



Plenary sitting

A8-0430/2018

6.12.2018

*****I**
REPORT

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 (COM(2018)0092 – C8-0111/2018 – 2018/0041(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Wolf Klinz

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT 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
(COM(2018)0092 – C8-0111/2018 – 2018/0041(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0092),
 - having regard to Article 294(2) and Article 53(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0111/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0430/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

2018/0041 (COD)

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 *undertakings*

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure,

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

¹ OJ C [...], [...], p. [...].

² OJ C , , p. .

Whereas:

- (1) A common objective of Directive 2009/65/EC of the European Parliament and of the Council¹ and Directive 2011/61/EU of the European Parliament and of the Council² is to ensure a level playing field among collective investment *undertakings* and to remove restrictions to the free movement of units and shares of collective investment funds in the Union at the same time ensuring more uniform protection for investors. While these objectives have been largely achieved, certain barriers still hamper fund managers' ability to fully benefit from the internal market.
- (2) The rules proposed in this Directive are complemented by a dedicated Regulation [on facilitating cross-border distribution of collective investment *undertakings* and amending Regulations (EU) No 345/2013 and (EU) No 346/2013]. It lays down additional rules and procedures concerning undertakings for collective investment in transferable securities (UCITS) and alternative investment fund managers (AIFMs) That Regulation and this Directive should collectively further coordinate the conditions for fund managers operating in the internal market and facilitate cross-border distribution of the funds they manage.
- (3) It is necessary to fill in the regulatory gap and align the **■** notification *procedure* to the competent authorities of the changes *regarding UCITS with the notification procedure* laid down in Directive 2011/61/EU.
- (4) Regulation [on facilitating cross-border distribution of collective investment *undertakings* and amending Regulations (EU) No 345/2013 and (EU) No 346/2013] establishes new rules requiring the European Securities and Markets Authority (ESMA), to develop draft regulatory technical standards and draft implementing technical standards to specify the information required and the forms, templates and procedures to be used for the transmission of that information in relation to *the management ■*, take-up or discontinuing of marketing of *collective investment undertakings* under Directive 2009/65/EC and Directive 2011/61/EU. Therefore, the provisions of those two Directives providing ESMA with discretionary empowerments to develop regulatory technical standards and draft implementing technical standards for notifications are no longer necessary and therefore should be deleted.
- (5) Regulation [on facilitating cross-border distribution of collective investment *undertakings* and amending Regulations (EU) No 345/2013 and (EU) No 346/2013] further strengthens the principles applicable to marketing communications governed by Directive 2009/65/EC and extends their application to the AIFMs, thus resulting in a high standard of investor protection, regardless of the type of investor. As a result, the corresponding provisions of Directive 2009/65/EC relating to marketing communications and accessibility of national laws and regulation relevant to the

¹ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), *OJ L 302, 17.11.2009, p. 32.*

² Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (AIFM), *OJ L 174, 1.7.2011, p. 1.*

arrangement of marketing units of UCITS are no longer necessary and therefore should be deleted.

- (6) The provisions of Directive 2009/65/EC, which require UCITS to provide facilities to investors, as implemented by certain national legal systems, have proven to be burdensome. Moreover, the local facilities are rarely used by investors as intended by the Directive. The preferred method of contact has shifted to direct interaction of investors with the fund manager — either electronically or by telephone, whereas payments and redemptions are executed through other channels. While these facilities are used for administrative purposes such as cross-border recovery of regulatory fees, such issues, however, should be addressed via other means including cooperation between the competent authorities. Consequently, rules should be established, which modernise and specify the requirements for providing facilities to retail investors, **and a local physical presence *providing such facilities*** should not be required by Member States. At the same time rules should ensure that investors have access to the information to which they are entitled.
- (7) In order to ensure a coherent treatment of retail investors, it is necessary that 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.
- (7a) *In order to facilitate the enforcement of retail investor rights in cases of cross-border marketing of investment funds, Member States should ensure that in cases of mass infringements, retail investors have access to representative legal actions under both Union and national law in accordance with Directive ... [Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC].*
- (8) The absence of clear and uniform conditions for the discontinuation of marketing of units or shares of a UCITS or an EU AIF in a host Member State creates economic and legal uncertainty for the fund managers. Therefore, this proposal lays down clear conditions under which ***denotification of marketing activities*** could take place. The conditions are set in such a way that they balance, on the one hand, the ***ability of collective investment undertakings or their managers to end their marketing activities*** when the established conditions are met, and on the other hand, the interests of investors in ***such undertakings***.
- (9) The possibility to stop marketing UCITS or EU AIFs in a particular Member State should not 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.
- (10) There are cases where an AIFM **or a UCITS management company** willing to test investor appetite for a particular investment idea or investment strategy is faced with a divergent treatment of pre-marketing activities in different national legal systems. In some Member States where pre-marketing is permitted, its definition and conditions vary considerably. However, in other Member States there is no concept of pre-marketing at all. To address these divergences, a harmonised definition of pre-

marketing *of an AIF* should be provided and conditions under which an EU AIFM can engage in these activities should be established.

- (11) For pre-marketing to be recognised as such under this Directive, it should *be addressed to a professional investor and* concern an investment idea or strategy without having an **AIF or compartment** already established, *or an established AIF or compartment which is not yet notified for marketing in the Member State concerned*. Accordingly, during the course of pre-marketing, investors are unable to subscribe to the units or shares of an AIF **AIF** and no *final versions of* offering documents *or any form of subscription documents* should be permitted to be distributed to potential investors during this stage. However, when following the pre-marketing activities *of the AIFM, an investor subject to these activities subscribes to* units or shares of an AIF *or compartment* with the features akin to the pre-marketed investment idea *or to an AIF or compartment referred to during the pre-marketing activities*, the appropriate marketing notification procedure should be observed and the AIFM should not be able to invoke reverse solicitation. *To ensure that national competent authorities can exercise their control over pre-marketing activities in their Member State, AIFMs should 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. The sending of that informal letter or e-mail should not be subject to any extra regulatory fees charged by any competent authority.*
- (11a) *AIFMs should 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. ESMA should closely monitor any lack of convergence between Member States with regard to the documentation of pre-marketing activities, and should take all necessary measures to ensure that, in such cases, the efficiency of pre-marketing as a tool to foster the cross-border distribution of funds is not hindered.*
- (11b) *Without prejudice to the definition of pre-marketing laid down in this Directive, Member States should ensure that UCITS management companies can continue to test professional investor appetite for a particular investment idea or investment strategy concerning UCITS which have not yet been established. Furthermore, the Commission should submit a legislative proposal to the European Parliament and to the Council in order to harmonise the provisions applicable to UCITS management companies and AIFM testing investor appetite for a particular investment idea or investment strategy.*
- (11c) *The harmonised rules on pre-marketing should not disadvantage an EU AIFM vis-à-vis a non-EU AIFM in any case. This concerns both the current situation in which non-EU AIFMs do not have passporting rights, and the situation where the provisions on passporting in Directive 2011/61/EU become applicable. To ensure this, the Commission should conduct a thorough investigation of all provisions in*

Directive 2011/61/EU in the light of their application in the scenario of a passporting regime for non-EU AIFMs, and, if appropriate, propose legislative changes before Article 35 and Articles 37 to 41 of Directive 2011/61/EU become applicable.

- (12) In order to ensure legal certainty, it is necessary to synchronise the application dates of laws, regulations and administrative provisions implementing this Directive **and** Regulation [on facilitating cross-border distribution of collective investment **undertakings** and amending Regulations (EU) No 345/2013 and (EU) No 346/2013] with regard to relevant provisions on marketing communications and pre-marketing. It is also necessary to coordinate the empowerments granted to the Commission to adopt draft regulatory technical standards and implementing technical standards, as developed by ESMA, under Regulation [on facilitating cross-border distribution of collective investment **undertakings** and amending Regulations (EU) No 345/2013 and (EU) No 346/2013] in the area of notifications, notification letters or written notices on cross-border activities that are to be deleted by this Directive from Directive 2009/65/EC and Directive 2011/61/EU respectively.
- (13) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/65/EC

Directive 2009/65/EC is amended as follows:

- (1) ***In Article 17(8), the following subparagraphs are added:***

■

‘Where, pursuant to a change, ***the management company*** would no longer comply with this Directive, the ■ competent authorities ***of the management company’s home Member State*** shall ***inform*** the management company within ***15*** working days ***of receiving all the information referred to in this paragraph*** that it is not to implement that change.

In that case, the competent authorities of the management company’s home Member State shall inform the competent authorities of the management company’s host Member State that the change will not be implemented.

¹ OJ C 369, 17.12.2011, p. 14.

Where a change **■** is implemented *in breach of the second and the third* subparagraph and pursuant to that change the *management company would* no longer *comply* with this Directive, the competent authorities of the *management company's* home Member State **■** shall take all due measures in accordance with Article 98 *and shall notify accordingly the competent authorities of the management company's host Member State without undue delay.*'

■

■

- (3) Article 77 is deleted.
- (4) in Article 91, paragraph 3 is deleted.
- (5) Article 92 is replaced by the following:

‘Article 92

1. 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:

- (a) process subscription, repurchase and redemption orders *and make other payments to unit-holders* relating to the units of the UCITS, in accordance with the conditions set out in the *UCITS documents*;
 - (b) provide investors with information on how orders referred to in point (a) can be made and how repurchase and redemption proceeds are paid;
 - (c) facilitate the handling of information *and access to procedures and arrangements referred to in Article 15* relating to the investors' exercise of their rights arising from their investment in the UCITS in the Member State where the UCITS is marketed;
 - (d) make available to investors, for inspection and for the obtaining of copies of:
 - (i) fund rules or instruments of incorporation of the UCITS;
 - (ii) the latest *published* annual report of the UCITS *and the latest published half-yearly report if more recent*;
 - (*iiia*) *the prospectus of the UCITS*;
 - (*iiib*) *the most up-to-date key [investor] information document for the UCITS.*
 - (e) provide investors with information relevant to the tasks the facilities perform in a durable medium as defined in Article 2(1)(m);
- (*ea*) *act as contact point for communicating with the competent authority.*

2. Member States shall not require the UCITS to have a physical presence *in the host Member State or to appoint a third party* for the *purposes* of paragraph 1.

3. The UCITS █ shall ensure that the facilities *to perform the tasks* referred to in paragraph 1 are *provided*:

- (a) █ 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*;
- (b) *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*;

For the purposes of point (b), where the *tasks* are performed by a third *party*, the appointment of a third *party* shall be evidenced by a written contract, which specifies which of the tasks referred to in paragraph 1 are not performed by the UCITS █ and that the third *party* receives all the relevant information and documents from the UCITS management company.’

(6) █ Article 93 *is amended as follows*:

(a) *paragraph 1 is replaced by the following*:

1. If a UCITS proposes to market its units in a Member State other than its home Member State, it shall first submit a notification letter to the competent authorities of its home Member State.

The notification letter shall include information on arrangements made for marketing units of the UCITS in the host Member State, including, where relevant, in respect of share classes. In the context of Article 16(1), it shall include an indication that the UCITS is marketed by the management company that manages the UCITS.

The notification letter shall also include information and the address necessary for the invoicing, or communication of any applicable regulatory fees or charges by the competent authorities of the host Member State and an indication of the facilities for performing the tasks referred to in Article 92(1).

(b) *paragraph 8 is replaced by the following*:

‘8. In the event of a change to the information in the notification letter submitted in accordance with paragraph 1, or a change regarding share classes to be marketed, the UCITS shall give written notice thereof to the competent authorities of *both* the *UCITS home Member State and the host Member State* at least one month before implementing that change.

Where, pursuant to a change referred to in the first subparagraph the UCITS would no longer comply with this Directive, the █ competent authorities *of the*

UCITS home Member State shall notify the UCITS within **15** working days ***of receiving all the information referred to in the first subparagraph*** that it is not to implement that change.

In that case, the competent authorities of the UCITS home Member State shall notify the competent authorities of the UCITS host Member State that the change will not be implemented.

Where a change referred to in the first subparagraph is implemented after notification has been made in accordance with the second subparagraph and pursuant to that change the UCITS no longer complies with this Directive, the competent authorities of the home Member State of the UCITS shall take all due measures in accordance with Article 98, including, where necessary, the express prohibition of marketing of the UCITS ***and shall notify accordingly the competent authorities of the UCITS host Member State without undue delay.***

Where ***a change*** referred to in the first subparagraph ***does*** not affect the compliance of the UCITS with this Directive, the competent authorities of the home Member State of the UCITS shall, without undue delay, ***and, in any case, within 15 working days of receiving all the information referred to in the first subparagraph,*** inform the competent authorities of the host Member State of the UCITS of those changes.’

(7) the following Article 93a is inserted:

‘Article 93a

1. 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 in accordance with Article 93, where all the following conditions are fulfilled:

■

- (b) a blanket offer to repurchase, free of any charges or deductions, all its UCITS units held by investors in a Member State where the UCITS has notified its activities in accordance with Article 93 is made public for at least 30 working days and is addressed, ***directly or through financial intermediaries,*** individually to all investors in the host Member State whose identity is known;
- (c) the intention to ***proceed to denotification of*** marketing activities in the Member State where the UCITS has notified its activities in accordance with Article 93 is made public by means of a publicly available medium, ***including by electronic means,*** which is customary for marketing UCITS and suitable for a typical UCITS investor.

The notice to investors shall make clear the consequences for investors if they do not accept the offer to repurchase their units.

The information referred to in points (b) and (c) 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*.

2. The UCITS shall submit a notification letter to the competent *authorities* of its home Member State comprising the information referred to in paragraph 1.

3. *The competent authorities of the UCITS home Member State shall verify whether the notification submitted by the UCITS in accordance with paragraph 2 is complete.* The competent authorities of the UCITS home Member State shall, no later than **15** working days from the receipt of the notification referred to in paragraph 2, transmit *that notification* to the competent authorities of the Member State where marketing of the UCITS is intended to be discontinued and to ESMA, *or else shall inform the UCITS of the reason why the notification cannot be transmitted.*

Upon transmission of the notification file pursuant to the first subparagraph the competent authorities of the UCITS home Member State shall immediately notify the UCITS of that transmission. As of this date, the UCITS shall cease all marketing of its units in the Member State identified in the notification letter referred to in paragraph 2.

4. *As long as investors remain invested in the UCITS after marketing is discontinued:*

(a) 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 Articles 68 to 82 and under Article 94;

(b) *the competent authorities of the home Member State of the UCITS shall provide the competent authorities of the Member State where the marketing has been discontinued with the information required to be provided to the competent authorities of the UCITS host Member State under Article 93;*

(c) *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 under Articles 97 and 108 and, if applicable, may levy fees or charges for carrying out those activities in accordance with the provisions applicable for competent authorities pursuant to Article 6 of Regulation [on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013 and (EU) No 346/2013].*

5. Member States shall allow for the use of all electronic or other distance communication means for the purposes of paragraph 4, provided the information and communication means are available for investors in the official *language or one of*

the official languages of the Member State where the investor is located *or in a language approved by the competent authorities of that Member State.*'

- (8) in Article 95, paragraph (2)(a) is deleted.

Article 2

Amendments to Directive 2011/61/EU

Directive 2011/61/EU is amended as follows:

- (1) in Article 4(1), between points (ae) and (af), the following point (aea) is inserted:

‘(aea) ‘pre-marketing’ means a direct or indirect provision of information *or communication* on investment strategies or investment ideas by an *EU* AIFM or on its behalf to *potential* professional investors domiciled or registered in the Union in order to test their interest in an AIF, *or in a compartment of an AIF*, which is not yet established *or which is established, but not yet notified for marketing in accordance with Article 32, in that Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the investor to invest in the units or shares of that AIF or compartment.*’

- (2) the following Article 30a is inserted at the beginning of CHAPTER VI:

‘Article 30a

Conditions for pre-marketing in the Union by an EU AIFM

1. Member States shall ensure that an authorised EU AIFM may engage in pre-marketing in the Union, excluding where the information presented to potential professional investors:

■

- (c) enables investors to commit to acquiring units or shares of a particular AIF;
- (d) amounts to *the final form of* a prospectus, constitutional documents *or offering documents* of a not-yet-established AIF, *or amounts to* subscription forms or similar documents whether in a draft or a final form allowing investors to *invest in the units or shares of an AIF or compartment. For already established AIFs, the final form of a prospectus may be provided.*

Where a draft prospectus or offering document as referred to in point (d) of the first subparagraph is provided, that document shall clearly state that it does not constitute an offer or an invitation to subscribe to units or shares of an AIF or compartment.

2. *Member States shall ensure that an EU AIFM sends a simple, informal letter in paper form or by electronic means before it engages in pre-marketing activities, stating the Member State or Member States in which it will engage in those activities, to the competent authorities of its home Member State with a copy to the*

competent authorities of the Member State or Member States in which it will engage in pre-marketing activities.

Member States shall ensure that no requirement to notify the competent authorities *of the content or the addressees* of the pre-marketing activities is necessary for an EU AIFM to engage in pre-marketing activities.

3. AIFMs shall ensure that investors do not acquire units or shares in an AIF through pre-marketing activities and that investors contacted as part of pre-marketing may only acquire units or shares in that AIF under marketing permitted under Article 31 or 32.

Subscription by professional investors *that were subject to pre-marketing, within 18 months of the AIFM becoming engaged in pre-marketing*, to units or shares of an AIF *referred to in the information provided in the context of pre-marketing activities* by the EU AIFM *or on its behalf, or of an AIF established as a result of those pre-marketing activities*, shall be considered the result of marketing *and shall be subject to the applicable notification procedures referred to in Article 31 and 32.*

3a. Member States shall ensure that EU AIFMs make appropriate arrangements such that information relating to their pre-marketing activities is available, and provided upon request, to the competent authorities of their home Member State and to the competent authorities of the Member States in which they have engaged in pre-marketing activities. EU AIFMs shall ensure that their pre-marketing activities are adequately documented, including references to the Member States and the periods of time in which the pre-marketing activities took place, as well as a brief description of those activities, including the information on the investment strategies presented and, where relevant, a list of the AIFs and compartments of AIFs presented.

3b. A third party shall only engage in activities referred to in paragraph 1 in a host Member State of an AIFM on behalf of an authorised EU AIFM where it is authorised as an investment firm in accordance with Directive 2014/65/EU, as a credit institution in accordance with Directive 2013/36/EU, as a UCITS management company in accordance with Directive 2009/65/EC, as an alternative investment fund manager in accordance with Directive 2011/61/EU, or acts as a tied agent.'

(3) in Article 31, paragraph 5 is deleted.

(4) **█** Article 32 is amended as follows:

(a) the second subparagraph of paragraph 7 is replaced by the following:

*'If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Directive or the AIFM would otherwise no longer comply with this Directive, the relevant competent authorities **of the home Member State of the AIFM** shall inform the AIFM within 15 working days **receiving all the information referred to in the first subparagraph** that it is not to implement the change. **The competent authorities of the home Member***

State of the AIFM shall, without undue delay, inform the competent authorities of the host Member State of the AIFM about the planned change, its assessment of it and whether or not it was implemented.'

(aa) *the third subparagraph of paragraph 7 is replaced by the following:*

If a planned change is implemented notwithstanding the first and second subparagraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with this Directive or the AIFM otherwise would no longer comply with this Directive, the competent authorities of the home Member State of the AIFM shall take all due measures in accordance with Article 46, including, if necessary, the express prohibition of marketing of the AIF **and shall notify the competent authorities of the host Member State of the AIFM accordingly without undue delay.**

(b) the fourth subparagraph of paragraph 7 is replaced by the following:

'If the changes do not affect the compliance of the AIFM's management of the AIF with this Directive, or the compliance by the AIFM with this Directive otherwise, the competent authorities of the home Member State of the AIFM shall, **without undue delay, and no later than within 15 working days,** inform the competent authorities of the host Member State of the AIFM of those changes.'

(c) paragraph 8 is deleted.

(5) the following Article 32a is inserted:

'Article 32a

Denotification of marketing **activities** of units or shares of EU AIFs in the Member States other than in the home Member State of the AIFM

1. Member States shall ensure that an EU AIFM may **proceed to the denotification of the marketing activities of** units or shares of an EU AIF that it manages in the Member State where a notification of its marketing activities has been transmitted in accordance with Article 32, where all of the following conditions are fulfilled:

(b) **with the exception of closed-ended AIFs and funds regulated by Regulation (EU) 2015/760,** a blanket offer to repurchase, free of any charges or deductions, all its AIF units or shares held by investors in the Member State, where a notification of marketing activities has been transmitted in accordance with Article 32, is made public at least for 30 working days and is addressed, **directly or through financial intermediaries,** individually to all investors in that Member State whose identity is known;

(c) the intention to stop the marketing activities on the territory of the Member State, where a notification of its marketing activities has been transmitted in

accordance with Article 32, is made public by means of a publicly available medium which is customary for marketing AIF and suitable for a typical AIF investor.

2. The AIFM shall submit a notification to the competent *authorities* of its home Member State comprising the information referred to in paragraph 1.

3. *The competent authorities of the home Member State of the AIFM shall verify whether the notification submitted by the AIFM in accordance with paragraph 2 is complete.* The competent authorities of the home Member State of the AIFM shall, no later than **15** working days following the receipt of the complete notification referred to in paragraph 2, transmit it to the competent authorities of the Member State where marketing of AIF is intended to be discontinued and to ESMA.

Upon transmission of the notification file pursuant to the first subparagraph, the competent authorities of the home Member State of the AIFM shall immediately notify the AIFM of that transmission. As of this date, the AIFM shall cease all marketing of units or shares of the AIF it manages in the Member State identified in the notification letter referred to in paragraph 2.

4. *As long as investors remain invested in the EU AIF after marketing activities are denotified:*

- (a) the AIFM shall *provide* investors who remain invested in the EU AIF *as well as the competent authorities of the home Member State of the AIFM and the competent authorities of the Member State where the marketing has been discontinued* with the information required under Articles 22 and 23;
- (b) *the competent authorities of the home Member State of the AIFM shall provide the competent authorities of the Member State where the marketing has been discontinued with the information required to be provided to the competent authorities of the host Member State of the AIFM under Article 32;*
- (c) *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 host Member State of the AIFM under Article 45 of this Directive and, if applicable, may levy fees or charges for carrying out those activities in accordance with the provisions applicable for competent authorities pursuant to Article 6 of Regulation [on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013 and (EU) No 346/2013].*

5. Member States shall allow for the use of all electronic or other distance communication means for the purposes of paragraph 4.

(5a) *Article 33(6) is amended as follows:*

- (a) *the second subparagraph is replaced by the following:*

‘If, pursuant to a planned change, the AIFM’s management of the AIF would no longer comply with this Directive or the AIFM would otherwise no longer comply with this Directive, the *relevant* competent authorities of the home Member State of the AIFM shall inform the AIFM *within 15 working days of receiving all the information referred to in the first subparagraph* that it is not to implement the change.’;

(b) *the third subparagraph is replaced by the following:*

‘If a planned change is implemented notwithstanding the first and second subparagraphs or if an unplanned change has taken place pursuant to which the AIFM’s management of the AIF would no longer comply with this Directive or the AIFM otherwise would no longer comply with this Directive, the competent authorities of the home Member State of the AIFM shall take all due measures in accordance with Article 46 *and shall notify accordingly the competent authorities of the host Member State of the AIFM without undue delay.*’;

(6) in Article 33, paragraphs 7 and 8 are deleted.

(7) the following Article 43a is inserted:

‘Article 43a

Facilities available to retail investors

1. Without prejudice to Article 26 of Regulation (EU) 2015/760¹, Member States shall ensure that an AIFM *makes available*, in each Member State where it intends to market units or shares of an AIF to retail investors, facilities to perform the following tasks:

- (a) process investors’ subscription, payment, repurchase and redemption orders relating to the units or shares of the AIF, in accordance with the conditions set out in the AIF’s **■** documents;
- (b) provide investors with information on how orders referred to in point (a) can be made and how repurchase and redemption proceeds are paid;
- (c) facilitate the handling of information relating to the exercise of investors’ rights arising from their investment in the AIF in the Member State where the AIF is marketed;
- (d) make available to investors for inspection and for the obtaining copies of *information and documents in compliance with Articles 22 and 23;*

■

¹ Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds *OJ L 123, 19.5.2015, p. 9.*

(e) provide investors with information relevant to the tasks the facilities perform in a durable medium as defined in Article 2(1)(m) of Directive 2009/65/EC;

(ea) act as contact point for communication with the competent authorities.

2. Member States shall not require an AIFM to have a physical presence *in the host Member State or to appoint a third party* for the purpose of paragraph 1.

3. The AIFM shall ensure that the facilities *for performing the tasks* referred to in paragraph 1 are *provided*:

(a) **█** in the official language or *one of the* official languages of the Member State where the AIF is marketed *or in a language approved by the competent authorities of that Member State*;

(b) **█** by *the* AIFM itself or a third *party*, subject to regulation *and to supervision* governing the tasks to be performed, or both.

For the purposes of point (b), where the *tasks* are performed by a third *party*, this appointment shall be evidenced by a written contract, which specifies which of the tasks specified in paragraph 1 are not performed by the AIFM and that the third *party* receives all the relevant information and documents from the AIFM.’

(7a) In Annex IV, the following points are added:

‘(ha) information and the address necessary for the invoicing or communicating of any applicable regulatory fees or charges by the competent authority of the host Member State;

(hb) an indication of the facilities for performing the tasks referred to in Article 43a.’

Article 3

Transposition

1. Member States shall adopt and publish, by [*PO: Please insert date 24 months after the date of entry into force*] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [*PO: Please insert date 24 months after the date of entry into force*].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Evaluation

By ... [PO: Please insert date 12 months after the date for transposition of this Directive] the Commission shall, on the basis of an impact assessment, submit a legislative proposal to the European Parliament and to the Council amending Directive 2009/65/EU 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 concerning established and not yet established UCITS with the definition and conditions of pre-marketing laid down Directive 2011/61/EU.

By ... [PO: Please insert date 36 months after the date for transposition of this Directive] the Commission shall, on the basis of a public consultation and in light of discussions with ESMA and competent authorities, conduct an evaluation of the application of this Directive.

Before Article 35 and Articles 37 to 41 of Directive 2011/61/EU become applicable, the Commission shall submit a report to the European Parliament and to the Council, and if appropriate, legislative proposals, as a result of an investigation of all provisions in Directive 2011/61/EU, in the context of their application in the scenario of a passporting regime being in place for non-EU AIFMs, with a particular focus on the potential uneven playing field between EU AIFMs and non-EU AIFMs with a view to ensuring the perspective that EU AIFMs are not disadvantaged.

Article 5

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Articles 1(1)(b), 1(2) 1(8), 2(3), 2(4)(c) and 2(6) shall apply from the day of entry into force of this Directive.

Article 6

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Cross-border distribution of collective investment funds	
References	COM(2018)0092 – C8-0111/2018 – 2018/0041(COD)	
Date submitted to Parliament	7.3.2018	
Committee responsible Date announced in plenary	ECON 16.4.2018	
Committees asked for opinions Date announced in plenary	JURI 16.4.2018	
Not delivering opinions Date of decision	JURI 27.3.2018	
Rapporteurs Date appointed	Wolf Klinz 31.5.2018	
Previous rapporteurs	Ramon Tremosa i Balcells	
Discussed in committee	8.10.2018	19.11.2018
Date adopted	3.12.2018	
Result of final vote	+: 34	–: 3
	0: 2	
Members present for the final vote	Pervenche Berès, Esther de Lange, Markus Ferber, Jonás Fernández, Roberto Gualtieri, Brian Hayes, Petr Ježek, Wolf Klinz, Georgios Kyrtzos, Philippe Lamberts, Werner Langen, Bernd Lucke, Olle Ludvigsson, Ivana Maletić, Marisa Matias, Gabriel Mato, Alex Mayer, Bernard Monot, Luděk Niedermayer, Ralph Packet, Sirpa Pietikäinen, Anne Sander, Martin Schirdewan, Molly Scott Cato, Pedro Silva Pereira, Peter Simon, Paul Tang, Marco Valli, Miguel Viegas, Jakob von Weizsäcker	
Substitutes present for the final vote	Enrique Calvet Chambon, Mady Delvaux, Syed Kamall, Alain Lamassoure, Luigi Morgano, Michel Reimon, Lieve Wierinck	
Substitutes under Rule 200(2) present for the final vote	Barbara Lochbihler, Jarosław Wałęsa	
Date tabled	6.12.2018	

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

34	+
ALDE	Enrique Calvet Chambon, Petr Ježek, Wolf Klinz, Lieve Wierinck
ECR	Syed Kamall, Bernd Lucke, Ralph Packet
PPE	Markus Ferber, Brian Hayes, Georgios Kyrtos, Alain Lamassoure, Esther de Lange, Werner Langen, Ivana Maletić, Gabriel Mato, Luděk Niedermayer, Sirpa Pietikäinen, Anne Sander, Jarosław Wałęsa
S&D	Pervenche Berès, Mady Delvaux, Jonás Fernández, Roberto Gualtieri, Olle Ludvigsson, Alex Mayer, Luigi Morgano, Pedro Silva Pereira, Peter Simon, Paul Tang, Jakob von Weizsäcker
VERTS/ALE	Philippe Lamberts, Barbara Lochbihler, Michel Reimon, Molly Scott Cato

3	-
GUE/NGL	Marisa Matias, Martin Schirdewan, Miguel Viegas

2	0
EFDD	Bernard Monot, Marco Valli

Key to symbols:

+ : in favour

- : against

0 : abstention