



2018/0045(COD)

18.9.2018

*****I**

DRAFT REPORT

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 (COM(2018)0110 – C8-0110/2018 – 2018/0045(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 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 (COM(2018)0110 – C8-0110/2018 – 2018/0045(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0110),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0110/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of ...¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2018),
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.

¹ OJ C ...

Amendment 1

Proposal for a regulation Title 1

Text proposed by the Commission

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

Amendment

Proposal for a
REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on facilitating cross-border distribution of
collective investment *undertakings* and
amending Regulations (EU) No 345/2013
and (EU) No 346/2013

Or. en

Amendment 2

Proposal for a regulation Recital 1

Text proposed by the Commission

(1) Divergent regulatory and supervisory approaches concerning the cross-border distribution of alternative investment funds ('AIFs'), as defined in Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the Council²⁴, and undertakings for collective investment in transferable securities ('UCITS'), within the meaning of Directive 2009/65/EC of the European Parliament and of the Council²⁵, result in fragmentation and barriers to cross-border marketing and access of AIFs and UCITS, which in turn could prevent them from being marketed in other Member States.

Amendment

(1) Divergent regulatory and supervisory approaches concerning the cross-border distribution of alternative investment funds (AIFs), as defined in *point (a) of* Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council²⁴, *including European Venture Capital Funds (EuVECA), as defined in Regulation (EU) No 345/2013, European Social Entrepreneurship Funds (EuSEF), as defined in Regulation (EU) No 346/2013 and European Long-Term Investment Funds (ELTIF), as defined in Regulation (EU) No 2015/760*, and undertakings for collective investment in transferable securities (UCITS), within the meaning of Directive 2009/65/EC of the European Parliament and of the Council²⁵, result in fragmentation and barriers to cross-border marketing and access of AIFs

and UCITS, which in turn could prevent them from being marketed in other Member States.

²⁴ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

²⁵ 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).

²⁴ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

²⁵ 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).

Or. en

Amendment 3

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) In order to enhance the regulatory framework applicable to investment ***funds*** and to better protect investors, marketing communications to investors in AIFs and UCITS should be identifiable as such, and should present risks and rewards of purchasing units or shares of an AIF or UCITS in an equally prominent manner. In addition, all information included in marketing communications should be presented in a manner that is fair, clear and not misleading. To safeguard investors' protection and secure a level playing field between AIFs and UCITS, the standards for marketing communications should therefore equally apply to marketing communications for AIFs and UCITS.

Amendment

(2) In order to enhance the regulatory framework applicable to ***collective investment undertakings*** and to better protect investors, marketing communications to investors in AIFs and UCITS should be identifiable as such, and should present risks and rewards of purchasing units or shares of an AIF or UCITS in an equally prominent manner. In addition, all information included in marketing communications should be presented in a manner that is fair, clear and not misleading. To safeguard investors' protection and secure a level playing field between AIFs and UCITS, the standards for marketing communications should therefore equally apply to marketing

Amendment 4

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2 a) In order to increase transparency and investor protection and to facilitate access to information on national laws, regulations and administrative provisions applicable to marketing communications, national competent authorities should publish such information on their websites in at least a language customary in the sphere of international finance, including their non-official summaries which would allow managers of collective investment undertakings to get a first indication of those requirements. The publication should only be for information purposes and should not create legal obligations. For the same reasons, the European Supervisory Authority (European Securities and Markets Authority) (ESMA) should create a central database containing summaries of national requirements for marketing communications and hyperlinks to the information published on the websites of competent authorities.

Amendment 5

Proposal for a regulation Recital 2 b (new)

Text proposed by the Commission

Amendment

(2 b) In order to promote good practices of investor protection which are enshrined in the national requirements for fair and clear marketing communications, including their on-line aspects, it should be possible for ESMA to adopt guidelines on the application of those rules to marketing communications.

Or. en

Amendment 6

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) Competent authorities ***that*** decide to require ***systematic*** notification of marketing communications ***should verify*** compliance of those communications with this Regulation and other applicable requirements, ***namely*** whether the marketing communications are identifiable as such, whether they present 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.

Amendment

(3) 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 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.***

Or. en

Amendment 7

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) *To enhance transparency and investor protection, access to information on marketing requirements for shares or units of AIFs or UCITS enshrined in national laws, regulations and administrative provisions should be improved by requiring competent authorities and the European Securities and Markets Authority ('ESMA') to maintain central databases on their websites in at least a language customary in the sphere of international finance.*

Amendment

deleted

Or. en

Amendment 8

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) To ensure equality in treatment and facilitate decision-making of AIFMs and UCITS management companies whether to engage in cross border distribution of investment funds, it is important that fees and charges levied by competent authorities for *the authorisation, registration and* supervision referred to in Directives 2009/65/EC and 2011/61/EU are proportionate to the supervisory tasks carried out and publicly disclosed, and that those fees and charges *are* published on their websites. For the same reason, the ESMA website should include an interactive tool enabling calculations of fees and charges levied by competent authorities

Amendment

(5) To ensure equality in treatment and facilitate decision-making of AIFMs and UCITS management companies whether to engage in cross border distribution of investment funds, it is important that fees and charges levied by competent authorities for supervision *of cross-border marketing activities* referred to in Directives 2009/65/EC and 2011/61/EU are proportionate to the supervisory tasks carried out and publicly disclosed, and those fees and charges *should be* published on their websites. For the same reason, *hyperlinks to the information published on the websites of competent authorities in relation to the fees and charges should be published at the ESMA website in order to have a central point for information.* The ESMA website should *also* include an interactive tool enabling *indicative* calculations of *those* fees and

charges levied by competent authorities.

Or. en

Amendment 9

Proposal for a regulation Recital 5 a (new)

Text proposed by the Commission

Amendment

(5 a) To ensure better recovery of fees or charges and to increase transparency and clarity of the fees and charges structure, where such fees or charges are levied by the competent authorities, AIFMs and UCITS management companies should receive an invoice, an individual payment statement or a payment instructions clearly setting out the amount of fees or charges due and the arrangements for payment.

Or. en

Amendment 10

Proposal for a regulation Recital 6

Text proposed by the Commission

Amendment

(6) Since ESMA, in accordance with Regulation (EU) No 1095/2010 of the European Parliament and of the Council²⁶, should monitor and assess market developments in the area of its competence, it is appropriate and necessary to enhance the knowledge of ESMA by enlarging ESMA's currently existing databases to include all AIFMs and UCITS management companies and all AIFs and UCITS which those management companies manage and market, as well as all the Member States in which those

(6) Since ESMA, in accordance with Regulation (EU) No 1095/2010 of the European Parliament and of the Council²⁶, should monitor and assess market developments in the area of its competence, it is appropriate and necessary to enhance the knowledge of ESMA by enlarging ESMA's currently existing databases to include all AIFMs and UCITS management companies, ***the Member States in which they are providing services*** and all AIFs and UCITS which those ***AIFMs and UCITS*** management

investment *fonds* are marketed. For that purpose, competent authorities should transmit to ESMA notifications, notification letters *or written notices* that they received under Directives 2009/65/EC and 2011/61/EU.

companies manage and market, as well as all the Member States in which those *collective* investment *undertakings* are marketed. For that purpose, *in order to enable ESMA to maintain the central database with up-to-date information*, competent authorities should transmit to ESMA *information on the* notifications, notification letters *and information* that they *have* received under Directives 2009/65/EC and 2011/61/EU *in relation to cross border activity as well as transmit information about any change which should be reflected in the database*.

²⁶ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

²⁶ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Or. en

Amendment 11

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) The Commission should be empowered to adopt implementing technical standards, developed by ESMA, with regard to the standard forms, templates and procedures for *notifications* by competent authorities of the laws, regulations and administrative provisions and their summaries on marketing requirements applicable in their territories, the levels of fees or charges levied by them, and, where applicable, relevant calculation methodologies. Furthermore, to improve the transmission *of information to*

Amendment

(9) The Commission should be empowered to adopt implementing technical standards, developed by ESMA, with regard to the standard forms, templates and procedures for *publication* by competent authorities of the laws, regulations and administrative provisions and their summaries on marketing requirements applicable in their territories, the levels of fees or charges *for cross-border marketing activity* levied by them, and, where applicable, relevant calculation methodologies. Furthermore, to improve

competent authorities and among competent authorities and ESMA, implementing technical standards should cover notifications, notification letters and **written notices** on cross-border activities that are required by Directives 2009/65/EC and 2011/61/EU. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.

the transmission **to** ESMA, implementing technical standards should **also** cover notifications, notification letters and **information** on cross-border activities that are required by Directives 2009/65/EC and 2011/61/EU. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.

Or. en

Amendment 12

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) It is necessary to **coordinate the empowerments granted to the Commission to adopt draft regulatory technical standards and implementing technical standards, as developed by ESMA, in the area of notifications, notification letters or written notices on cross-border activities under this Regulation and under Directives 2009/65/EC and 2011/61/EU. [Directive amending Directive 2009/65/EC and Directive 2011/61/EU with regard to cross-border distribution of collective investment funds] should therefore delete those empowerments from Directives 2009/65/EC and 2011/61/EU.**

Amendment

(10) It is necessary to **specify which information is to be communicated every quarter to ESMA, in order to keep the data bases of all managers and collective investment undertakings up-to-date.**

Or. en

Amendment 13

Proposal for a regulation

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11 a) In order to enable the national competent authorities to exercise the functions attributed to them by this Regulation, Member States should vest them with all the necessary supervisory and investigative powers.

Or. en

Amendment 14

Proposal for a regulation Recital 13

Text proposed by the Commission

Amendment

(13) In order to ensure legal certainty, it is necessary to synchronise the application dates of laws, regulations and administrative provisions implementing [Directive amending Directive 2009/65/EC and Directive 2011/61/EU with regard to cross-border distribution of collective investment **funds**] and of this Regulation with regard to provisions on marketing communications and pre-marketing.

(13) In order to ensure legal certainty, it is necessary to synchronise the application dates of laws, regulations and administrative provisions implementing [Directive amending Directive 2009/65/EC and Directive 2011/61/EU with regard to cross-border distribution of collective investment **undertakings**] and of this Regulation with regard to provisions on marketing communications and pre-marketing.

Or. en

Amendment 15

Proposal for a regulation Article 1 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) ‘AIF’ means an AIF as defined in Article 4(1)(a) of Directive 2011/61/EU;

(a) ‘AIF’ means an AIF as defined in Article 4(1)(a) of Directive 2011/61/EU, **including EuVECA, EuSEF and ELTIF**;

Or. en

Amendment 16

Proposal for a regulation

Article 1 – paragraph 1 – point b

Text proposed by the Commission

(b) ‘AIFM’ means an AIFM as ***defined in Article 4(1)(b)*** of Directive 2011/61/EU;

Amendment

(b) ‘AIFM’ means an AIFM as ***authorised in accordance with Article 6*** of Directive 2011/61/EU;

Or. en

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) ‘EuVECA manager’ means a manager of a qualifying venture capital fund registered in accordance with Article 14 of Regulation (EU) No 345/2013;

Or. en

Amendment 18

Proposal for a regulation

Article 1 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

(b b) ‘EuSEF manager’ means a manager of a qualifying social entrepreneurship fund registered in accordance with Article 15 of Regulation (EU) No 346/2013;

Or. en

Amendment 19

Proposal for a regulation

Article 1 – paragraph 1 – point f

Text proposed by the Commission

(f) ‘UCITS management company’ means a management company as defined in Article 2(1)(b) of Directive 2009/65/EC.

Amendment

(f) ‘UCITS management company’ means a management company as defined in Article 2(1)(b) of Directive 2009/65/EC **or a self-managed UCITS.**

Or. en

Amendment 20

Proposal for a regulation

Article 2 – paragraph 1

Text proposed by the Commission

1. AIFMs **or** UCITS management companies shall ensure that all marketing communications to investors shall be identifiable as such, present risks and rewards of purchasing units or shares of an AIF or of an UCITS in an equally prominent manner and that all information included in marketing communications is fair, clear and not misleading.

Amendment

1. AIFMs, ***EuVECA managers, EuSEF managers and*** UCITS management companies shall ensure that all marketing communications to investors shall be identifiable as such, present risks and rewards of purchasing units or shares of an AIF or of an UCITS in an equally prominent manner and that all information included in marketing communications is fair, clear and not misleading.

Or. en

Amendment 21

Proposal for a regulation

Article 2 – paragraph 3

Text proposed by the Commission

3. AIFMs shall ensure that no marketing communication comprising an invitation to purchase units or shares of an AIF that contains specific information about an AIF makes any statement that

Amendment

3. AIFMs, ***EuVECA managers and EuSEF managers*** shall ensure that no marketing communication comprising an invitation to purchase units or shares of an AIF that contains specific information

contradicts the information that needs to be disclosed to the investors in accordance with Article 23 of Directive 2011/61/EU, or diminishes its significance.

about an AIF makes any statement that contradicts the information that needs to be disclosed to the investors in accordance with Article 23 of Directive 2011/61/EU, or, *respectively, with Article 13 of Regulation 345/2013 or with Article 14 of Regulation 346/2013*, or diminishes its significance.

Or. en

Amendment 22

Proposal for a regulation Article 2 – paragraph 5

Text proposed by the Commission

5. By [PO: Please insert date 24 months after the date of entry into force] ESMA **shall** issue guidelines, and thereafter update those guidelines periodically, on the application of the requirements for marketing communications referred to in the first paragraph, taking into account on-line aspects of marketing communications.

Amendment

5. By [PO: Please insert date 24 months after the date of entry into force] ESMA **may** issue guidelines, and thereafter update those guidelines periodically, on the application of the requirements for marketing communications referred to in the first paragraph, taking into account on-line aspects of marketing communications.

Or. en

Amendment 23

Proposal for a regulation Article 3 – paragraph 1

Text proposed by the Commission

1. Competent authorities shall publish and maintain on their websites **central databases containing all** applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS, and the summaries thereof, in at least a language customary in the sphere of

Amendment

1. Competent authorities shall publish and maintain **up to date complete information on the** applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS, and the summaries thereof, in at least a language customary in the sphere of

international finance.

international finance.

Or. en

Amendment 24

Proposal for a regulation

Article 3 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Competent authorities shall notify to ESMA *the laws, regulations and administrative provisions, and* the summaries *thereof*, referred to in paragraph 1 and the hyperlinks to the websites of competent authorities where that information is published.

Amendment

Competent authorities shall notify to ESMA the summaries referred to in paragraph 1 and the hyperlinks to the websites of competent authorities where that information is published.

Or. en

Amendment 25

Proposal for a regulation

Article 3 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Competent authorities shall notify to ESMA any change in the information provided under the first subparagraph of this paragraph without delay.

Amendment

deleted

Or. en

Amendment 26

Proposal for a regulation

Article 3 – paragraph 3 – subparagraph 1

Text proposed by the Commission

ESMA shall develop draft implementing

Amendment

ESMA shall develop draft implementing

technical standards to determine standard forms, templates and procedures for the notifications under this Article.

technical standards to determine standard forms, templates and procedures for the **publications and** notifications under this Article.

Or. en

Amendment 27

Proposal for a regulation Article 3 – paragraph 4

Text proposed by the Commission

4. By [PO: Please insert date 48 months after the date of entry into force] ESMA shall examine in a report the marketing requirements referred to in paragraph 1 and inform the Commission thereof. ESMA shall update that report every two years.

Amendment

deleted

Or. en

Amendment 28

Proposal for a regulation Article 4 – paragraph 1

Text proposed by the Commission

By [PO: Please insert date 30 months after the date of entry into force], ESMA shall publish and maintain on its website a central database containing the **national laws, regulations and administrative provisions concerning marketing requirements, and the** summaries thereof, and the hyperlinks to the websites of competent authorities.

Amendment

By ... [PO: Please insert date 30 months after the date of entry into force], ESMA shall publish and maintain on its website a central database containing the summaries **referred to in Article 3(1)**, and the hyperlinks to the websites of competent authorities **referred to in Article 3(2)**.

Or. en

Amendment 29

Proposal for a regulation Article 5 – title

Text proposed by the Commission

Verification of marketing communications

Amendment

Ex-ante verification of marketing communications

Or. en

Amendment 30

Proposal for a regulation Article 5 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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 the management companies intend to use directly or indirectly in their dealings with investors.

Or. en

Amendment 31

Proposal for a regulation Article 5 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The *systematic* notification referred to in the first subparagraph shall not constitute a prior condition for the marketing of units of UCITS.

Amendment

The *requirement for prior* notification referred to in the first subparagraph shall not constitute a prior condition for the marketing of units of UCITS *and shall not be part of the notification procedure referred to in Article 93 of Directive 2009/65/EC*.

Amendment 32

Proposal for a regulation

Article 5 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Where competent authorities require notification of marketing communications referred to in the first subparagraph, they shall, within **10** working days, starting on the working day following that of the receipt of **a notification**, inform the UCITS management company of any request to amend its marketing communications.

Amendment

In cases where competent authorities require ***prior*** notification of marketing communications referred to in the first subparagraph ***with the purpose of ex-ante verification***, they shall, within **15** working days, starting on the working day following that of the receipt of ***marketing communications***, inform the UCITS management company of any request to amend its marketing communications.

Or. en

Amendment 33

Proposal for a regulation

Article 5 – paragraph 1 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

The prior notification referred to in the first subparagraph may be required on a systematic basis or in accordance with any other verification practices and is without prejudice to further supervisory powers to verify marketing communications ex-post.

Or. en

Amendment 34

Proposal for a regulation

Article 5 – paragraph 2

Text proposed by the Commission

2. Competent authorities that require **systematic** notification of marketing communications shall establish, apply, and publish on their websites, procedures for the **systematic** notification of marketing communications. The internal rules and procedures shall ensure transparent and non-discriminatory treatment of all UCITS, regardless of the Member States in which the UCITS are authorised.

Amendment

2. Competent authorities that require **prior** notification of marketing communications shall establish, apply, and publish on their websites, procedures for the **prior** notification of marketing communications. The internal rules and procedures shall ensure transparent and non-discriminatory treatment of all UCITS, regardless of the Member States in which the UCITS are authorised.

Or. en

Amendment 35

Proposal for a regulation
Article 5 – paragraph 3

Text proposed by the Commission

3. Where **Member States allow** AIFMs **to** market to retail investors units or shares of **AIFs in their territories**, paragraphs 1 and 2 **of this Article** shall apply mutatis mutandis to those AIFMs.

Amendment

3. Where AIFMs, **EuVECA or EuSEF managers** market to retail investors units or shares of their **AIFs**, paragraphs 1 and 2 shall apply mutatis mutandis to those AIFMs, **EuVECA or EuSEF managers**.

Or. en

Amendment 36

Proposal for a regulation
Article 5 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Competent authorities **that require systematic notification of marketing communications as referred to in paragraph 1** shall, by 31 March of **each year**, report to ESMA **on the decisions taken in the preceding year rejecting or**

Amendment

Competent authorities shall, by 31 March of **every second year starting from [PO: Please insert date 24 months after the date of entry into force]**, report **the following information** to ESMA:

requesting adaptations to marketing communications.

Or. en

Amendment 37

Proposal for a regulation

Article 5 – paragraph 4 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

The report to ESMA shall include the following information:

deleted

Or. en

Amendment 38

Proposal for a regulation

Article 5 – paragraph 4 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) the *total* number of *decisions taken, clearly distinguishing the most frequent breaches, including the description of the subject matter;*

(a) the number of *requests for amendments of marketing communications made on the basis of ex-ante verification, where applicable;*

Or. en

Amendment 39

Proposal for a regulation

Article 5 – paragraph 4 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) the *outcomes of each decision;*

(b) the *number of requests for amendments and decisions taken on the basis of ex-post checks, clearly distinguishing the most frequent breaches, including a description and the*

nature of those breaches;

Or. en

Amendment 40

Proposal for a regulation

Article 5 – paragraph 4 – subparagraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(b a) a description of the most frequent breaches of the requirements referred to in Article 2;

Or. en

Amendment 41

Proposal for a regulation

Article 5 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Amendment

By 30 June of each year, ESMA shall submit a report to the Commission analysing the effects of national laws, regulations and administrative provisions governing marketing communications.

deleted

Or. en

Amendment 42

Proposal for a regulation

Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. *Fees or charges levied by competent authorities shall be proportionate to the expenditure relating to the authorisation or registration and*

1. *Competent authorities shall only levy fees or charges for carrying out their duties in relation to the crossborder activity of AIFMs, EuVECA managers,*

the performance of the supervisory and investigatory powers pursuant to Articles 44, 45 and 46 of Directive 2011/61/EU and Articles 97 and 98 of Directive 2009/65/EC.

EuSEF managers and UCITS management companies where there is a legitimate need for carrying out those duties and only to the extent that such fees and charges are objectively reasonable and consistent with the actual costs incurred by the competent authority for carrying out these duties.

Or. en

Amendment 43

Proposal for a regulation Article 6 – paragraph 2

Text proposed by the Commission

2. Competent authorities shall send an invoice *for the given financial year* to the *registered office of the AIFM or UCITS management company. The invoice shall indicate* the fees or charges referred to in paragraph 1, the means of payment and the date when payment is due.

Amendment

2. Competent authorities shall send an invoice, *an individual payment statement or a payment instruction* to the *address indicated in [second subparagraph of Article 93 (1) of Directive 2009/65/EC or point (i) of Annex IV of Directive 2011/61/EU]* for the fees or charges referred to in paragraph 1, the means of payment and the date when payment is due.

Or. en

Amendment 44

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

1. By [PO: Please insert date 6 months after the date of entry into force], competent authorities shall publish and maintain on their websites *central databases* listing the fees or charges referred to in Article 6(1), or, where applicable, the calculation methodologies

Amendment

1. By [PO: Please insert date 6 months after the date of entry into force], competent authorities shall publish and maintain *up to date information* on their websites listing the fees or charges referred to in Article 6(1), or, where applicable, the calculation methodologies for those fees or

for those fees or charges, in at least a language customary in the sphere of international finance.

charges, in at least a language customary in the sphere of international finance.

Or. en

Amendment 45

Proposal for a regulation

Article 7 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Competent authorities shall notify to ESMA the *levels of fees or charges* referred to *in Article 6(1), and where applicable, the calculation methodologies for those fees or charges.*

Amendment

Competent authorities shall notify to ESMA the *hyperlinks to the websites of competent authorities where the information* referred to *in paragraph 1 is published.*

Or. en

Amendment 46

Proposal for a regulation

Article 7 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Competent authorities shall notify to ESMA any change in the information provided under the first subparagraph without delay.

Amendment

deleted

Or. en

Amendment 47

Proposal for a regulation

Article 8 – title

Text proposed by the Commission

ESMA *interactive database* on fees and

Amendment

ESMA *publication* on fees and charges

charges

Or. en

Amendment 48

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

By [PO: Please insert date 30 months after the date of entry into force] ESMA shall publish and maintain on its website *an interactive database, publicly accessible in at least a language customary in the sphere of international finance, listing the fees or charges referred to in Article 6(1), or, where applicable, the calculation methodologies for those fees or charges.*

Amendment

By [PO: Please insert date 30 months after the date of entry into force], ESMA shall publish and maintain on its website *hyperlinks to the websites of competent authorities referred to in Article 7(2).*

Or. en

Amendment 49

Proposal for a regulation Article 8 – paragraph 2

Text proposed by the Commission

The interactive database shall contain the hyperlinks to the websites of competent authorities referred to in Article 7(1).

Amendment

By [PO: Please insert date 30 months after the date of entry into force], ESMA shall develop, make available and maintain on its website an interactive tool publicly accessible in at least a language customary in the sphere of international finance that provides an indicative calculation of the fees and charges referred to in Article 6(1).

Or. en

Amendment 50

Proposal for a regulation

Article 9

Text proposed by the Commission

Amendment

Article 9

deleted

ESMA interactive tool on fees and charges

By [PO: Please insert date 30 months after the date of entry into force] ESMA shall develop, make available and maintain on its website an interactive tool publicly accessible in at least a language customary in the sphere of international finance presenting the fees and charges referred to in Article 6(1).

The interactive tool shall constitute a part of the interactive database referred to in Article 8.

Or. en

Amendment 51

Proposal for a regulation Article 10 – title

Text proposed by the Commission

Amendment

ESMA central database on **AIFMs, UCITS management companies**, AIFs and UCITS

ESMA central database on **cross-border marketing of** AIFs and UCITS

Or. en

Amendment 52

Proposal for a regulation Article 10 – paragraph 1

Text proposed by the Commission

Amendment

By [PO: Please insert date 30 months after the date of entry into force] ESMA shall publish and maintain on its website a central database, publicly accessible in a

I. By [PO: Please insert date 30 months after the date of entry into force], ESMA shall publish and maintain **up to date** on its website a central database **for**

language customary in the sphere of international finance, listing all *AIFMs, UCITS management companies, AIFs and UCITS which those AIFMs and UCITS management companies manage and market, as well as* the Member States in which *those funds* are marketed.

the cross-border marketing of AIFs and UCITS, publicly accessible in a language customary in the sphere of international finance, listing:

(a) all *AIFs that are marketed in another Member State, their AIFMs and a list of Member States in which they are marketed; and*

(b) all *UCITS that are marketed in another Member State, their UCITS management companies and a list of the Member States in which they are marketed.*

Or. en

Amendment 53

Proposal for a regulation Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The database referred to in paragraph 1 of this Article is without prejudice to the list referred to in the second subparagraph of Article 6(1) of Directive 2009/65/EC, the central public register referred to in the second subparagraph of Article 7(5) of Directive 2011/61/EU, the central database referred to in Article 17 of Regulation (EU) No 345/2013 and the central database referred to in Article 18 of Regulation (EU) No 346/2013.

Or. en

Amendment 54

Proposal for a regulation Article 11 – paragraph 1

Text proposed by the Commission

1. The competent authorities of the home Member States shall **transmit** to ESMA any notification, **any** notification letter, **any written notice or any** information referred to in **paragraphs 3 and 8 of Article 17, paragraphs 2 and 4 of Article 18, paragraphs 3 and 8 of Article 93 and Article 93a(3) of Directive 2009/65/EC and paragraphs 2 and 4 of Article 31, paragraphs 3 and 7 of Article 32, Article 32a(3) and paragraphs 2 and 3 of Article 33 of Directive 2011/61/EU without delay.**

Amendment

1. The competent authorities of the home Member States shall **communicate** to ESMA **quarterly the information which is necessary for creating and maintaining the central database referred to in Article 10 regarding** any notification, notification letter **or** information referred to in **the first subparagraph** of Article **93(1)**, Article 93a(2) of Directive 2009/65/EC, **and in Article 31(2), Article 32(2), Article 32a(2) and** of Directive 2011/61/EU, **and any changes to that information, if those changes would result in a change to the information in the central database referred to in Article 10 of this Regulation.**

Or. en

Amendment 55

**Proposal for a regulation
Article 11 a (new)**

Text proposed by the Commission

Amendment

Article 11 a

Powers of competent authorities

1. Competent authorities shall have all supervisory and investigatory powers that are necessary for the exercise of their functions pursuant to this Regulation.

2. The powers conferred on competent authorities in accordance with Directive 2009/65/EC, Directive 2011/61/EU, Regulation 345/2013 and Regulation 346/2013, Regulation 2015/760 including those related to penalties, shall also be exercised with respect to the managers referred to in Article 2 of this Regulation.

Or. en

Amendment 56

Proposal for a regulation

Article 12 – paragraph 1 – point 1

Regulation (EU) No 345/2013

Article 3 – point o

Text proposed by the Commission

(o) ‘pre-marketing’ means a direct or indirect provision of information on investment strategies or investment ideas by the manager of a qualifying venture capital fund, or on its behalf, to potential investors domiciled or with a registered office in the Union in order to test their interest in a ***not yet registered*** qualifying venture capital fund;

Amendment

(o) ‘pre-marketing’ means a direct or indirect provision of information ***or communication*** on investment strategies or investment ideas by the manager of a qualifying venture capital fund, or on its behalf, to potential investors domiciled or with a registered office in the Union in order to test their interest in a qualifying venture capital fund, ***which is not yet established in the Member State where the potential investors are domiciled or have their registered office;***

Or. en

Amendment 57

Proposal for a regulation

Article 12 – paragraph 1 – point 2

Regulation (EU) No 345/2013

Article 4a – paragraph 1

Text proposed by the Commission

1. Managers of qualifying venture capital funds may engage in pre-marketing in the Union, ***excluding where the information presented to potential investors:***

Amendment

1. Managers of qualifying venture capital funds may engage in pre-marketing in the Union.

Or. en

Amendment 58

Proposal for a regulation

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Article 12 – paragraph 1 – point 2

Regulation (EU) No 345/2013

Article 4a – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) relates to established qualifying venture capital funds;

deleted

Or. en

Amendment 59

Proposal for a regulation

Article 12 – paragraph 1 – point 2

Regulation (EU) No 345/2013

Article 4a – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) contains any reference to established qualifying venture capital funds;

deleted

Or. en

Amendment 60

Proposal for a regulation

Article 12 – paragraph 1 – point 2

Regulation (EU) No 345/2013

Article 4a – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) enables investors to commit to acquiring units or shares of particular qualifying venture capital funds;

deleted

Or. en

Amendment 61

Proposal for a regulation
Article 12 – paragraph 1 – point 2
Regulation (EU) No 345/2013
Article 4a – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) amounts to a prospectus, constitutional documents of not yet registered qualifying venture capital funds, offering documents, subscription forms or similar documents whether in a draft or a final form allowing investors to take an investment decision.

deleted

Or. en

Amendment 62

Proposal for a regulation
Article 12 – paragraph 1 – point 2
Regulation (EU) No 345/2013
Article 4a – paragraph 3

Text proposed by the Commission

Amendment

3. *Subscription by investors to units or shares of qualifying venture capital funds registered following the pre-marketing in accordance with paragraph 1 or to the units or shares of qualifying venture capital funds managed and marketed by managers of qualifying venture capital funds that engaged in pre-marketing of not yet registered qualifying venture capital funds with the similar features shall be considered the result of marketing.*

3. *Managers of qualifying venture funds shall ensure that investors, within 18 months of being contacted as part of pre-marketing, may acquire units or shares in a qualifying venture capital fund referred to in the information provided in the context of pre-marketing or of a qualifying venture capital fund established as a result of the pre-marketing only under marketing in accordance with Article 15.*

Or. en

Amendment 63

Proposal for a regulation
Article 12 – paragraph 1 – point 2

Text proposed by the Commission

4. Managers of qualifying venture capital funds ***offering for subscription units or shares of qualifying venture capital funds that were the object of*** pre-marketing ***shall inform the*** competent authority in accordance with Article 15.

Amendment

4. Managers of qualifying venture capital funds ***shall ensure that information relating to their*** pre-marketing activities is available, and provided upon request, to ***their*** competent authorities after that activity takes place. ***That information shall 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.***

Or. en

Amendment 64

Proposal for a regulation

Article 13 – paragraph 1 – point 1

Regulation (EU) No 346/2013

Article 3 – point o

Text proposed by the Commission

(o) ‘pre-marketing’ means a direct or indirect provision of information on investment strategies or investment ideas by the manager of a qualifying social entrepreneurship fund, or on its behalf, to potential investors domiciled or with a registered office in the Union in order to test their interest in a ***not yet registered*** qualifying social entrepreneurship fund;

Amendment

(o) ‘pre-marketing’ means a direct or indirect provision of information ***or communication*** on investment strategies or investment ideas by the manager of a qualifying social entrepreneurship fund, or on its behalf, to potential investors domiciled or with a registered office in the Union in order to test their interest in a qualifying social entrepreneurship fund, ***which is not yet established in that Member State where the potential investors are domiciled or have their registered office;***

Or. en

Amendment 65

Proposal for a regulation

Article 13 – paragraph 1 – point 2

Regulation (EU) No 346/2013

Article 4a – paragraph 1

Text proposed by the Commission

1. Managers of qualifying social entrepreneurship funds may engage in pre-marketing in the Union, ***excluding where the information presented to potential investors:***

Amendment

1. Managers of qualifying social entrepreneurship funds may engage in pre-marketing in the Union.

Or. en

Amendment 66

Proposal for a regulation

Article 13 – paragraph 1 – point 2

Regulation (EU) No 346/2013

Article 4a – paragraph 1 – point a

Text proposed by the Commission

(a) ***relates to established qualifying social entrepreneurship funds;***

deleted

Amendment

Or. en

Amendment 67

Proposal for a regulation

Article 13 – paragraph 1 – point 2

Regulation (EU) No 346/2013

Article 4a – paragraph 1 – point b

Text proposed by the Commission

(b) ***contains any reference to established qualifying social entrepreneurship funds;***

deleted

Amendment

Or. en

Amendment 68

Proposal for a regulation

Article 13 – paragraph 1 – point 2

Regulation (EU) No 346/2013

Article 4a – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) enables investors to commit to acquiring units or shares of particular qualifying social entrepreneurship funds;

deleted

Or. en

Amendment 69

Proposal for a regulation

Article 13 – paragraph 1 – point 2

Regulation (EU) No 346/2013

Article 4a – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) amounts to a prospectus, constitutional documents of not yet registered qualifying social entrepreneurship funds, offering documents, subscription forms or similar documents whether in a draft or a final form allowing investors to take an investment decision.

deleted

Or. en

Amendment 70

Proposal for a regulation

Article 13 – paragraph 1 – point 2

Regulation (EU) No 346/2013

Article 4a – paragraph 3

Text proposed by the Commission

Amendment

3. ***Subscription by investors to units or shares of qualifying social entrepreneurship funds registered following the pre-marketing in accordance with paragraph 1 or to the units or shares of qualifying social entrepreneurship funds managed and marketed by managers of qualifying social entrepreneurship funds that engaged in pre-marketing of not yet registered qualifying social entrepreneurship funds with the similar features shall be considered the result of marketing.***

3. ***Managers of qualifying social entrepreneurship funds shall ensure that investors, within 18 months of being contacted as part of pre-marketing, may acquire units or shares in a qualifying social entrepreneurship fund referred to in the information provided in the context of pre-marketing or of a qualifying social entrepreneurship fund established as a result of the pre-marketing only under marketing in accordance with Article 16.***

Or. en

Amendment 71

Proposal for a regulation

Article 13 – paragraph 1 – point 2

Regulation (EU) No 346/2013

Article 4a – paragraph 4

Text proposed by the Commission

4. Managers of qualifying social entrepreneurship funds ***offering for subscription units or shares of qualifying social entrepreneurship funds that were the object of pre-marketing shall inform the competent authority in accordance with Article 16.***

Amendment

4. Managers of qualifying social entrepreneurship funds ***shall ensure that information relating to their pre-marketing activities is available, and provided upon request, to their competent authorities after that activity takes place. That information shall 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.***

Or. en

EXPLANATORY STATEMENT

Your rapporteur essentially supports the Commission's proposals, which form part of the Commission's package to deepen the Capital Markets Union. They follow a consultation process set up to identify barriers to cross-border distribution of investment funds and options to tackle them. Key areas identified for action include procedures for meeting marketing requirements by national authorities, transparency on fees set by such authorities, and the possibility to 'pre-market' across borders alternative investment funds that have not been established.

Addressing these issues across the whole range of fund types provided for in EU legislation means amending the AIFMD, UCITS Directive and the EuVECA and EuSEF Regulations.

A key provision (new paragraph 2 in Articles 92 UCITS and 43a AIFMD) is to prohibit Member States from requiring a physical presence on their territory of such funds intending to market there. Your rapporteur supports this change, which has also been agreed in the Council in its general approach reached in June 2018.

The general approach of the Council makes a number of changes to the Commission proposal. Some are of a relatively technical nature and in many cases your rapporteur has drafted amendments which go in the same direction. If the committee follows me in this then it will facilitate agreement in trilogues before the end of the legislative term.

In certain areas, while agreeing with the Council that the Commission's approach needs to be modified, I have made proposals, which diverge from the Council text. In particular:

- in the definition of pre-marketing to professional investors which is proposed to be introduced in the AIFMD and in the EuVECA and EuSEF Regulations (Article 2(1) of the proposed amending directive, Articles 12 and 13 of the amending regulation), and allowed under the proposed new Article 30a of AIFMD and 4a of the EuVECA and EuSEF Regulations, I propose a more targeted approach in order to focus on the main goal: to make pre-marketing possible but keep reverse solicitation from happening. This is achieved by simplifying the conditions for pre-marketing and by introducing a more practical system without overly increasing the administrative burden for the investment undertakings. I suggest that pre-marketing should be facilitated, but within 18 months of being contacted as part of pre-marketing, investors should only be allowed to acquire units or shares in an AIF under marketing. The pre-marketing activities need to be documented and the documents must be provided upon request to the competent authorities.

- in the provisions concerning the possibility for AIFMs and UCITS managers to cease marketing a fund which has previously been active in a particular host Member State (Article 93a UCITS Directive introduced by Article 1(7) of the proposed directive, and Article 32a AIFMD introduced by Article 2(5)), I propose further simplifications. The continuation of marketing should not be mandatory if it is not economically sensible from the point of view of the investment undertaking. What needs to be ensured is that the investors are protected. They need to be offered a repurchase offer free of any charges and if they choose to remain invested, the financial undertaking must continue to fulfil the disclosure and reporting

requirements as laid down in Union law while the competent authorities must be able to continue to fulfil their supervisory tasks.

- in the matter of fees that can be charged by competent authorities, in particular in host Member States, in relation to cross border activity of fund managers (Article 6 of the Regulation) I suggest a tighter test for these fees. I believe it is important that such fees are charged only where there is a legitimate need for supervisory tasks to be carried out and only to the extent that such fees and charges are objectively reasonable and consistent with the costs incurred by the competent authority.