

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

2018/0041(COD) - 12/07/2019 - Final act

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

LEGISLATIVE ACT: Directive (EU) 2019/1160 of the European Parliament and of the Council amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings.

CONTENT: the current rules for investment funds in the EU include ensuring a level playing field among collective investment undertakings and removing restrictions to the free movement of units and shares of collective investment undertakings in the Union, at the same time ensuring more uniform protection for investors. While those objectives have been largely achieved, certain barriers still hamper the ability of fund managers to fully benefit from the internal market.

Accordingly, this Directive amends certain provisions of [Directive 2009/65/EC](#) on undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on alternative investment fund managers (AIFM) with a view to removing regulatory barriers that currently hinder the cross-border distribution of investment funds in order to make their cross-border distribution easier, faster and less costly.

The Directive is complemented by [Regulation \(EU\) 2019/1156](#) of the European Parliament and of the Council, which establishes additional rules and procedures for UCITS and AIF managers.

The main changes to the current regulatory framework are as follows:

Support for local investors (facilities)

The requirements relating to the facilities to be made available to retail investors are modernised, clarified and also applicable to AIF managers. Member States may not require a UCITS or an AIF manager to have a local physical presence to provide these facilities.

Notification

The Directive provides that if a UCITS proposes to market its units in a Member State other than its home Member State, it must first send a notification letter to the competent authorities of its home Member State. The notification letter shall also include the information necessary for invoicing or communicating any applicable regulatory fees or charges by the competent authorities of the host Member State, as well as information on facilities.

Clear conditions govern the discontinuation of marketing of units or shares of a UCITS or an AIF in a host Member State creates economic and legal uncertainty for fund managers. The possibility to cease marketing UCITS or AIFs in a particular Member State should neither come at a cost to investors nor diminish their safeguards under Directive 2009/65/EC or Directive 2011/61/EU, in particular with regard to their right to accurate information on the continued activities of those funds.

Pre-marketing

The concept of pre-marketing is introduced in Directive 2011/61/EU and conditions are laid down for pre-marketing in the Union by an AIF manager established in the Union.

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).

ENTRY INTO FORCE: 1.8.2019.

TRANSPOSITION: no later than 2.8.2021.

APPLICATION: from 2.8.2021.