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

2018/0045(COD) - 12/07/2019 - Final act

PURPOSE: to facilitate the cross-border distribution of investment funds.

LEGISLATIVE ACT: Regulation (EU) 2019/1156 of the European Parliament and of the Council on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014.

CONTENT: the Regulation aims to remove 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. It complements Directive (EU) 2019/1160, which amends certain provisions of Directive 2009/65/EC and Directive 2011/61/EU with a view to removing regulatory barriers that currently hinder the cross-border distribution of investment funds.

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.

The main elements of the new regulation are as follows:

Requirements for marketing communications

This Regulation establishes uniform rules on the publication of national provisions concerning marketing requirements for collective investment undertakings and on marketing communications addressed to investors.

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.

In particular, marketing communications should:

- indicate that a prospectus exists and that key investor information is available, and specify where, how and in what language investors can obtain the prospectus and key information;

- specify where, how and in what language investors can obtain a summary of investor rights and provide a hyperlink to this summary, which will include, where appropriate, information on access to collective redress mechanisms at EU and national level in the event of litigation;

- contain clear information indicating that the manager or the management company may decide to stop marketing its collective investment undertakings.

Competent authorities shall publish and maintain on their websites up-to-date and complete information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS, and the summaries thereof, in, as a minimum, a language customary in the sphere of international finance.

For the sole purpose of verifying compliance with this Regulation and with national provisions concerning marketing requirements, competent authorities may require prior notification of marketing communications which UCITS management companies intend to use directly or indirectly in their dealings with investors.

Fees and charges

The Regulation establishes common principles concerning the fees and charges levied on managers of collective investment undertakings in respect of their cross-border activities.

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.

The competent authorities shall send an invoice, an individual payment statement or a payment instruction, clearly setting out the means of payment and the date on which payment is due.

Central database

The Regulation also provides for the creation of a central database on the cross-border marketing of AIFs and UCITS. It is the responsibility of the European Securities and Markets Authority (ESMA) to publish this central database on its website by 2 February 2022 at the latest, in a language customary in the sphere of international finance.

Pre-marketing

This Regulation includes in the relevant 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.

ENTRY INTO FORCE AND APPLICATION: from 1.8.2019.