provide investors with information on how orders can be made and how repurchase and redemption proceeds are paid; make available to investors, for inspection and for the obtaining of copies of the latest published annual report of the UCITS and the latest published half-yearly report if more recent; the prospectus of the UCITS; the most up-to-date key [investor] information document for the UCITS.

The UCITS shall ensure that the facilities to perform the tasks are provided:

- in the **official language** or one of the official languages of the Member State where the UCITS is marketed or in a language approved by the competent authorities of that Member State;
- **by the UCITS itself or a third party subject to regulation and supervision governing the tasks to be performed, or both, including by the use of electronic means.**

Withdrawal of notifications related to the use of the marketing passport: the competent authorities of the UCITS home Member State shall ensure that UCITS may proceed to the denotification of the marketing activities of its units in a Member State where it has notified its activities, where all the following conditions are fulfilled. The **notice to investors** shall make clear the consequences for investors if they do not accept the offer to repurchase their units.

The information shall be provided in the official language or one of the official languages of the Member State where the UCITS has been marketed or in a language approved by the competent authorities of that Member State.

As long as investors remain invested in the UCITS after marketing is discontinued, the UCITS shall provide investors who remain invested in the UCITS as well as the competent authorities of the home Member State of the UCITS and the competent authorities of the Member State where the marketing has been discontinued with the information required under the Directive.

In addition, the competent authorities of the Member State where the marketing has been discontinued shall exercise the rights and obligations conferred on competent authorities of the UCITS host Member State, in accordance with the Directive.

Conditions for pre-marketing in the Union by an EU-based AIFM: in order to ensure that national competent authorities can exercise their control over pre-marketing activities in their Member States, Parliament specified that AIFMs shall **send an informal letter or e-mail** to the competent authorities of their home Member State and the competent authorities of the Member State or Member States where they will engage in pre-marketing activities, mentioning in which Member State or Member States they will conduct pre-marketing activities.

AIFMs shall ensure that their pre-marketing activities are **appropriately documented** and made available, upon request, to the national competent authorities concerned. Such information should include a reference to the Member States and the period of time in which the pre-marketing activities took place and a description of the investment strategies or investment ideas presented in the course of the pre-marketing activities.

Evaluation: the Commission shall submit a legislative proposal to the European Parliament and the Council in order to harmonise the provisions applicable to UCITS management companies testing the appetite of professional investors for a particular investment idea or investment strategy.

Before the entry into force of certain provisions of Directive 2011/61/EU, the Commission shall submit a report to the European Parliament and the Council, and if appropriate, legislative proposals after an examination of the application of all the provisions of Directive 2011/61/EU in the context of their application in the scenario of a passporting regime being in place for non-EU AIFMs.