Basic information

2018/0041(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Cross-border distribution of collective investment funds: pre-marketing and de-notification Amending Directive 2009/65/EC 2008/0153(COD) Amending Directive 2011/61/EU 2009/0064(COD) See also 2018/0045(COD) **Subject** 2.50 Free movement of capital 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 3.45.01 Company law	

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
JURI Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Employment, Social Policy, Health and Consumer Affairs	3699	2019-06-14

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	KATAINEN Jyrki

European Economic and Social Committee

Key events

Date	Event	Reference	Summary
12/03/2018	Legislative proposal published	COM(2018)0092	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	A8-0430/2018	Summary
10/12/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
12/12/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72)		
04/03/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE636.220 GEDA/A/(2019)001852	
15/04/2019	Debate in Parliament		
16/04/2019	Decision by Parliament, 1st reading	T8-0367/2019	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	2018/0041(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amending Directive 2009/65/EC 2008/0153(COD) Amending Directive 2011/61/EU 2009/0064(COD) See also 2018/0045(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 053-p1
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/8/12525

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE627.813	02/10/2018	
Amendments tabled in committee		PE629.583	25/10/2018	
Committee report tabled for plenary, 1st reading/single reading		A8-0430/2018	06/12/2018	Summary
Text agreed during interinstitutional negotiations		PE636.220	27/02/2019	
Text adopted by Parliament, 1st reading/single reading		T8-0367/2019	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	00053/2019/LEX	20/06/2019	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2018)0092	12/03/2018	Summary
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)0092	14/05/2018	
Contribution	ES_CONGRESS	COM(2018)0092	14/05/2018	

Additional information

Source	Document	Date
European Parliament	Briefing	
European Commission	EUR-Lex	

Final act

Directive 2019/1160
OJ L 188 12.07.2019, p. 0106 Summary

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

2018/0041(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's (ALDE, DE) 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 committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows.

Support for local investors (facilities): the proposal 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 available to investors, for inspection and for the obtaining of copies of the latest published annual report of the UCITS and the latest published half-yearly report if more recent; the prospectus of the UCITS; the most up-to-date key [investor] information document for the UCITS.

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.**

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: in order to ensure that national competent authorities can exercise their control over pre-marketing activities in their Member States, Parliament specified that AIFMs shall **send an informal letter or e-mail** to the competent authorities of their home Member State and the competent authorities of the Member State or Member States where they will engage in pre-marketing activities, mentioning in which Member State or Member States they will conduct pre-marketing activities.

AIFMs shall ensure that their pre-marketing activities are **appropriately documented** and made available, upon request, to the national competent authorities concerned. Such information should include a reference to the Member States and the period of time in which the pre-marketing activities took place and a description of the investment strategies or investment ideas presented in the course of the pre-marketing activities.

Evaluation: the Commission shall submit a legislative proposal to the European Parliament and the Council in order to harmonise the provisions applicable to UCITS management companies testing the appetite of professional investors for a particular investment idea or investment strategy.

Before the entry into force of certain provisions of Directive 2011/61/EU, the Commission shall submit a report to the European Parliament and the Council, and if appropriate, legislative proposals after an examination of the application of all the provisions of Directive 2011/61/EU in the context of their application in the scenario of a passporting regime being in place for non-EU AIFMs.

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

2018/0041(COD) - 12/03/2018 - Legislative proposal

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

PROPOSED ACT: Directive 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 proposed dedicated Regulation on facilitating cross-border distribution of collective investment funds and amending Regulations (EU) No 345/2013 and (EU) No 346/2013.

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.

CONTENT: 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.

Its main elements are:

Support for local investors (facilities): the proposal sets out rules to modernise and specify the requirements for providing facilities to retail investors, a **physical presence should not be required** by Member States. While requiring that facilities are established in each Member State where marketing activities are carried out and which serve situations such as making subscriptions, making payments or repurchasing or redeeming units, this proposal allows fund managers to use electronic or other means of distance communication with investors. The information and means of communication should be available to investors in the official languages of the Member State where the investor is located.

The requirements relating to facilities are also applied to AIFMs where Member States allow them to market units or shares of AIFs to retail investors in their territories.

De-notification of the use of the marketing passport: the proposed Directive harmonises the conditions under which investment funds may **exit a national market**. It creates the possibility for asset managers to stop marketing an investment fund in defined cases in one or several host Member States.

Asset managers are allowed to de-notify the marketing of their UCITS only if a maximum of 10 investors who hold up to 1 % of assets under management of this UCITS have invested in this UCITS in an identified Member State. The competent authorities of the home Member State of this UCITS will verify the compliance with this requirement, including the transparency and publication requirement for investors and the repurchase offer.

All obligations to inform will continue to apply to remaining investors after de-notification of the marketing activities in a Member State.

Pre-marketing: the proposal also allows European asset managers to engage in pre-market activities to test an investment idea or an investment strategy with professional investors.

Therefore, this proposal lays down clear conditions, including thresholds, under which deregistration could take place. The thresholds are indicative of when a fund manager may consider that its activities have become insignificant in a particular host Member State.

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.

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.