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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: 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
- Outcome of the European Parliament's first reading
(Strasbourg, 15 to 18 April 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p. 5.

In this context, the rapporteur, Wolf KLINZ (ALDE, DE), presented a compromise amendment (amendment 2) to the proposal for a Directive on behalf of the Committee on Economic and Monetary Affairs. This amendment had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 16 April 2019, the plenary adopted the compromise amendment (amendment 2) to the proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Cross-border distribution of collective investment undertakings (Directive) *I**

European Parliament legislative resolution of 16 April 2019 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 the opinion of the European Economic and Social Committee of 11 July 2018¹,
 - having regard to the provisional agreement approved by the responsible committee under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 27 February 2019 to approve Parliament's position, in accordance with Article 294(4) 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.

¹ OJ C 367, 10.10.2018, p. 50.

P8_TC1-COD(2018)0041

Position of the European Parliament adopted at first reading on 16 April 2019 with a view to the adoption of Directive (EU) 2019/... of the European Parliament and of the Council amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment *undertakings*

(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 Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 367, 10.10.2018, p. 50.

² Position of the European Parliament of 16 April 2019.

Whereas:

- (1) Common objectives 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 include ensuring a level playing field among collective investment undertakings and removing restrictions to the free movement of units and shares of collective investment **undertakings** in the Union, at the same time ensuring more uniform protection for investors. While those objectives have been largely achieved, certain barriers still hamper the ability of fund managers to fully benefit from the internal market.
- (2) This Directive is complemented by Regulation (EU) 2019/... of the European Parliament and of the Council³⁺. That Regulation 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 procedure **█** for notifying competent authorities of changes **regarding** UCITS **with the notification procedure** laid down in Directive 2011/61/EU.

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 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).

³ Regulation (EU) 2019/... of the European Parliament and of the Council of ... on facilitating cross-border distribution of collective investment **undertakings** and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014 (OJ L ...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS .../... (2018/0045(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

- (4) Regulation (EU) 2019/...⁺ further strengthens the principles applicable to marketing communications governed by Directive 2009/65/EC and extends the application of those principles to AIFMs, thereby resulting in a high standard of investor protection, regardless of the type of investor. The corresponding provisions of Directive 2009/65/EC relating to marketing communications and accessibility of national laws and regulations relevant to the arrangement of marketing units of UCITS are therefore no longer necessary and should be deleted.

- (5) 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. In addition, local facilities are rarely used by investors in the manner intended by that Directive. The preferred method of contact has shifted to direct interaction between investors and fund managers, either electronically or by telephone, whereas payments and redemptions are executed through other channels. While those local facilities are currently used for administrative purposes such as cross-border recovery of regulatory fees, such issues should be addressed via other means including cooperation between competent authorities. Consequently, rules should be established which modernise and specify the requirements for providing facilities to retail investors, **and Member States should not require a local physical presence for the provision of such facilities**. In any case, those rules should ensure that investors have access to the information to which they are entitled.
- (6) In order to ensure the consistent 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 alternative investment funds (AIFs) to retail investors in their territories.

- █
- (7) The absence of clear and uniform conditions for the discontinuation of marketing of units or shares of a UCITS or an AIF in a host Member State creates economic and legal uncertainty for fund managers. Therefore, Directives 2009/65/EC and 2011/61/EU should set out clear conditions █ under which **de-notification of the arrangements made for marketing as regards some or all of the units or shares** could take place. █ Those conditions should balance, on the one hand, the **ability of collective investment undertakings or their managers to terminate their arrangements made for marketing of their shares or units** when the established conditions are met and, on the other hand, the interests of investors in **such undertakings**.

- (8) The possibility to cease marketing UCITS or AIFs in a particular Member State should neither come at a cost to investors nor diminish their safeguards under Directive 2009/65/EC or Directive 2011/61/EU, in particular with regard to their right to accurate information on the continued activities of those funds.
- (9) There are cases where an AIFM wishing to test investor appetite for a particular investment idea or investment strategy is faced with diverging treatment of pre-marketing in different national legal systems. The definition of pre-marketing and the conditions under which it is permitted vary considerably between those Member States in which it is permitted, whereas in other Member States there is no concept of pre-marketing at all. To address those divergences, a harmonised definition of pre-marketing should be provided and the conditions under which an EU AIFM can engage in *pre-marketing* should be established.

- (10) For pre-marketing to be recognised as such under Directive 2011/61/EU, it should ***be addressed to potential professional investors and concern an investment idea or investment strategy in order to test their interest in an AIF or a compartment which is not yet established, or which is established, but not yet notified for marketing in accordance with that Directive.*** Accordingly, during the course of pre-marketing, it should not be possible for investors to subscribe to the units or shares of an AIF ***and the distribution of subscription forms or similar documents to potential professional investors, whether in draft or final form,*** should not be permitted. ***EU AIFMs should ensure that investors do not acquire units or shares in an AIF through pre-marketing and that investors contacted as part of pre-marketing can only acquire units or shares in that AIF through marketing permitted under Directive 2011/61/EU.*** Any subscription by professional investors, ***within 18 months of the EU AIFM having begun pre-marketing,*** to units or shares of an AIF ***referred to in the information provided in the context of pre-marketing, or of an AIF established as a result of the pre-marketing,*** should be considered to be the result of marketing ***and should be subject to the applicable notification procedures referred to in Directive 2011/61/EU.*** To ensure that national competent authorities can exercise control over pre-marketing in their Member State, ***an EU AIFM should send, within 2 weeks of having begun pre-marketing, an informal letter, in paper form or by electronic means, to the competent authorities of its home Member State, specifying inter alia in which Member States it is or has engaged in pre-marketing, the periods during which the pre-marketing is taking or has taken place and including, where relevant, a list of its AIFs and compartments of AIFs which are or were the subject of pre-marketing. The competent authorities of the home Member State of the EU AIFM should promptly inform the competent authorities of the Member States in which the EU AIFM is or has engaged in pre-marketing thereof.***

- (11) *EU AIFMs should ensure that their pre-marketing is adequately documented.*
- (12) *National laws, regulations and administrative provisions necessary to comply with Directive 2011/61/EU and, in particular, with harmonised rules on pre-marketing, should not in any way disadvantage EU AIFMs vis-à-vis non-EU AIFMs. This concerns both the current situation in which non-EU AIFMs do not have passporting rights, and a situation in which the provisions on such passporting in Directive 2011/61/EU become applicable.*
- (13) In order to ensure legal certainty, it is necessary to synchronise the application dates of *national* laws, regulations and administrative provisions implementing this Directive *and* Regulation (EU) 2019/...⁺ with regard to relevant provisions on marketing communications and pre-marketing.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS .../... (2018/0045(COD)).

- (14) 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:

¹ OJ C 369, 17.12.2011, p. 14.

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 as referred to in the first subparagraph, *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 receipt of 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 management company’s home Member State shall inform the competent authorities of the management company’s host Member State accordingly.*

Where a change referred to in *the first subparagraph* is implemented after information has been transmitted in accordance with the second subparagraph and pursuant to that change the *management company* no longer complies with this Directive, the competent authorities of the *management company’s home Member State* ■ shall take all appropriate measures in accordance with Article 98 *and shall notify the competent authorities of the management company’s host Member State without undue delay of the measures taken.*’;

■

- (2) Article 77 is deleted;
- (3) in Article 91, paragraph 3 is deleted;

(4) Article 92 is replaced by the following:

‘Article 92

1. Member States shall ensure that a UCITS ***makes available, in each Member State where it intends to market its units***, 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 documents required pursuant to Chapter IX;
 - (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 the ***information and documents required pursuant to Chapter IX*** available to investors ***under the conditions laid down in Article 94***, for the purposes of inspection and obtaining copies thereof;
 - (e) provide investors with information relevant to the tasks that the facilities perform in a durable medium; ***and***
 - (f) ***act as a contact point for*** communicating ***with the competent authorities***.
2. Member States shall not require a 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, including electronically, 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, by a third *party* which is subject to regulation *and supervision* governing the tasks to be performed, or by both.

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

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

(a) *in paragraph 1, the following subparagraph is added*:

‘The notification letter shall also include the details necessary, including the address, for the invoicing or for the communication of any applicable regulatory fees or charges by the competent authorities of the host Member State and information on the facilities for performing the tasks 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 UCITS host*** Member State at least 1 month before implementing that change.

Where, pursuant to a change as 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 inform the UCITS within ***15*** working days ***of receipt of 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 accordingly.***

Where a change referred to in ***the first subparagraph*** is implemented after information has been transmitted 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 appropriate measures in accordance with Article 98, including, where necessary, the express prohibition of marketing of the UCITS ***and shall notify the competent authorities of the UCITS host Member State without undue delay of the measures taken.***’;

█

(6) the following article is inserted:

‘Article 93a

1. █ Member *States* shall ensure that *a* UCITS may *de-notify arrangements made for marketing as regards* units, including, where relevant, in respect of share classes, in a Member State *in respect of which* it has *made a notification* in accordance with Article 93, where all the following conditions are fulfilled:

█

- (a) a blanket offer *is made* to repurchase *or redeem*, free of any charges or deductions, all *such* units held by investors in *that* Member State, is publicly *available* for at least 30 working days, and is addressed, *directly or through financial intermediaries*, individually to all investors in that Member State █ whose identity is known;
- (b) the intention *to terminate arrangements made for marketing such units* in *that* Member State █ 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;
- (c) *any contractual arrangements with financial intermediaries or delegates are modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the units identified in the notification referred to in paragraph 2.*

The information referred to in points (a) and (b) shall clearly describe the consequences for investors if they do not accept the offer to redeem or repurchase their units.

The information referred to in points (a) and (b) of the first subparagraph shall be provided in the official *language or one of the official* languages of the Member State in respect of which the UCITS has made a notification in accordance with Article 93 *or in a language approved by the competent authorities of that Member State. As of the date referred to in point (c) of the first subparagraph, the UCITS shall cease any new or further, direct or indirect, offering or placement of its units which were the subject of de-notification in that Member State.*

2. The UCITS shall submit a notification to the competent *authorities* of its home Member State *containing* the information referred to in *points (a), (b) and (c) of the first subparagraph of* 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 *a complete* notification **■**, transmit *that notification* to the competent authorities of the Member State *identified in the notification referred to in paragraph 2*, and to ESMA.

Upon transmission of the notification pursuant to the first subparagraph, the competent authorities of the UCITS home Member State shall promptly notify the UCITS of that transmission. **■**

4. The UCITS shall *provide* investors who remain invested in the UCITS *as well as the competent authorities of the UCITS home Member State* with the information required under Articles 68 to 82 and under Article 94.

5. *The competent authorities of the UCITS home Member State shall transmit to the competent authorities of the Member State identified in the notification referred to in paragraph 2 of this Article information on any changes to the documents referred to in Article 93(2).*
6. *The competent authorities of the Member State identified in the notification referred to in paragraph 2 of this Article shall have the same rights and obligations as the competent authorities of the UCITS host Member State as set out in Article 21(2), Article 97(3) and Article 108. Without prejudice to other monitoring activities and supervisory powers as referred to in Article 21(2) and Article 97, as from the date of transmission under paragraph 5 of this Article, the competent authorities of the Member State identified in the notification referred to in paragraph 2 of this Article shall not require the UCITS concerned to demonstrate compliance with national laws, regulations and administrative provisions governing marketing requirements referred to in Article 5 of Regulation (EU) 2019/... of the European Parliament and of the Council^{*,+}.*
7. Member States shall allow for the use of any electronic or other distance communication means for the purposes of paragraph 4, provided that 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.*

* *Regulation (EU) 2019/... of the European Parliament and of the Council of ... on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014 (OJ L ...).’;*

(7) in Article 95(1), *point (a)* is deleted.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS .../... (2018/0045(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

Article 2
Amendments to Directive 2011/61/EU

Directive 2011/61/EU is amended as follows:

(1) in Article 4(1), the following point is inserted:

‘(aea) ‘pre-marketing’ means **■** provision of information *or communication, direct or indirect*, on investment strategies or investment ideas by an *EU* AIFM or on its behalf, to *potential* professional investors domiciled or with a registered office in the Union in order to test their interest in an AIF or a compartment which is not yet established, *or which is established, but not yet notified for marketing in accordance with Article 31 or 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 potential investor to invest in the units or shares of that AIF or compartment;*’;

(2) the following article 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, *except* where the information presented to potential professional investors:

■

- (a) is sufficient to allow investors to commit to acquiring units or shares of a particular AIF;
- (b) *amounts to subscription forms or similar documents whether in a draft or a final form; or*

- (c) amounts to **■** constitutional documents, *a prospectus or offering documents* of a not-yet-established AIF *in* a final form **■** .

Where a draft prospectus or offering documents are provided, they shall not contain information sufficient to allow investors to take an investment decision and shall clearly state that:

- (a) *they do not constitute an offer or an invitation to subscribe to units or shares of an AIF; and*
- (b) *the information presented therein should not be relied upon because it is incomplete and may be subject to change.*

■ Member States shall ensure that an *EU AIFM is not required* to notify the competent authorities *of the content or of the addressees* of pre-marketing, *or to fulfil any conditions or requirements other than those set out in this Article,* before it engages in pre-marketing.

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

Any subscription by professional investors, *within 18 months of the EU AIFM having begun pre-marketing,* to units or shares of an AIF *referred to in the information provided in the context of pre-marketing, or of an AIF* established *as a result of* the pre-marketing, **■** shall be considered to be the result of marketing *and shall be subject to the applicable notification procedures referred to in Articles 31 and 32.*

Member States shall ensure that an EU AIFM sends, within 2 weeks of it having begun pre-marketing, an informal letter, in paper form or by electronic means, to the competent authorities of its home Member State. That letter shall specify the Member States in which and the periods during which the pre-marketing is taking or has taken place, a brief description of the pre-marketing including information on the investment strategies presented and, where relevant, a list of the AIFs and compartments of AIFs which are or were the subject of pre-marketing. The competent authorities of the home Member State of the EU AIFM shall promptly inform the competent authorities of the Member States in which the EU AIFM is or was engaged in pre-marketing. The competent authorities of the Member State in which pre-marketing is taking or has taken place may request the competent authorities of the home Member State of the EU AIFM to provide further information on the pre-marketing is taking or has taken place on its territory.

3. *A third party shall only engage in pre-marketing on behalf of an authorised EU AIFM where it is authorised as an investment firm in accordance with Directive 2014/65/EU of the European Parliament and of the Council*, as a credit institution in accordance with Directive 2013/36/EU of the European Parliament and of the Council**, as a UCITS management company in accordance with Directive 2009/65/EC, as an AIFM in accordance with this Directive, or acts as a tied agent in accordance with Directive 2014/65/EU. Such a third party shall be subject to the conditions set out in this Article.*

4. *An EU AIFM shall ensure that pre-marketing is adequately documented.*

* *Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).*

** *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).’;*

- (3) ■ in Article 32(7), the second, third and fourth subparagraphs are 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 *receipt of all the information referred to in the first subparagraph* that it is not to implement the change. *In that case, the competent authorities of the home Member State of the AIFM shall notify the competent authorities of the host Member State of the AIFM accordingly.*

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.*

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 within 1 month inform the competent authorities of the host Member State of the AIFM of those changes.’;

■

(4) the following article is inserted:

‘Article 32a

De-notification of arrangements made for the marketing of units or shares of *some or all* 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 ***de-notify arrangements made for marketing as regards*** units or shares ***of some or all of its AIFs*** in a Member State ***in respect of which*** it has ***made a notification*** in accordance with Article 32, where all **■** the following conditions are fulfilled:

■

- (a) ***except in the case of closed-ended AIFs and funds regulated by Regulation (EU) 2015/760 of the European Parliament and of the Council****, a blanket offer ***is made*** to repurchase ***or redeem***, free of any charges or deductions, all ***such*** AIF units or shares held by investors in ***that*** Member State, is ***publicly available*** for at least 30 working days, and is addressed, ***directly or through financial intermediaries***, individually to all investors in that Member State whose identity is known;
- (b) the intention ***to terminate arrangements made for marketing units or shares of some or all of its AIFs*** in ***that*** Member State is made public by means of a publicly available medium, ***including by electronic means***, which is customary for marketing AIFs and suitable for a typical AIF investor;
- (c) ***any contractual arrangements with financial intermediaries or delegates are modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the units or shares identified in the notification referred to in paragraph 2.***

As of the date referred to in point (c) of the first subparagraph, the AIFM shall cease any new or further, direct or indirect, offering or placement of units or shares of the AIF it manages in the Member State in respect of which it has submitted a notification in accordance with paragraph 2.

2. The AIFM shall submit a notification to the competent *authorities* of its home Member State *containing* the information referred to in *points (a), (b) and (c) of the first subparagraph of 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 from the receipt of a *complete* notification, transmit *that notification* to the competent authorities of the Member State *identified in the notification referred to in paragraph 2*, and to ESMA.

Upon transmission of the notification pursuant to the first subparagraph, the competent authorities of the home Member State of the AIFM shall promptly notify the AIFM of that transmission.

For a period of 36 months from the date referred to in point (c) of the first subparagraph of paragraph 1, the AIFM shall not engage in pre-marketing of units or shares of the EU AIFs referred to in the notification, or in respect of similar investment strategies or investment ideas, in the Member State identified in the notification referred to in paragraph 2.

4. 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* with the information required under Articles 22 and 23.

5. *The competent authorities of the home Member State of the AIFM shall transmit to the competent authorities of the Member State identified in the notification referred to in paragraph 2, information on any changes to the documentation and information referred to in points (b) to (f) of Annex IV.*
6. *The competent authorities of the Member State identified in the notification referred to in paragraph 2 of this Article shall have the same rights and obligations as the competent authorities of the host Member State of the AIFM as set out in Article 45.*
7. *Without prejudice to other supervisory powers referred to in Article 45(3), as from the date of transmission under paragraph 5 of this Article, the competent authorities of the Member State identified in the notification referred to in paragraph 2 of this Article, shall not require the AIFM concerned to demonstrate compliance with national laws, regulations and administrative provisions governing marketing requirements as referred to in Article 5 of Regulation (EU) 2019/... of the European Parliament and of the Council^{**+}.*
8. Member States shall allow for the use of any electronic or other distance communication means for the purposes of paragraph 4.

* *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. 98).*

** *Regulation (EU) 2019/... of the European Parliament and of the Council of ... on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014 (OJ L ...).⁺*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS .../... (2018/0045(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

(5) *in Article 33(6), the second and third subparagraphs are 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 receipt of all the information referred to in the first subparagraph that it is not to implement the change.

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) the following article is inserted:

‘Article 43a

Facilities available to retail investors

1. Without prejudice to Article 26 of Regulation (EU) 2015/760 ■, 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 *the information and documents required pursuant to Articles 22 and 23* available to investors for the purposes of inspection and obtaining copies thereof;
 - (e) provide investors with information relevant to the tasks that the facilities perform in a durable medium as defined in point (m) of Article 2(1) of Directive 2009/65/EC; *and*
 - (f) *act as a contact point for communicating 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 purposes of paragraph 1.
3. The AIFM shall ensure that the facilities *to perform the tasks* referred to in paragraph 1, including electronically, 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, by a third *party which is* subject to regulation *and supervision* governing the tasks to be performed, or by both.

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

(7) *the following article is inserted:*

‘Article 69a

Assessment of the passport regime

Before the entry into force of the delegated acts referred to in Article 67(6) pursuant to which the rules set out in Article 35 and Articles 37 to 41 become applicable, the Commission shall submit a report to the European Parliament and to the Council, taking into account the result of an assessment of the passport regime provided in this Directive including the extension of that regime to non-EU AIFMs. That report shall be accompanied, where appropriate, by a legislative proposal.’;

(8) *in Annex IV, the following points are added:*

‘(i) the details necessary, including the address, for the invoicing or for the communication of any applicable regulatory fees or charges by the competent authorities of the host Member State;

(j) information on the facilities for performing the tasks referred to in Article 43a.’;

Article 3
Transposition

1. By ... [24 months after the date of entry into force of this Directive], Member States shall adopt and publish the ***national*** laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those provisions from ... [24 months after the date of entry into force of this Directive].

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. The methods of making such reference shall be laid down by Member States.

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 ... [60 months after the date of entry into force 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. ***By ... [72 months after the date of entry into force of this Directive], the Commission shall present a report on the application of this Directive.***

Article 5

Review

By ... [48 months after the date of entry into force of this Directive], the Commission shall present a report assessing, inter alia, the merits of harmonising the provisions applicable to UCITS management companies testing investor appetite for a particular investment idea or investment strategy, and whether any amendments to Directive 2009/65/EC are needed to that end.

Article 6

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*.

Article 7

This Directive is addressed to the Member States.

Done at ...

For the European Parliament

For the Council

The President

The President