

Basic information

2018/0045(COD)

COD - Ordinary legislative procedure (ex-codecision procedure)
Regulation

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

Amending Regulation (EU) No 345/2013 [2011/0417\(COD\)](#)

Amending Regulation (EU) No 346/2013 [2011/0418\(COD\)](#)

See also [2018/0041\(COD\)](#)

Subject

2.50 Free movement of capital

2.50.03 Securities and financial markets, stock exchange, CIUTS, investments

3.45.01 Company law

Procedure completed

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	KLINZ Wolf (ALDE)	31/05/2018
	Shadow rapporteur LAMASSOURE Alain (PPE) DELVAUX Mady (S&D) KAMALL Syed (ECR) CARTHY Matt (GUE/NGL) GIEGOLD Sven (Verts/ALE)	

Committee for opinion	Rapporteur for opinion	Appointed
BUDG Budgets	The committee decided not to give an opinion.	
JURI Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	3699	2019-06-14

European

Commission DG	Commissioner

Commission	Financial Stability, Financial Services and Capital Markets Union	DOMBROVSKIS Valdis
European Economic and Social Committee		

Key events			
Date	Event	Reference	Summary
12/03/2018	Legislative proposal published	COM(2018)0110 	Summary
16/04/2018	Committee referral announced in Parliament, 1st reading		
03/12/2018	Vote in committee, 1st reading		
03/12/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
06/12/2018	Committee report tabled for plenary, 1st reading	A8-0431/2018	Summary
10/12/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
12/12/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
04/03/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE636.219 GEDA/A/(2019)001852	
15/04/2019	Debate in Parliament		
16/04/2019	Decision by Parliament, 1st reading	T8-0368/2019	Summary
16/04/2019	Results of vote in Parliament		
14/06/2019	Act adopted by Council after Parliament's 1st reading		
20/06/2019	Final act signed		
20/06/2019	End of procedure in Parliament		
12/07/2019	Final act published in Official Journal		

Technical information	
Procedure reference	2018/0045(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EU) No 345/2013 2011/0417(COD) Amending Regulation (EU) No 346/2013 2011/0418(COD) See also 2018/0041(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 114
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE627.812	18/09/2018	
Amendments tabled in committee		PE629.588	25/10/2018	
Committee report tabled for plenary, 1st reading/single reading		A8-0431/2018	06/12/2018	Summary
Text agreed during interinstitutional negotiations		PE636.219	27/02/2019	
Text adopted by Parliament, 1st reading/single reading		T8-0368/2019	16/04/2019	Summary

Council of the EU

Document type	Reference	Date	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2019)001852	27/02/2019	
Draft final act	00054/2019/LEX	20/06/2019	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2018)0110 	12/03/2018	Summary
Document attached to the procedure	SWD(2018)0054 	12/03/2018	
Document attached to the procedure	SWD(2018)0055 	12/03/2018	
Commission response to text adopted in plenary	SP(2019)440	08/08/2019	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2018)0110	14/05/2018	
Contribution	ES_CONGRESS	COM(2018)0110	14/05/2018	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

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

2018/0045(COD) - 06/12/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Wolf KLINZ (ALDE, DE) 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 committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal.

Fees or charges: there is a need to ensure better recovery of fees or charges and to increase transparency and clarity of the fees and charges structure. Fees or charges levied by a competent authority in carrying out its duties in relation to the cross-border activity of alternative investment fund managers (AIFMs), European Venture Capital Funds (EuVECA) managers, European Social Entrepreneurship Fund (EuSEF) managers and undertakings for collective investment in transferable securities (UCITS) management companies shall be consistent with the actual costs incurred by the competent authority for carrying out its functions with respect to these duties.

Competent authorities shall send an **invoice**, an individual payment statement or a payment instruction to the appropriate address. The invoice shall indicate the fees or charges, 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 24 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: (i) 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; and (ii) 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.

That central database shall be kept up to date.

Marketing communications shall also 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, access to Union level and national collective redress mechanisms in the event of litigation.

In order to facilitate the exchange of information between ESMA and competent authorities, ESMA shall establish a system for the regular **exchange of information** relevant to cross-border marketing activities of AIFMs and UCITS management companies.

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.

Powers of competent authorities: in order to enable the national competent authorities to exercise the functions attributed to them in this Regulation, Member States shall vest them with sufficient resources and all the necessary supervisory and investigative powers.

Evaluation: to assess the phenomenon of reverse solicitation and demand on the own initiative of an investor, as well as the potential to use them to circumvent provisions connected to the passport, including by third country entities, the Commission shall publish a report on these issues two years after the entry into force of this Regulation.

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

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.

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

2018/0045(COD) - 12/03/2018 - Legislative proposal

PURPOSE: to reduce the barriers to the cross-border distribution of investment funds in the EU.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: this proposal should be seen in the broader context of the [Capital Markets Union \(CMU\) action plan](#) and the [CMU Mid-Term Review](#), to establish a genuine internal capital market by addressing fragmentation in the capital markets, removing regulatory barriers to the financing of the economy and increasing the supply of capital to businesses.

Investment funds are investment products created with the sole purpose of pooling investors' capital, and investing that capital collectively through a portfolio of financial instruments such as stocks, bonds and other securities. In the EU, investment funds can be categorised as undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs) managed by alternative investment fund managers (AIFMs).

While EU investment funds have seen rapid growth, with a total of EUR 14 310 billion in assets under management in June 2017, **the EU investment fund market is still predominantly organised as a national market:**

- 70 % of all assets under management are held by investment funds authorised or registered for distribution only in their domestic market;
- only 37 % of UCITS and about 3 % of AIFs are registered for distribution in more than three Member States.

Regulatory barriers, namely Member States' marketing requirements, regulatory fees and administrative and notification requirements represent a significant disincentive to the cross-border distribution of funds. These barriers were identified in response to the [Green Paper](#) on Capital Markets Union.

These new measures are expected to reduce the cost of going cross-border and should **support a more integrated single market for investment funds**. They should, in turn, should reduce market fragmentation, increase competition, and ultimately help to deliver greater choice and better value for investors in the EU.

This proposal is presented together with a Directive amending [Directive 2009/65/EC](#) and Directive 2011/61/EU with regard to cross-border distribution of collective investment funds.

IMPACT ASSESSMENT: following the evaluation of the strategic options being considered, the policy choices are as follows:

- more transparent national marketing requirements at both national and EU level, harmonisation of the definition of pre-marketing in Directive 2011/61/EU and clearer guidance on the process of checking marketing material;
- greater transparency of regulatory fees at EU level, and the establishment of key principles to ensure greater consistency in the way these fees are determined;
- the choice of facilities to support local investors should be left to investment fund managers, with safeguards for investors;
- increased harmonisation of procedures and conditions for updating or withdrawing notifications on the use of the marketing passport.

For all investment funds currently marketed on a cross-border basis in the EU, the policy choices together are expected to **save an annual EUR 306 to 440 million** in costs (recurrent costs).

CONTENT: 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 proposed Regulation seeks to:

- **harmonise the procedure and requirements on marketing communications** by the national competent authorities. The marketing communications must fulfil, namely (i) the communications are identifiable as such, (ii) present the risks and rewards of purchasing units or shares of AIFs and UCITS in an equally prominent manner and (iii) all information included in marketing communications is fair, clear and not misleading;
- **improve transparency by harmonising national marketing requirements and regulatory fees:** the competent authorities will publish online all applicable national laws, regulations and administrative provisions governing marketing rules for AIFs and UCITS, and their summaries, in at least a language customary in the sphere of international finance, requesting the publication in that language next to the official languages or one of the official languages used in a given Member State. Competent authorities have to publish and maintain on their websites central databases on the fees or charges or relevant calculation methodologies;
- **introduces the concept of pre-marketing** in [Regulation \(EU\) No 345/2013](#) on European venture capital funds and [Regulation \(EU\) No 346/2013](#) on European social entrepreneurship funds. The change would allow managers registered in accordance with those Regulations to target investors by testing their appetite for upcoming investment opportunities or strategies through pre-marketing;

- **introduces a requirement on the European Securities and Markets Authority (ESMA) to better monitor investment funds** and to publish and maintain on its website a central database on all AIFMs, UCITS management companies, AIFs and UCITS.

BUDGETARY IMPLICATION: this proposal will have **two budgetary implications for ESMA**. ESMA will have to prepare regulatory and implementing technical standards, and develop and maintain databases that the public can use for free.

The impact on expenditure is estimated at **EUR 0.441 million** for the year of the start of the implementation of the proposal. The financial impact on the EU budget after 2020 will depend on Commission proposals for the next multiannual financial framework.

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.