

Cross-border distribution of collective investment funds: marketing and regulatory fees

2018/0045(COD) - 16/04/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 533 votes to 57, with 62 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on facilitating cross-border distribution of collective investment funds and amending Regulations (EU) No 345/2013 and (EU) No 346/2013.

The proposal for a Regulation aims to remove the regulatory barriers that currently hinder the cross-border distribution of investment funds in order to make their cross-border distribution simpler, faster and less costly.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission's proposal.

Subject matter and scope

The Regulation shall establish uniform rules on the publication of national provisions concerning marketing requirements for collective investment undertakings and on marketing communications addressed to investors, as well as common principles concerning fees and charges levied on managers of collective investment undertakings in relation to their cross-border activities.

The Regulation shall apply to: (i) alternative investment fund managers; (ii) UCITS management companies, including any UCITS which has not designated a UCITS management company; (iii) EuVECA managers; and

(iv) EuSEF managers.

Requirements for marketing communications

AIFMs, EuVECA managers, EuSEF managers and UCITS management companies shall ensure that all marketing communications addressed to investors are identifiable as such and describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading.

Marketing communications shall specify where, how and in which language investors or potential investors can obtain a summary of investor rights and shall provide a hyperlink to such a summary, which shall include, as appropriate, information on access to collective redress mechanisms at Union and national level in the event of litigation.

Ex-ante verification of marketing communications

Competent authorities may decide to require prior notification of marketing communications for the purpose of ex-ante verification of compliance of those communications with this Regulation and other applicable requirements, such as whether the marketing communications are identifiable as such, whether they present a detailed account of risks and rewards of purchasing units or shares of a UCITS and, where a Member State allows marketing of AIFs to retail investors, of an AIF in an equally prominent manner and whether all information in marketing communications is presented in a manner that is fair, clear and not

misleading. That verification should be performed within a limited timeframe. Where competent authorities require prior notification, this should not prevent them from verifying marketing communications ex-post.

Competent authorities shall report to ESMA the results of those verifications, requests for amendments and any sanctions imposed on managers of collective investment undertakings.

Fees and charges

Where fees or charges are levied by competent authorities for carrying out their duties in relation to the cross-border activities of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies, such fees or charges shall be consistent with the overall cost relating to the performance of the functions of the competent authority.

Competent authorities shall send an invoice, an individual payment statement or a payment instruction, clearly setting out the means of payment and the date when payment is due..

European Securities and Markets Authority (ESMA) central database on cross-border marketing of AIFs and UCITS

By 30 months after the date of entry into force of this amending Regulation, ESMA shall publish on its website a central database for the cross-border marketing of AIFs and UCITS, publicly accessible in a language customary in the sphere of international finance, listing:

- all AIFs that are marketed in another Member State, their AIFMs, EUSEF manager or EUVECA manager, and a list of Member States in which they are marketed;
- all UCITS that are marketed in another Member State, their UCITS management companies, AIFs and UCITS which those AIFMs and UCITS management company and a list of the Member States in which they are marketed.

On a quarterly basis, competent authorities of home Member States shall communicate to ESMA the information which is necessary for the creation and maintenance of the central database.

Competent authorities shall have all supervisory and investigatory powers that are necessary for the exercise of their functions pursuant to this Regulation.

Pre-marketing

In order to ensure a level playing field between qualifying venture capital funds, or qualifying social entrepreneurship funds, on the one hand, and other AIFs, on the other hand, it is necessary to include in those Regulations rules on pre-marketing that are identical to the rules laid down in Directive 2011/61/EU on pre-marketing.

Such rules should enable managers registered in accordance with those Regulations to target investors by testing their appetite for upcoming investment opportunities or strategies through qualifying venture capital funds and qualifying social entrepreneurship funds.