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NOTE

From: Presidency
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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
- Presidency compromise

Delegations will please find below a Presidency compromise text for the above-mentioned proposal. Additions to the text of the Commission proposal (doc. 6988/18) are marked in **underlined bold** and deletions are indicated in ~~striketrough~~.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2009/65/EC of the European Parliament and of the Council and Directive 2011/61/EU of the European Parliament and of the Council with regard to cross-border distribution of collective investment undertakings funds

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank¹,

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

Acting in accordance with the ordinary legislative procedure,

¹ OJ C [...], [...], p. [...].

² OJ C , , p. .

Whereas:

- (1) A common objective of Directive 2009/65/EC of the European Parliament and of the Council³ and Directive 2011/61/EU of the European Parliament and of the Council⁴ is to ensure a level playing field among collective investment undertakings and to remove restrictions to the free movement of units and shares of collective investment **undertakings funds** in the Union at the same time ensuring more uniform protection for investors. While these objectives have been largely achieved, certain barriers still hamper fund managers' ability to fully benefit from the internal market.
- (2) The rules proposed in this Directive are complemented by a dedicated Regulation [*on facilitating cross-border distribution of collective investment **undertakings funds** and amending Regulations (EU) No 345/2013 and (EU) No 346/2013*]. It lays down additional rules and procedures concerning undertakings for collective investment in transferable securities (UCITS) and alternative investment fund managers (AIFMs) That Regulation and this Directive should collectively further coordinate the conditions for fund managers operating in the internal market and facilitate cross-border distribution of the funds they manage.
- (3) It is necessary to fill in the regulatory gap and align the **notification procedure** ~~procedure governing notification~~ to the competent authorities of the changes **regarding UCITS** that ~~UCITS are planning in relation to their managed funds with those~~ **the notification procedure** ~~which are~~ laid down in Directive 2011/61/EU.

³ 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*.

⁴ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (AIFM), *OJ L 174, 1.7.2011, p. 1*.

- (4) Regulation [*on facilitating cross-border distribution of collective investment ~~undertakings funds~~ and amending Regulations (EU) No 345/2013 and (EU) No 346/2013*] establishes new rules requiring the European Securities and Markets Authority (ESMA), to develop draft regulatory technical standards and draft implementing technical standards to specify the information required and the forms, templates and procedures to be used for the transmission of that information in relation to **the** management of ~~funds~~, take-up or discontinuing of marketing of **collective investment undertakings** funds under Directive 2009/65/EC and Directive 2011/61/EU. Therefore, the provisions of those two Directives providing ESMA with discretionary empowerments to develop regulatory technical standards and draft implementing technical standards for notifications are no longer necessary and therefore should be deleted.
- (5) Regulation [*on facilitating cross-border distribution of collective investment ~~undertakings funds~~ and amending Regulations (EU) No 345/2013 and (EU) No 346/2013*] further strengthens the principles applicable to marketing communications governed by Directive 2009/65/EC and extends their application to the AIFMs, thus resulting in a high standard of investor protection, regardless of the type of investor. As a result, the corresponding provisions of Directive 2009/65/EC relating to marketing communications and accessibility of national laws and regulation relevant to the arrangement of marketing units of UCITS are no longer necessary and therefore should be deleted.

- (6) The provisions of Directive 2009/65/EC, which require UCITS to provide facilities to investors, as implemented by certain national legal systems, have proven to be burdensome. Moreover, the local facilities are rarely used by investors as intended by the Directive. The preferred method of contact has shifted to direct interaction of investors with the fund manager - either electronically or by telephone, whereas payments and redemptions are executed through other channels. While these facilities are used for administrative purposes such as cross-border recovery of regulatory fees, such issues, however, should be addressed via other means including cooperation between the competent authorities. Consequently, rules should be established, which modernise and specify the requirements for providing facilities to retail investors, **and a local physical presence providing such facilities** should not be required by Member States. At the same time rules should ensure that investors have access to the information to which they are entitled.
- (7) In order to ensure a coherent treatment of retail investors, it is necessary that the requirements relating to facilities are also applied to AIFMs where Member States allow them to market units or shares of AIFs to retail investors in their territories.
- (8) The absence of clear and uniform conditions for the discontinuation of marketing of units or shares of a UCITS or an EU AIF in a host Member State creates economic and legal uncertainty for the fund managers. Therefore, this proposal lays down clear conditions, including thresholds, under which deregistration could take place. The thresholds are indicative of when a fund manager may consider that its activities have become insignificant in a particular host Member State. The conditions are set in such a way that they balance, on the one hand, the **ability** interests of **collective investment undertakings (or their fund managers)** ~~to be able~~ to deregister marketed funds when the established conditions are met, and on the other hand, the interests of investors in **such undertakings** ~~the fund from the host Member State concerned~~.

- (9) The possibility to stop marketing UCITS or EU AIFs in a particular Member State should not come at a cost to investors, nor diminish their safeguards under Directive 2009/65/EC or Directive 2011/61/EU, in particular with regard to their right to accurate information on the continued activities of those funds.
- (10) There are cases where an AIFM willing to test investor appetite for a particular investment idea or investment strategy is faced with a divergent treatment of pre-marketing activities in different national legal systems. In some Member States where pre-marketing is permitted, its definition and conditions vary considerably. However, in other Member States there is no concept of pre-marketing at all. To address these divergences, a harmonised definition of pre-marketing should be provided and conditions under which an EU AIFM can engage in these activities should be established.
- (11) For pre-marketing to be recognised as such under this Directive, it should concern an investment idea or strategy ~~without having an actual~~ **of an AIF which is not yet** already established, **or which is established, but not yet notified for marketing in that Member State.** Accordingly, during the course of pre-marketing, investors are unable to subscribe to the units or shares of an AIF ~~because the fund does not exist yet,~~ and no **subscription forms or similar documents** ~~offering documents~~ in a **final** ~~draft~~ form should be permitted to be distributed to potential investors during this stage. However, when following the pre-marketing activities the AIFM offers for subscription 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, this shall be considered as a result of marketing and shall be subject to notification procedure.** ~~with the features akin to the pre-marketed investment idea, the appropriate marketing notification procedure should be observed and the AIFM should not be able to invoke reverse solicitation.~~

- (12) In order to ensure legal certainty, it is necessary to synchronise the application dates of laws, regulations and administrative provisions implementing this Directive **and** Regulation [*on facilitating cross-border distribution of collective investment **undertakings funds** and amending Regulations (EU) No 345/2013 and (EU) No 346/2013*] with regard to relevant provisions on marketing communications and pre-marketing. It is also necessary to coordinate the empowerments granted to the Commission to adopt draft regulatory technical standards and implementing technical standards, as developed by ESMA, under Regulation [*on facilitating cross-border distribution of collective investment **undertakings funds** and amending Regulations (EU) No 345/2013 and (EU) No 346/2013*] in the area of notifications, notification letters or written notices on cross-border activities that are to be deleted by this Directive from Directive 2009/65/EC and Directive 2011/61/EU respectively.
- (13) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁵, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/65/EC

Directive 2009/65/EC is amended as follows:

⁵ OJ C 369, 17.12.2011, p. 14.

(1) Article 17 is amended as follows:

(a) **In paragraph 8, new subparagraphs are** the following paragraph 8a is inserted:

‘Where, pursuant to a change referred to in paragraph 8, the **management company** UCITS would no longer comply with this Directive, the ~~relevant~~ competent authorities **of the management company’s home Member State** referred to in paragraph 8 shall **inform** notify the management company within ~~15~~ 10 working days **of receiving all the information referred to in this paragraph** that it is not to implement that change.

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

Where a change referred to in paragraph 8 is implemented **notwithstanding the first and second subparagraphs** after notification has been made in accordance with the first subparagraph and pursuant to **which** that change the **management company** UCITS **would** no longer **comply** complies with this Directive, the competent authorities of the **management company’s** home Member State of the UCITS shall take all due measures in accordance with Article 98 **and shall notify accordingly the competent authorities of the management company’s host Member State without undue delay.**’

Where a change referred to in paragraph 8 does not affect the compliance of the management company with this Directive, the competent authorities of the home Member State of the management company shall, within 10 working days, inform the competent authorities of the host Member State of the management company of those changes.

(b) paragraph 10 is deleted.

(2) in Article 18, paragraph 5 is deleted.

(3) Article 77 is deleted.

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

Article 92

1. Member States shall ensure that the UCITS ~~management company~~ **makes available** ~~establishes~~, in each Member State where it intends to market **its** ~~units of a UCITS~~, facilities to perform the following tasks:

- (a) process ~~investors'~~ subscription, ~~payment~~, repurchase and redemption orders **and make other payments to unit-holders** relating to the units of the UCITS, in accordance with the conditions set out in the UCITS ~~marketing~~ documents;
- (b) provide investors with information on how orders referred to in point (a) can be made and how repurchase and redemption proceeds are paid;
- (c) facilitate the handling of information **and access to procedures and arrangements referred to in Article 15** relating to the investors' exercise of their rights arising from their investment in the UCITS in the Member State where the UCITS is marketed;
- (d) make available to investors, for inspection and for the obtaining of copies of **information and documents required pursuant to Chapter IX, in accordance with Article 94;**
- (i) ~~fund rules or instruments of incorporation of the UCITS;~~
- (ii) ~~the latest annual report of the UCITS;~~
- (e) provide investors with information relevant to the tasks the facilities perform in a durable medium as defined in Article 2(1)(m);

(f) act as contact point for communicating with the competent authority.

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

3. The UCITS ~~management company~~ shall ensure that the **facilities to perform the tasks** referred to in paragraph 1 are **provided**: ~~of the following types and have the following characteristics~~

- (a) ~~their tasks are performed~~ in the official language or **one of the** official languages of the Member State where the UCITS is marketed **or into a language approved by the competent authorities of that Member State**;
- (b) ~~by their tasks are performed~~ the UCITS ~~management company~~ itself or a third **party** entity subject to regulation **and prudential supervision** governing the tasks to be performed, or both, **including by the use of electronic means**;

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

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

(a) In paragraph 1 a new subparagraph is inserted:

‘The notification letter shall also include information necessary for the invoicing or communicating of any applicable regulatory fees or charges by the competent authorities of the host Member State and a description of the facilities to perform the tasks referred to in Article 92, paragraph 1.

(b) ~~in Article 93, 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 the **UCITS** home Member State at least one month before implementing that change.

Where, pursuant to a change referred to in the first subparagraph the UCITS would no longer comply with this Directive, the ~~relevant~~ competent authorities **of the UCITS home Member State** shall notify the UCITS within **15** ~~10~~ working days **of receiving all the information referred to in the first subparagraph** that it is not to implement that change.

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

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

~~Where the changes referred to in the first subparagraph do not affect the compliance of the UCITS with this Directive, the competent authorities of the home Member State of the UCITS shall, without undue delay, inform the competent authorities of the host Member State of the UCITS of those changes.~~

(7) the following Article 93a is inserted:

‘Article 93a

1. The competent authorities of the UCITS home Member State **of a UCITS** shall ensure that **a UCITS** may **de-notify its activities** ~~discontinue marketing its units~~ in a Member State where it has notified its activities in accordance with Article 93, **provided that** ~~where~~ all the following conditions are fulfilled:

- (a) ~~no investor which is domiciled or has a registered office in a Member State where the UCITS has notified its activities in accordance with Article 93 holds units of that UCITS, or~~ no more than **50** ~~10~~ investors which are domiciled or have a registered office in that Member State hold units of **that UCITS or the units of** the UCITS **held in that Member State** representing **in total** less than 1% of **the** assets under **the** management of that UCITS **calculated on the date of submission of the notification letter referred to in paragraph 2;**
- (b) a blanket offer to repurchase, free of any charges or deductions, all its UCITS units held by investors in a Member State where the UCITS has notified its activities in accordance with Article 93 is made public for at least 30 working days and is addressed, **directly or through financial intermediaries**, individually to all investors in the host Member State whose identity is known **to the UCITS;**
- (c) the intention to **de-notify the** activities ~~stop the marketing~~ in the Member State where the UCITS has notified its activities in accordance with Article 93 is made public by means of a publicly available medium, **including by electronic means**, which is customary for marketing UCITS and suitable for a typical UCITS investor.

The information referred to in points (b) and (c) shall be provided in the official languages **or one of the official languages** of the Member State where the UCITS has been marketed **or in a language approved by the competent authorities of that Member State.**

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

3. The competent authorities of the UCITS home Member State shall verify whether the notification submitted by the UCITS in accordance with paragraph 2 is complete. The competent authorities of the UCITS home Member State shall, no later than 20 working days from the receipt of the complete notification referred to in paragraph 2, transmit ~~it~~ this notification to the competent authorities of the Member State where marketing of the UCITS is intended to be discontinued and to ESMA.

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

4. The UCITS shall continue providing investors who remain invested in the UCITS, with the information required under Articles 68 to 82 and under Article 94.

5. Member States shall allow for the use of all electronic or other distance communication means for the purposes of paragraph 4, provided the information and communication means are available for investors in the official languages or one of the official languages of the Member State where the investor is located or in a language approved by the competent authorities of that Member State.

(8) in Article 95, paragraphs (1)(a) and (2)(a) are ~~paragraph (2)(a) is~~ deleted.

Article 2

Amendments to Directive 2011/61/EU

Directive 2011/61/EU is amended as follows:

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

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

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

‘Article 30a

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

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

~~(a) — relates to an established AIF;~~

~~(b) — contains reference to an established AIF;~~

(a)~~(e)~~ enables investors to commit to acquiring units or shares of a particular AIF;

(b)~~(d)~~ amounts to a prospectus, constitutional documents of a not yet established AIF, offering documents, subscription forms or similar documents whether in a draft or a final form ~~allowing investors to take an investment decision.~~

- (e) **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, such documents shall not contain all relevant information allowing investors to take an investment decision and shall clearly state that:

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

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

3. Subscription by professional investors, **following the 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** ~~following the pre-marketing in accordance with paragraph 1 or to the units or shares of AIFs managed or marketed by the EU AIFM that had engaged in pre-marketing of a not-yet-established AIF with the similar features shall be considered the result of marketing~~ **and shall be subject to the applicable notification procedures referred to in Articles 31 and 32.**

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

(4) ~~in~~ Article 32 is amended as follows:

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

‘If, pursuant to a planned change, the AIFM’s management of the AIF would no longer comply with this Directive or the AIFM would otherwise no longer comply with this Directive, the relevant competent authorities **of the home Member State of the AIFM** shall inform the AIFM within **15 20** working days **of receiving all the information referred to in the first subparagraph** that it is not to implement the change.

In this case, the AIFM shall notify correspondingly the competent authorities its host Member State that the change will not be implemented’

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

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

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

~~‘If the changes do not affect the compliance of the AIFM’s management of the AIF with this Directive, or the compliance by the AIFM with this Directive otherwise, the competent authorities of the home Member State of the AIFM shall within one month inform the competent authorities of the host Member State of the AIFM of those changes.’~~

(c) paragraph 8 is deleted.

(5) the following Article 32a is inserted:

‘Article 32a

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

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

- (a) **where the investors** ~~no investor~~, which **are** is domiciled or **have** has a registered office in the Member State, where a notification of **AIF** ~~its~~ marketing activities has been transmitted in accordance with Article 32, holds **the** units or shares of that AIF ~~or no more than 10 investors, which are domiciled or have a registered office in that Member State, hold units or shares of the AIF representing~~ represent **in total** less than **5%** ~~4%~~ of assets under management of that AIF **calculated on the date of submission of the notification letter referred to in paragraph 2;**
 - (b) **with the exception of closed-ended AIFs,** a blanket offer to repurchase, free of any charges or deductions, all its AIF units or shares held by investors in the Member State, where a notification of ~~its~~ marketing activities has been transmitted in accordance with Article 32, is made public at least for 30 working days and is addressed, **directly or through an intermediary,** individually to all investors in that Member State whose identity is known;
 - (c) the intention to **de-notify the** ~~stop the marketing~~ activities on the territory of the Member State, where a notification of its marketing activities has been transmitted in accordance with Article 32, is made public by means of a publicly available medium which is customary for marketing AIF and suitable for a typical AIF investor.
2. The AIFM shall submit a notification to the competent **authorities** ~~authority~~ of its home Member State comprising the information referred to in paragraph 1.

3. **The competent authorities of the home Member State of the AIFM shall verify whether the notification submitted by the AIFM in accordance with paragraph 2 is complete.** The competent authorities of the home Member State of the AIFM shall, no later than 20 working days following the receipt of the complete notification referred to in paragraph 2, transmit it to the competent authorities of the Member State where marketing of AIF is intended to be discontinued and to ESMA.

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

4. The AIFM shall continue providing investors who remain invested in the EU AIF with the information required under Articles 22 and 23.

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

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

(a) the second subparagraph of paragraph 6 is replaced by the following:

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

In this case, the AIFM shall notify correspondingly the competent authorities of the host Member State of the AIFM that the change will not be implemented.

(b) the third subparagraph of paragraph 6 is replaced by the following:

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

(c) the fourth subparagraph of paragraph 6 is deleted

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

(7) the following Article 43a is inserted:

'Article 43a

Facilities available to retail investors

1. Without prejudice to Article 26 of Regulation (EU) 2015/760⁶, Member States shall ensure that an AIFM **makes available** ~~establishes~~, 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 ~~marketing~~ 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;

⁶ Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds *OJL 123, 19.5.2015, p. 9.*

- (c) facilitate the handling of information relating to the exercise of investors' rights arising from their investment in the AIF in the Member State where the AIF is marketed;
- (d) make available to investors for inspection and for the obtaining copies of **information and documents in compliance with Articles 22 and 23;**
 - (i) ~~fund rules or instruments of incorporation of the AIF;~~
 - (ii) ~~the latest annual report of the AIF;~~
- (e) provide investors with information relevant to the tasks the facilities perform in a durable medium as defined in Article 2(1)(m) of Directive 2009/65/EC;
- (f) act as contact point for communicating with the competent authority.**

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

3. The AIFM shall ensure that the **facilities to perform the tasks** facilities referred to in paragraph 1 are **provided**: ~~of the following types and have the following characteristics~~

- (a) ~~their tasks are performed~~ 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) ~~their tasks are performed~~ by **the** AIFM itself or a third **party** entity, subject to regulation **and to prudential supervision** governing the tasks to be performed, or both.

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

(8) In Annex IV the following points (i) and (j) are inserted:

‘(i) information necessary for the invoicing or communicating of any applicable regulatory fees or charges

(j) a description of the facilities to perform the tasks referred to in Article 43a.’

Article 3

Transposition

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

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

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

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

Article 4

Evaluation

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

Article 4a

Review

By [date to be at least 12 months after the evaluation under Article 4], the Commission shall present a report on the application of this Directive. This report shall assess, inter alia, the merits of allowing UCITS management companies to test investor appetite for a particular investment idea or investment strategy, and whether any amendments to this Directive are needed.

Article 5

Entry into force

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

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

Article 6

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President