

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

2018/0041(COD) - 16/04/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 526 votes to 98, with 26 abstentions, a legislative resolution 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 European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission's proposal as follows.

Support for local investors (facilities)

The amended Directive 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 the information and documents required available to investors and act as a contact point for communicating with the competent authorities.

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.

Notification

If a UCITS proposes to market its units in a Member State other than its home Member State, it will have to send a notification letter in advance to the competent authorities of its home Member State. The notification letter shall also include the details necessary, including the address, for the invoicing or for the communication of any applicable regulatory fees or charges by the competent authorities of the host Member State and information on the facilities for performing the tasks.

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

For pre-marketing to be recognised as such under Directive 2011/61/EU, it should be addressed to potential professional investors and concern an investment idea or investment strategy in order to test their interest in an alternative investment fund (AIF).

In order to ensure that national competent authorities can exercise their control over pre-marketing activities in their Member States, an EU AIFM should send, within two weeks of having begun pre-marketing, an informal letter, in paper form or by electronic means, to the competent authorities of its home Member State, specifying *inter alia* in which Member States it is or has engaged in pre-marketing, the periods during which the pre-marketing is taking or has taken place and including, where relevant, a list of its AIFs and compartments of AIFs which are or were the subject of pre-marketing.

The competent authorities of the home Member State of the EU AIFM should promptly inform the competent authorities of the Member States in which the EU AIFM is or has engaged in pre-marketing thereof.

EU AIFMs shall ensure that their pre-marketing is adequately documented.

Harmonised rules on pre-marketing, should not in any way disadvantage EU AIFMs vis-à-vis non-EU AIFMs.

Review

By two years after the date of entry into force of this Directive, the Commission shall present a report assessing, *inter alia*, the merits of harmonising the provisions applicable to UCITS management companies testing investor appetite for a particular investment idea or investment strategy, and whether any amendments to Directive 2009/65/EC are needed to that end.