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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and Banking Union (MISP) Financial Services Attachés
Subject:	MISP - Asset Management - Presidency compromise text for CWP on 1 September 2026 - Master Regulation

EUROPEAN
COMMISSION

Brussels, 4.12.2025
COM(2025) 943 final

2025/0383 (COD)

PUBLIC

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) No 1095/2010, No 648/2012, No 600/2014, No 909/2014, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, No 1060/2009, 2016/1011, 2017/2402, 2023/2631 and 2024/3005 as regards the further development of capital market integration and supervision within the Union

{SEC(2025) 943 final} - {SWD(2025) 943 final} - {SWD(2025) 944 final}

(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 114 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 Committee[6],

Having regard to the opinion of the European Central Bank,

Having regard to the opinion of the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(61) This amending Regulation introduces targeted amendments to Regulation (EU) 2019/1156 with the aim of removing barriers to the cross-border marketing of AIFs and UCITS, harmonising rules on marketing communications and strengthening ESMA's powers to foster a common supervisory culture and better coordinate activities across home and host national competent authorities. **For the avoidance of doubt, the rules relating to marketing communications laid down in this amending Regulation**

OJ C , , p. .

apply to all UCITS and AIFs, including ELTIFs, EuVECAs and EuSEFs. However, the rules relating to cross-border marketing do not apply to AIFs marketed to retail investors under national private placement regimes as referred to in Article 43 of Directive 2011/61/EU, which continue to apply in that regard.

(62) The marketing of AIFs and UCITS is not always conducted by the AIFM, EuVECA or EuSEF manager, or UCITS management company directly but by one or several distributors either on behalf of those managers or on their own behalf. Arrangements whereby a distributor acts on behalf of the AIFM, EuVECA or EuSEF manager, or UCITS management company should be considered to be delegation arrangements subject to the provisions of Directive 2011/61/EU, Regulation (EU) No 345/2013, Regulation (EU) No 346/2013 and Directive 2009/65/EC regarding delegation. To ensure legal clarity, Regulation (EU) 2019/1156 is amended to clarify that where the marketing function is delegated to a third party acting on behalf of the AIFM, EuVECA or EuSEF manager, and UCITS management company, the latter remain responsible for ensuring that the marketing communications prepared and addressed to investors are compliant with the requirements of that Regulation. On the other hand, where a distributor acts on its own behalf and markets an AIF or UCITS under Directive 2014/65/EU or through life-insurance based investment products in accordance with Directive (EU) 2016/97, the provisions of Directive 2011/61/EU and Directive 2009/65/EC regarding delegation do not apply. Regulation (EU) 2019/1156 is therefore amended to clarify that in those cases where the marketing function is performed by one or several distributors acting on their own behalf, those distributors (and not the AIFM or UCITS management company) are liable to ensure that the marketing communications that they prepare and address to investors are compliant with the requirements of this Regulation.

(63) ~~To reduce unnecessary delays and divergent supervisory practices and to facilitate the seamless marketing of AIFs and UCITS in the Single Market, it is appropriate that Regulation (EU) 2019/1156 prohibits the competent authorities of the host Member State from requiring the notification of marketing communications as a prior condition for the marketing of AIFs and UCITS in their territory.~~ In order to protect investors in the host Member State and improve supervisory cooperation and effectiveness, where the **fund is authorised and the** competent authorities of the host Member State have reasonable grounds to believe that marketing communications are not in compliance with Regulation (EU) 2019/1156 or the relevant Commission delegated acts, they retain the right to request ~~the competent authorities of the home Member State of~~ the AIFM, EuVECA or EuSEF manager or UCITS to take all appropriate measures to **correct existing, and** prevent or penalise further**,** irregularities. ~~The c~~**C**ompetent authorities**,** of host Member States **having taken such actions, shall communicate these measures** ~~may further refer the matter~~ to ESMA**, and other competent authorities through the data platform.** ~~if they are not satisfied with the actions taken by the home competent authorities.~~ **Similarly, where the competent authorities of the home Member State take action in respect of UCITS or AIFs distributed on cross-border basis, they shall communicate these measures to ESMA and other competent authorities through the data platform.**

(64) In order to ensure high levels of transparency on the fees or charges levied by host competent authorities for carrying out their duties in relation to AIFs and UCITS marketed in their territory and to facilitate the recovery of those fees or charges, ESMA should publish up to date information on the amount of fees or charges levied by each host competent authority, their frequency and the modalities of their payment. To ensure consistency of the fees or charges levied by competent authorities, ESMA should, every

2 years, analyse whether such fees or charges are consistent with the overall cost relating to the performance of the functions of the competent authorities and submit a report to the Commission on that basis.

(65) To facilitate the marketing of AIFs and UCITS across the Union and to optimise the interactions and the exchange of information between home and host Member States, it is appropriate and necessary for ESMA to establish a "one-stop-shop" for the cross-border marketing of AIFs and UCITS, that would allow competent authorities to easily transmit and exchange information and documentation on marketing notifications. It is therefore essential that ESMA develops a data platform for marketing notifications and de-notifications that would be accessible to all competent authorities. UCITS and AIFMs should provide all information and documentation necessary for the marketing of AIFs and UCITS across the Union, including any amendments thereof to the competent authorities of their home Member State and the latter will in turn transmit them to ESMA through that data platform. All relevant host competent authorities should have immediate and direct access to the information and documentation in connection with the UCITS and AIFs marketed in their territory through the data platform. The data platform will simplify and expedite the passporting procedure for UCITS and AIFMs, allowing for immediate Single Market access upon their authorisation, as well as increasing transparency and cooperation among competent authorities. To fund the expenditure relating to the new passporting procedure, including the appropriate share of maintenance costs of the data platform that is utilised for that purpose, ESMA should charge UCITS and AIFMs a fee when they avail of the passporting based on authorisation procedure. The fee structure should be commensurate to the number of host Member States in which the units of UCITS or AIFs are marketed. **In keeping with the "one-stop-shop" approach, the information and documentation submitted through the data platform either by competent authorities or regulated entities should be submitted by those stakeholders to ESMA following a "report once" principle. This means that, once received by ESMA through the data platform, it shall not be necessary for the information or documentation to be submitted through other mechanisms or platforms, where such information or documentation may be required for regulatory or supervisory purposes beyond the cross-border marketing of AIFs and UCITS.**

(66) To ensure a consistent implementation and greater harmonisation of marketing requirements and notification procedures across Member States, the provisions of Directive 2011/61/EU and Directive 2009/65/EC as regards the marketing of EU AIFs managed by EU AIFMs to professional investors and the marketing of UCITS across the Union are transferred to Regulation (EU) 2019/1156. **In the interest of simplification and more efficient access to the single market, and without compromising investor protection, the one-month notification requirement of a new UCITS share class is removed.**

(67) EU AIFMs marketing EU AIFs to professional investors, and UCITS marketing their units across the Union, are already authorised and subject to strict regulatory safeguards and prudential requirements. However, the cross-border marketing of UCITS and AIFs remains hampered by lengthy notification procedures and divergent national requirements and administrative practices, including obligations relating to translations, the appointment of local agents and differing national deadlines. Those divergences hinder the functioning of the internal market, as UCITS and AIFs must navigate a patchwork of national rules and processes when operating in several Member States. It is therefore necessary to streamline marketing notification and denotification procedures, shorten processing times and remove national requirements that create obstacles to the cross-border marketing of investment funds. For that purpose,

Regulation (EU) 2019/1156 is amended to allow UCITS and AIFMs, at the time of their authorisation, to notify their home Member State of their intention to market units or shares of UCITS or AIFs in other Member States through a simplified procedure. Once the home Member State has received the required information and documentation through the authorisation application, it should transmit it to the ESMA data platform. That information should be automatically accessible to host Member States and, from the moment of its transmission to the data platform, UCITS and AIFs should enjoy unrestricted access to the markets of those Member States.

(68) **As part of its initial authorisation, a UCITS should enclose with its application, inter alia, its fund rules or instruments of incorporation, its prospectus and, where appropriate, its latest annual report, and its key information documents, translated in accordance with Regulation (EU) No 1286/2014, and the other required documents at least in a language customary in the sphere of international finance. The UCITS should provide information on the appointment of inter alia the management company and the depositary. In the event of any foreseen material changes to the documentation and information submitted to the competent authorities of the UCITS home Member State subsequent to the application for the initial authorisation, such changes should be notified in advance. For the purposes of this Regulation only, and without prejudice to the meaning of "material change" under other Regulation, a material change may be considered to be a change sufficiently significant to potentially affect investors' interests or alter the basis upon which they made their investment decision. These changes may relate to the governing body of the UCITS (where applicable) or to an existing relationship with a statutorily provided service provider, namely the management company, including change of status as externally managed or vice versa, or the depositary or the statutory auditor. Such changes may also be related to third-party delegates and relevant entrusted tasks, in particular cross-border distribution arrangements. They may further relate to legal and commercial aspects of the UCITS and its offering, such as changes to the terms regarding issue, sale redemption, the investment objective and policy of the UCITS, changes to legal form and structuring as well as corporate action related events, e.g. merger. The notification of material changes should not create unnecessary barriers in terms of time and costs to market a UCITS, noting the broader objective to improve and simplify access to the Single Market. Similarly, this would apply to AIFMs, EUVECA managers, EuSEF managers.**

(69) The de-notification of marketing arrangements should likewise be subject to the simplified procedure, allowing UCITS and AIFMs to notify their intention to terminate marketing activities in a host Member State to their home competent authority, who will in turn notify the relevant host Member States and ESMA through the data platform.

(70) Although the requirement of a physical presence as a precondition for the marketing of UCITS and AIFs in a host Member State is prohibited, Member States often require, through market practice or otherwise, the appointment of a local agent to conduct certain tasks locally. Such practices undermine the functioning of the Single Market and generate unnecessary costs and complexity for funds marketed across the Union. It is therefore necessary to clarify that host Member States should not impose, through market practice or otherwise, any form of physical local presence obligation on UCITS and AIFs marketed in their territory, even where such presence is not formally a precondition for marketing but creates additional burdens or places those funds at a disadvantage compared to domestic funds.

(71) To ensure greater harmonisation in the exercise of supervisory powers by the competent authorities of home and host Member States, the provisions of Directive 2011/61/EU

and Directive 2009/65/EC concerning supervisory powers over UCITS and AIFs marketed across the Union should be transferred into Regulation (EU) 2019/1156. In order to promote effective cooperation between home and host competent authorities and to ensure that any potential disagreements are resolved efficiently and without creating obstacles to the marketing of UCITS and AIFs within the Union, it is necessary to clarify that the competent authorities of host Member States should refer to ESMA any matters of disagreement with the competent authorities of the home Member State of the UCITS or AIFM, or cases where the host Member State considers that the marketing of a UCITS or AIF should be prohibited in its territory. In such cases, ESMA should resolve the matter in accordance with its powers to address cross-border issues.

(72) To ensure the effective functioning of the Single Market for investment funds and remove supervisory obstacles that impede the cross-border exercise of passporting rights, ESMA should be empowered to detect and address instances of divergent, duplicative, redundant or deficient supervisory practices that hinder the cross-border marketing of UCITS and AIFs or instances where the cross-border marketing of UCITS or AIFs does not comply with Union law. In those cases, ESMA should implement an escalation process, starting with engaging with competent authorities and stakeholders, fostering greater collaboration between them and, where necessary, using its convergence and intervention powers so that unjustified restrictions on crossborder activities or cases of non-compliance with EU law are remedied in a timely and effective manner. For the same reasons, it is necessary to ensure that, if those problems persist despite this escalation process, ESMA should then exercise its powers to launch breach of Union law procedures in accordance with Article 17 of Regulation (EU) No 1095/2010, to suspend the right to market UCITS or AIFs on a cross-border basis in accordance with Article 17aaa of Regulation (EU) No 1095/2010, to arrange binding mediation in accordance with Article 19 of Regulation (EU) No 1095/2010 or to organise collaboration platforms in accordance with Article 19a of Regulation (EU) No 1095/2010, where appropriate, in order to effectively remedy those problems.

(73) To ensure consistent supervision and effective cooperation between competent authorities of Member States, competent authorities should be able to refer to ESMA any disagreements on assessments, actions, or omissions in areas where Regulation (EU) 2019/1156 requires coordination, so that ESMA can intervene using the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

(100)

In order to fulfil the objectives of Regulation (EU) No 1095/2010, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the adoption of rules of procedures for the exercise of ESMA's power to charge fees, for the imposition of fines and a settlement procedure, including the rights of defence, disclosure and effects of settlements. In addition, in order to ensure the effectiveness of Regulation (EU) No 648/2012, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the specification of the fees to be paid to ESMA for the supervision of significant CCPs, the matters for which those fees are due, the calculation of the amount of those fees, and the manner in which those fees are to be paid , and in respect of amending the list of infringements for which ESMA can impose supervisory measures on significant CCPs. Furthermore, to ensure the effectiveness and the consistent application of Regulation (EU) No 600/2014, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the specification of the fees to be paid by operators of the trading venues that are subject to supervision by ESMA, in respect of the conditions and methodologies used to determine whether a trading venue should be deemed significant, and in respect of the conditions under which a trading venue or a CCP should grant access to its services. In parallel, in order to ensure the effectiveness of Regulation (EU) No 909/2014, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the specification of the type of fees to be paid to ESMA for the supervision of significant CSDs, the matters for which those fees are due, the calculation of the amount of those fees and the manner in which they are to be paid; amending the list of infringements for which ESMA can impose supervisory measures; the further specification of the requirements applicable to the participation in a CSD, and the amendment of the conditions under which a CSD shall be subject to the obligation to establish bilateral links. In addition, in order to ensure that the activity thresholds laid down in Regulation (EU) 2022/858 can be modified in light of market developments and policy learnings from the pilot regime established by that act, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the adaptation of those thresholds to, among others, market conditions and possible risks to financial stability. Furthermore, in order to ensure the effectiveness of Regulation (EU) 2023/1114, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of further specifying the type and the calculation of the amount of supervisory fees that ESMA can charge to the cryptoasset service providers. Lastly, to ensure an orderly application of provisions transferred from Directive 2014/65/EU to Regulation (EU) No 600/2014, it is appropriate to ensure that delegated acts and implementing acts that have been adopted on the basis of empowerments laid down in Directive 2014/65/EU that are to be transferred to Regulation (EU) No 600/2014, continue to apply. The Commission should be empowered to amend those delegated and implementing act in accordance

with the procedures set out in Article 10(4a) or 15(4a) of Regulation (EU) No 1095/1010. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[7]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(101) To ensure consistent application of the relevant provisions under Regulation (EU) No 600/2014, the Commission should be empowered to adopt, in accordance with Article 290 TFEU and Articles 10 to 14 of Regulation (EU) No 1095/2010, regulatory technical standards developed by ESMA related to the authorisation of regulated markets and PEMOs, and to the operation of trading venues. Furthermore, to ensure consistent harmonisation of standards, the Commission should be empowered to adopt, in accordance with Article 290 TFEU and with Articles 10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[8] and of Regulation (EU) No 1095/2010, regulatory technical standards developed by the European Banking Authority ('EBA') and by the European Securities and Markets Authority ('ESMA') with regard to the procedures for the calculation of the criteria for establishing the significance of a CSD and the set of data EU CSDs are to report to ESMA for such calculation; the measures to be put in place by CSDs and market participants to prevent settlement fails and to increase the settlement efficiency of Union capital markets; the conditions under which an outsourcing arrangement is to be considered as the outsourcing of core CSD services; the measures to be implemented by CSDs to mitigate the specific risks stemming from the provision of CSD services using DLT; and the risk management measures and prudential requirements with respect to the settlement in commercial bank money and in e-money tokens. In addition, in order to ensure consistent harmonisation in the fees to be charged by ESMA to UCITS and AIFMs in connection with the passporting procedure and the maintenance of the data platform, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of measures to specify the type, amount, frequency and the modalities governing the payment of those fees. Furthermore, in order to ensure consistent harmonisation in the marketing communications made available to investors, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission to specify the content and format of marketing communications. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. Lastly, to identify the requirements of Regulation (EU) No 909/2014 that should apply to the providers of the DLT notary and DLT central account maintenance service, and adapt them to the use of distributed ledger technology and the specificities of business models involving DLT notaries and DLT account keepers, ESMA should develop draft regulatory technical standards to

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Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016.

Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority).

supplement the provisions of Title III of Regulation (EU) No 909/2014.

(102) In order to ensure uniform conditions for the implementation of Regulation (EU) No 909/2014, implementing powers should be conferred on the Commission to adopt implementing technical standards developed by ESMA with regard to the standard forms, templates and procedures for the disclosure of fees and prices by CSDs and by settlement internalisers. Those powers should be exercised in in accordance with Article 15 of Regulation (EU) No 1095/2010.

(103) Regulations (EU) No 1095/2010, No 648/2012, No 600/2014, No 909/2014, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, No 1060/2009, 2016/1011, 2017/2402, 2023/2631 and 2024/3005 should therefore be amended accordingly.

(104) It is necessary to provide ESMA with sufficient time to prepare for its new supervisory role, which entails changes to its governance. The amendments to Regulations (EU) 1095/2010, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, (EU) No 1060/2009, 2016/1011, 2017/2402, 2023/2631, 2024/3005 should therefore start to apply from 12 months after the entry into force of this Regulation. However, to enable the Executive Board to be operational and to effectively take over the tasks assigned to it, the selection and appointment procedure for the members of the Executive Board should start to apply as from the date of entry into force of this Regulation.

HAVE ADOPTED THIS REGULATION:

Article 6

Amendments to Regulation (EU) 2019/1156

Regulation (EU) 2019/1156 is amended as follows:

(1) Article 1 is replaced by the following:

‘*Article 1*

Subject matter

This Regulation establishes uniform rules concerning the marketing of collective investment undertakings across the Union, the marketing communications addressed to investors, as well as common principles concerning fees and charges levied on collective investment undertakings in relation to their cross-border activities. It also provides for the establishment of a data platform on the cross-border marketing of collective investment undertakings.

Member States shall not add any further requirements in the field covered by this Regulation.’;

(2) Article 2 is amended as follows:

(a) point (b) is replaced by the following:

‘(b) UCITS management companies, including any investment company which has not designated a UCITS management company, pursuant to the second subparagraph of

Article 30 of Directive 2009/65/EC[9]';

(b) the following point (e) is added:

'(e) UCITS';

(3) in Article 3 the following points (i) to (p) are added:

~~(a)~~ **(i)** 'UCITS home Member State' means a Member State as defined in Article 2(1), point (e), of Directive 2009/65/EC;

(j) 'UCITS host Member State' means a Member State, other than the UCITS home Member State, in which the units of the UCITS are marketed;

(k) 'host Member State of the AIFM' means a Member State, other than the home Member State, in which an EU AIFM markets units or shares of an EU AIF;

(l)'EU AIFM' means an AIFM as defined in Article 4(1), point (l), of Directive 2011/61/EU[10];

(m) 'EU AIF' means an AIF as defined in Article 4(1), point (k) of Directive 2011/61/EU;

(n) 'marketing' means a direct or indirect offering or placement at the initiative of the AIFM, the EuVECA manager, the EuSEF manager or the UCITS or on behalf of them of units or shares of an AIF or UCITS to or with investors domiciled or with a registered office in the Union;

(o) '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 17f or 17g, 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;

(p) 'professional investor' means an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2014/65/EU.';

(4) Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. AIFMs, EuVECA managers, EuSEF managers and UCITS shall ensure that all marketing communications they prepare and make available to investors are identifiable as such and describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading.';

(b) paragraph 2 is replaced by the following:

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[9] 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, pp. 32–96), ELI: Directive - 2009/65 - EN - UCITS - EUR-Lex

[10] 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, pp. 1–73), ELI: Directive - 2011/61 - EN - aifmd - EUR-Lex

‘2. UCITS shall ensure that marketing communications that contain specific information about a UCITS do not contradict or diminish the significance of the information contained in the prospectus referred to in Article 68 of Directive 2009/65/EC or the key information document referred to in Regulation (EU) No 1286/2014. UCITS shall ensure that all marketing communications indicate that a prospectus exists and that the key information document is available. Such marketing communications shall specify where, how and in which language investors or potential investors can obtain the prospectus and the key information document and shall provide hyperlinks to or website addresses for those documents.’;

‘The requirements of the first subparagraph shall apply mutatis mutandis to AIFs which publish a prospectus in accordance with Regulation (EU) 2017/1129 of the European Parliament and of the Council[11], or in accordance with national law, or are required to draw up a key information document in accordance with Regulation (EU) No 1286/2014.[12]’;

(c) paragraphs 3, 4 and 5 are replaced by the following:

~~1.~~ **3**. Marketing communications referred to in paragraph 1 shall specify where, how and in which language investors or potential investors can obtain a summary of investor rights and shall provide a hyperlink to such a summary, which shall include, as appropriate, information on access to collective redress mechanisms at Union and national level in the event of litigation.

Such marketing communications shall also contain clear information that the AIFM, EuVECA manager, EuSEF manager or UCITS may decide to terminate the arrangements made for the marketing of AIFs and UCITS in accordance with Articles 17d and 17h.

4. AIFMs, EuVECA managers and EuSEF managers shall ensure that marketing communications comprising an invitation to purchase units or shares of an AIF that contain specific information about that AIF do not contradict or diminish the significance of the information which is to be disclosed to the investors in accordance with Article 23 of Directive 2011/61/EU, with Article 13 of Regulation (EU) No 345/2013 or with Article 14 of Regulation (EU) No 346/2013, or, where relevant, the information contained in the key information document drawn up in accordance with Regulation (EU) No 1286/2014 or in the prospectus drawn up in accordance with Regulation (EU) 2017/1129 of the European Parliament and of the Council[13].

5. AIFMs, EuVECA and EuSEF managers and UCITS management companies shall be liable for ensuring that the requirements of this Article are met where the marketing function is delegated to a third party, pursuant to Article 20 of Directive 2011/61/EU, Article 8 of

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[11] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12, ELI: Regulation - 2017/1129 - EN - Prospectus Regulation - EUR-Lex).

[12] Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), (*OJ L 352, 9.12.2014, pp. 1–23),* Regulation - 1286/2014 - EN - PRIIPs Regulation - EUR-Lex

[13] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12, ELI: Regulation - 2017/1129 - EN - Prospectus Regulation - EUR-Lex).

Regulation (EU) No 345/2013, Article 8 of Regulation (EU) No 346/2013 and Article 13 of Directive 2009/65/EC.

Where the marketing function is performed by one or several distributors which are acting on their own behalf pursuant to Article 20 (6a) of Directive 2011/61/EU and Article 13(3) of Directive 2009/65/EC, those distributors shall be responsible to ensure that the marketing communications made available to investors comply with the requirements of this Article.';

(d) the following paragraph 5a is inserted:

'5a. Member States shall not impose additional requirements on the content and format of marketing communications as regards AIFs and UCITS marketed in their territory than those set out in this Article and in the delegated acts referred to in paragraph 6.';

(e) paragraph 6 is replaced by the following:

'6. The Commission shall adopt, by means of a delegated acts in accordance with Article 18b, measures specifying the content and format of the marketing communications referred to in paragraph 1. Those delegated acts shall specify the following:

(a) the scope of what is considered a marketing communication;

(b) principles on information that is fair, clear and not misleading;

(c) general principles for drafting marketing communications;

(d) the description of risks and rewards in marketing communications;

(e) principles on disclosures relating to costs and fees in marketing communications;

(f) information on past and future performance in marketing communications.';

(f) **the following paragraph 6a is inserted:**

'6a. Where a competent authority has reasonable grounds to suspect that the marketing communications referred to in paragraph 1 do not comply with the requirements of this Article, they may act in accordance with the applicable powers referred to in Article 14a and 14b. ~~**14a (5) and (7) and in Article 14b (5) and (7).**~~

The competent authorities of the host Member State may exercise the powers referred to in this paragraph only from the date on which the UCITS or AIF is authorised.

The competent authority shall, without undue delay after adopting a measure pursuant to the first subparagraph, communicate that measure, the reasons for it and its date of effect to the Authority and the other relevant competent authorities through the data platform referred to in Article 12.

(5) Articles 5 and 6 are deleted;

(6) Article 7 is replaced by the following:

‘*Article 7*

~~Verification~~ [Monitoring of marketing communications by competent authorities]

1. ~~The c~~[**C**ompetent authorities ~~of the host Member State~~]shall not require the prior notification of marketing communications which AIFMs, EuVECA managers, EuSEF managers and UCITS intend to use directly or indirectly in their dealings with investors as a prior condition for the marketing of AIFs and UCITS in their territory.

2. ~~Where the competent authorities of the host Member State have reasonable grounds to suspect that the marketing communications referred to in paragraph 1 do not comply with the requirements of Article 4, they may act in accordance with the powers referred to in Article 14a (5) and (7) and in Article 14b (5) and (7).’;~~

2. **[Competent authorities may monitor compliance with the requirements of Article 4 as regards the marketing communications used in their territories that are targeted at retail investors as per paragraph 1 of Article 5 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council.**

The first subparagraph shall not apply in respect of AIFs marketed to retail investors under national private placement regimes as referred to in Article 43 of Directive 2011/61/EU]

3. **For the purposes of paragraph 2, UCITS must submit the marketing communications referred to in paragraph 1 of Article 4, as soon as they are ready for use, to the data platform referred to in Article 12, clearly indicating the Member States for which the marketing communications will be used.**

4. **UCITS are responsible for ensuring the reliability and usability of the information and documentation submitted in accordance with paragraph 3 to allow competent authorities access to the marketing communications used in their territory’;**

(7) Article 8 is deleted;

(8) Article 9 is replaced by the following:

‘*Article 9*

Common principles concerning fees or charges

1. Where fees or charges are levied by the competent authorities of host Member States for carrying out their duties in relation to the cross-border marketing of AIFs and UCITS in their territory, such fees or charges shall be consistent and justified with the overall cost relating to the performance of the functions of those competent authorities.

2. By [Please insert date = 36 months after the entry into force of this Regulation], and every two years thereafter, ESMA shall conduct a review of the fees or charges referred to in paragraph 1 that are imposed by host competent authorities in relation to the marketing of AIFs and UCITS in their territory and shall submit a report to the Commission indicating whether such fees or charges are consistent with the overall cost relating to the performance of the functions of those competent authorities.’;

(9) Article 10 is replaced by the following:

‘Article 10

Publication of competent authorities' arrangements concerning fees or charges on ESMA's website

1. In relation to the fees or charges referred to in Article 9(1), ESMA shall publish and maintain up-to-date information on its website, which shall include at least the following:

(a) a list of competent authorities accompanied by an indication of whether fees or charges referred to in Article 9(1) are levied;

(b) for each competent authority that imposes fees or charges as referred to in Article 9(1), the following information shall be provided:

(a) the amount of applicable fees, including the applied fee structure;

(b) the frequency and timing of such fees or charges;

(c) the means and instructions of the payment of such fees or charges;

(d) any other information that an AIFM, EuVECA manager, EuSEF manager and UCITS would require in order to ensure the accurate and timely payment of the fees or charges in accordance with the national rules and procedures of each competent authority.

2. Where fees or charges are levied by competent authorities in accordance with Article 9(1), AIFMs, EuVECA managers, EuSEF managers and UCITS shall arrange the payment of such fees or charges in accordance with the information provided on the website of ESMA as referred to in paragraph 1.

3. Competent authorities shall be responsible to provide ESMA with the information referred to in paragraph 1, including any updates thereof, in a timely manner and on an ongoing basis.

4. ESMA shall not be accountable for any incomplete or inaccurate information in respect of fees or charges on its website.';

(10) Article 11 is deleted;

(11) Article 12 is replaced by the following:

'Article 12

ESMA's data platform for the exchange of information and documentation between competent authorities

1. In accordance with Article 35c of Regulation (EU) No 1095/2010, ESMA shall by [Please insert date = 24 months after the entry into force of this Regulation] develop a data platform, which shall include at least the following information:

(a) in relation to UCITS that market their units in a Member State other than their home Member State, the UCITS home and host Member States, the UCITS management company, and the documentation referred to in paragraphs 1, 2 and 4 of Article 17c;

(b) in relation to AIFMs that market in their home Member State units or shares of AIFs that are established in other Member States, the home Member States of the AIFM and the AIFs they market, and the documentation referred to in paragraphs 2 and 5 of Article 17f;

(c) in relation to AIFMs that market units or shares of AIFs in Member States other than their home Member State, the home and host Member States of the AIFM and the documentation referred to in paragraphs 2 and 4 of Article 17g;

(d) any material changes to the information and documentation referred to in

points (a), (b) and (c); and

(e) the de-notifications transmitted in accordance with Articles 17d and 17h.

2. ESMA shall ensure that the relevant competent authorities have immediate access by electronic means through the data platform, to the information and documentation referred to in paragraph 1 and, where relevant, to any translations thereof.

[ESMA shall ensure that UCITS can make submissions to the data platform to allow for the monitoring of marketing communications by national competent authorities referred to in Article 7.]

3. ESMA shall ensure that the information and documentation transmitted to the data platform can be automatically translated by the competent authorities in any of the official languages of the Union.

ESMA shall not be held liable for any errors, omissions or inaccuracies arising from the automatic translation of the information and documentation referred to in the first subparagraph.

4. ESMA shall by [Please insert date = 24 months after the entry into force of this Regulation] publish on its website and make publicly available in a language customary in the sphere of international finance the following:

(a) all AIFs that are marketed in a Member State other than the home Member State of the AIFM, their AIFM, EuSEF manager or EuVECA manager, and the Member States in which they are marketed; and

(b) all UCITS that are marketed in a Member State other than the UCITS home Member State, their UCITS management company and the Member States in which they are marketed.

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

(12) the following Article 12a is inserted:

'Article 12a

Disclosure to investors

1. Where an AIFM or UCITS markets the units of an AIF or UCITS in a host Member State, it shall provide to investors within the territory of such Member State all information and documents which it is required to provide to investors in its home Member State pursuant to Chapter IX of Directive 2009/65/EC and Article 23 of Directive 2011/61/EU.

2. The information and documents referred to in paragraph 1 shall be provided to investors in compliance with the following:

(a) the key information document as referred to in Regulation (EU) No 1286/2014 shall be translated in accordance with that Regulation ;

(b) information or documents other than that referred to in point (a) shall be translated into a language customary in the sphere of international finance;

(c) where relevant, translations of information or documents under paragraph 1 shall be produced under the responsibility of the AIFM or UCITS and shall faithfully reflect the content of the original information.

3. The requirements set out in points (a) to (c) of paragraph 2 shall also be applicable to any material changes to the information and documents referred to therein.

4. The frequency of the publication of the issue, sale, repurchase or redemption price of units of UCITS according to Article 76 of Directive 2009/65/EC shall be subject to the laws, regulations and administrative provisions of the UCITS home Member State.';

(13) Article 13 is deleted;

(14) Article 14, paragraph 2 is amended as follows:

'2. The powers conferred on competent authorities pursuant to Directives 2009/65/EC and 2011/61/EU, Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) 2015/760, including those related to penalties or other measures, shall also be exercised with respect to the entities referred to in Article 2 of this Regulation **in relation to matters governed by this Regulation** ~~as regards the field covered by this Regulation~~.';

(15) The following Articles 14a to 14e are inserted:

'*Article 14a*

Powers of the competent authorities of the UCITS

1. The competent authorities of the UCITS home Member State shall be competent **for supervising the UCITS compliance with this Regulation and Directive 2009/65/EU, including** ~~supervise that UCITS for matters laid down in this Regulation and,~~ where relevant, Article 19 of **that** Directive ~~2009/65/EC.~~

2. By way of derogation from paragraph 1, the competent authorities of the UCITS host Member State shall be competent to supervise the compliance of UCITS marketed in their territory with the requirements set out in Articles **4**, 12a and 17b of this Regulation and with provisions falling outside the field governed by this Regulation and by Directive 2009/65/EC.

The competent authorities of the host Member State of the UCITS may require a UCITS marketed in their territory to provide the information necessary for the supervision of the UCITS compliance with the applicable rules for which those competent authorities are responsible, as referred to in the first subparagraph.

3. Only the competent authorities of the UCITS home Member State shall have the power to take action against that UCITS for the matters referred to in paragraph 1.

However, the competent authorities of the UCITS host Member State may take action against that UCITS if it infringes the laws, regulations and administrative provisions referred to in the first subparagraph of paragraph 2 that are in force in that Member State.

~~By way of derogation from the second subparagraph, where the competent authorities of the UCITS host Member State are of the opinion that a UCITS does not comply with the requirements referred to in the first subparagraph of paragraph 2 and that for that reason they are to prevent any further marketing of that UCITS in their territory, they shall refer the matter to ESMA which shall act in accordance with the powers referred to in point (b) of Article 14c(4).~~

4. Where the competent authorities of the UCITS home Member State decide to withdraw the authorisation, or to suspend the issue, repurchase or redemption of the units of a UCITS, in accordance with the competencies laid down in paragraph 1, they shall communicate those decisions without delay to ESMA through the data platform referred to in Article 12.

The competent authorities of the UCITS host Member State shall immediately receive a notification from the data platform indicating the decisions referred to in the first subparagraph.

5. Where the competent authorities of the UCITS home Member State are competent to supervise the UCITS in accordance with paragraph 1, the competent authorities of the UCITS host Member State that have clear and demonstrable grounds for considering that a UCITS, the units of which are marketed within the territory of that Member State, is in breach of the obligations arising from this Regulation or the provisions adopted pursuant to Directive 2009/65/EC, shall refer those findings to ESMA through the data platform referred to in Article 12.

The competent authorities of the UCITS home Member shall immediately receive a notification from the data platform indicating the findings referred to in the first subparagraph and shall, without undue delay, take appropriate measures to remedy the situation.

The competent authorities of the UCITS host Member State may, where they have reasonable grounds for doing so, specifically request the competent authorities of the UCITS home Member State to exercise, without delay, powers pursuant to Article 98(2) of Directive 2009/65/EC, other than point (j) of that paragraph, specifying the reasons for their request in as specific a manner as possible and informing ESMA through the data platform referred to in Article 12 and, where there are potential risks to the stability and integrity of the financial system, the ESRB thereof.

6. Upon being informed in accordance with the third subparagraph of paragraph 5, the competent authorities of the UCITS home Member State shall, without undue delay, inform ESMA through the data platform referred to in Article 12, and, if there are potential risks to the stability and integrity of the financial system, the ESRB, of the powers exercised to remedy the situation identified by the competent authorities of the UCITS host Member State and of their findings.

The competent authorities of the UCITS host Member State shall immediately receive a notification from the data platform indicating those powers and findings.

ESMA may request the competent authorities to submit to it, without undue delay, explanations in relation to specific cases which raise a serious threat to investor protection, to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union.

7. Where the competent authorities of the UCITS host Member State consider that despite the measures taken by the competent authorities of the UCITS home Member State or because of the absence of measures taken thereof, the UCITS persists in acting in a manner that is clearly prejudicial to the interests of the UCITS host Member State's investors, the competent authorities of the UCITS host Member State shall inform ESMA thereof through the data platform referred to in Article 12 and may request it to act in accordance with the powers referred to under Regulation (EU) No 1095/2010.

The competent authorities of the UCITS home Member State shall immediately receive a notification from the data platform indicating the intention of the UCITS host Member State to request ESMA to resolve the issue pursuant to the first subparagraph.

8. The competent authorities of the UCITS host Member State may also request the

competent authorities of the UCITS home Member State to exercise powers pursuant to Article 84(2), point (b) of Directive 2009/65/EC, specifying the reasons for the request and informing ESMA through the data platform referred to in Article 12 and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.

9. Where the competent authorities of the UCITS home Member State do not agree with the request referred to in paragraph 8, they shall inform ESMA through the data platform referred to in Article 12, and, where the ESRB was informed of that request pursuant to paragraph 8, the ESRB thereof, stating the reasons for the disagreement.

The requesting competent authorities shall immediately receive a notification from the data platform indicating the disagreement of the competent authorities of the UCITS home Member State and the reasons behind it.

10. On the basis of the information received pursuant to paragraphs 8 and 9, ESMA shall issue without undue delay an opinion to the competent authorities of the UCITS home Member State on the exercise of powers pursuant to Article 84(2), point (b) of Directive 2009/65/EC.

ESMA shall communicate the opinion referred to in the first subparagraph to the competent authorities of the UCITS host Member State.

11. Where the competent authorities of the UCITS home Member State do not agree with ESMA's opinion referred to in paragraph 10, they shall inform ESMA thereof through the data platform referred to in Article 12 and they shall request ESMA to resolve the issue in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

The competent authorities of the UCITS host Member State shall immediately receive a notification from the data platform indicating the intention of the UCITS home Member State to request ESMA to resolve the issue pursuant to the first subparagraph.

12. Member States shall ensure that within their territories it is legally possible to serve the legal documents necessary for the measures which may be taken by the UCITS host Member State in regard to UCITS pursuant to paragraph 3.

Article 14b

Powers of the competent authorities of the AIFM

1. The authorities of the home Member State of the AIFM shall be competent to supervise that AIFM for matters laid down in this Regulation including, where relevant, pursuant to Article 45 of Directive 2011/61/EU.

2. By way of derogation from paragraph 1, the competent authorities of the host Member State of the AIFM shall be competent to supervise the compliance of AIFs marketed in their territory and of AIFMs managing those AIFs with the requirements set out in Article**s 4 and** 12a of this Regulation and with provisions falling outside the field governed by this Regulation and Directive 2011/61/EU.

The competent authorities of the host Member State of the AIFM may require an AIFM marketing AIFs in their territory to provide the information necessary for the supervision of the AIF's and AIFM's compliance with the applicable rules for which those competent authorities are responsible, as referred to in the first subparagraph.

3. Only the competent authorities of the home Member State of the AIFM shall have the power to take action against that AIFM for the matters referred to in paragraph 1.

However, the competent authorities of the host Member State of the AIFM may take

action against that AIFM or against an AIF marketed in their territory if they infringe the laws, regulations and administrative provisions referred to in the first subparagraph of paragraph 2 that are in force in that Member State.

~~By way of derogation from the second subparagraph, where the competent authorities of the host Member State of the AIFM are of the opinion that an AIF marketed in their territory or the AIFM that manages it does not comply with the requirements referred to in the first subparagraph of paragraph 2 and that for that reason they should they should prevent any further marketing of that AIF in their territory, they should refer the matter to ESMA which shall act in accordance with the powers referred to in point (b) of Article 14c(4).~~

4. Where the competent authorities of the home Member State of the AIFM decide to withdraw the authorisation, or to suspend the issue, repurchase or redemption of the units or shares of AIFs marketed in a host Member State, in accordance with the competencies laid down in paragraph 1, they shall communicate those decisions without delay to ESMA through the data platform referred to in Article 12.

   The competent authorities of the host Member State of the AIFM shall immediately receive a notification from the data platform indicating the decisions referred to in the first subparagraph.

5. Where the competent authorities of the home Member State of the AIFM are competent to supervise the AIFM and the AIFs marketed in their territory in accordance with paragraph 1, the competent authorities of the host Member State of the AIFM that have clear and demonstrable grounds for believing that an AIFM marketing units or shares of AIFs within the territory of that Member State is in breach the obligations arising from this Regulation or the provisions adopted pursuant to Directive 2011/61/EU shall refer those findings to ESMA through the data platform referred to in Article 12.

   The competent authorities of the home Member State of the AIFM shall immediately receive a notification from the data platform indicating the findings referred to in the first subparagraph and shall, without undue delay, take appropriate measures to remedy the situation.

   The competent authorities of the host Member State of the AIFM may, where they have reasonable grounds for doing so, specifically request the competent authorities of the home Member State of the AIFM to exercise, without delay, powers pursuant to Article 46(2) other than point (j) and Article 48 of Directive 2011/61/EU, specifying the reasons for their request in as specific a manner as possible and informing ESMA through the data platform referred to in Article 12 and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.

6. Upon being informed pursuant to the third subparagraph of paragraph 5, the competent authorities of the home Member State of the AIFM shall, without undue delay, inform ESMA through the data platform referred to in Article 12, and, if there are potential risks to the stability and integrity of the financial system, the ESRB, of the powers exercised to remedy the situation identified by the competent authorities of the host Member State of the AIFM and of their findings.

   The competent authorities of the host Member State of the AIFM shall immediately receive a notification from the data platform indicating those powers and findings.

   ESMA may request the competent authorities to submit to it, without undue delay, explanations in relation to specific cases which raise a serious threat to investor protection, to the orderly functioning and integrity of financial markets or to the

stability of the whole or part of the financial system in the Union.

7. Where the competent authorities of the host Member State of the AIFM believe that despite the measures taken by the competent authorities of the home Member State of the AIFM or because of the absence of measures taken thereof, the AIFM marketing an AIF in their territory or the AIF persists in acting in a manner that is clearly prejudicial to the interests of the host Member State's investors, the competent authorities of the host Member State of the AIFM shall inform ESMA thereof through the data platform referred to in Article 12 and may request it to act in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

The competent authorities of the home Member State of the AIFM shall immediately receive a notification from the data platform indicating the intention of the host Member State of the AIFM to request ESMA to resolve the issue pursuant to the first subparagraph.

8. The competent authorities of the host Member State of the AIFM may also request the competent authorities of the home Member State of the AIFM to exercise powers pursuant to Article 46(2), point (j) of Directive 2011/61/EU, specifying the reasons for the request and informing ESMA through the data platform referred to in Article 12 and, if there are potential risks to the stability and integrity of the financial system, the ESRB thereof.

9. Where the competent authorities of the home Member State of the AIFM do not agree with the request referred to in paragraph 8, they shall inform ESMA through the data platform referred to in Article 12, and, where the ESRB was informed of that request pursuant to paragraph 8, the ESRB thereof, stating the reasons for the disagreement.

The requesting competent authorities shall immediately receive a notification from the data platform indicating the disagreement of the competent authorities of the home Member State of the AIFM and the reasons behind it.

10. On the basis of the information received pursuant to paragraphs 8 and 9, ESMA shall issue without undue delay an opinion to the competent authorities of the home Member State of the AIFM on the exercise of powers pursuant to Article 46(2), point (j) of Directive 2011/61/EU. ESMA shall communicate that opinion to the competent authorities of the host Member State of the AIFM.

11. Where the competent authorities of the home Member State of the AIFM do not agree with ESMA's opinion referred to in paragraph 10, they shall inform ESMA thereof through the data platform referred to in Article 12 and they shall request ESMA to resolve the issue in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

The competent authorities of the host Member State of the AIFM shall immediately receive a notification from the data platform indicating the intention of the home Member State of the AIFM to request ESMA to resolve the issue pursuant to the first subparagraph.

12. Member States shall ensure that within their territories it is legally possible to serve the legal documents necessary for the measures which may be taken by the host Member State of the AIFM in regard to AIFMs or AIFs marketed in their territory, pursuant to paragraph 3.

Article 14c

Powers of ESMA to address cross-border issues

~~1.~~ **1.** ~~ESMA~~ **The Authority** shall on an ongoing basis identify diverging,

duplicative, redundant and deficient supervisory actions stemming from the home or host competent authorities and hindering the effective exercise of passporting rights by UCITS and AIFs marketed on a cross-border basis in accordance with this Regulation.

~~2.~~ **2.** For the purpose of paragraph 1, ~~ESMA~~ **the Executive Board** shall engage with the competent authorities concerned, and, where applicable, collect additional information to identify existing or potential cross-border issues.

Where, pursuant to the first subparagraph, ~~ESMA~~ **the Executive Board** identifies existing or potential cross-border issues it shall propose corrective actions to the relevant competent authorities for their removal.

~~3.~~ **3.** Where, despite the corrective actions referred to in paragraph 2 or because the relevant competent authorities fail to implement those corrective actions, the issues identified pursuant to paragraph 2 persist, ~~ESMA shall, without undue delay exercise at least one of the powers conferred on it~~ **the Executive Board may submit to the Board of Supervisors a reasoned proposal for the exercise by the Authority of one or more of the powers conferred on it** under ~~Articles 17, 17aaa, 19 or 19a of~~ Regulation (EU) No 1095/2010 in the following cases:

(a) the competent authorities of the host Member State of the UCITS or AIFM, EuVECA manager or EuSEF manager prevent or intend to prevent a UCITS or AIF from being marketed in their territory in accordance with Articles 14a(2) and 14b(2) of this Regulation, Article 18(3) of Regulation (EU) No 345/2013 and Article 19(3) of Regulation (EU) No 346/2013, or impose requirements on such marketing which are not compliant with Regulation (EU) 2019/1156;

(b) a UCITS or AIF is marketed or intended to be marketed on a crossborder basis while not being compliant with Union law.

The obligation to exercise at least one of the powers referred to in the first subparagraph shall be without prejudice to ESMA's capacity to use any of the powers conferred on it under Regulation (EU) No 1095/2010 outside the procedure laid down in this Article.

~~4. Notwithstanding the actions referred to in paragraph 3, ESMA may suspend a UCITS from being marketed in the territory of another Member State or an AIFM, EuVECA manager or EuSEF manager from marketing an AIF in another Member State where one of the following conditions are fulfilled:~~

~~(a) the competent authorities or stakeholders concerned fail to implement a decision, opinion, recommendation or action adopted or required by ESMA in accordance with paragraph 3 or an opinion issued by the Commission, in accordance with Article 17(4) of Regulation (EU) No 1095/2010;~~

~~(b) ESMA has concluded that a UCITS or AIF marketed on a cross border basis no longer fulfils the requirements of this Regulation, of Directives 2009/65/EC and 2011/61/EU or of Regulations (EU) No 345/2013 and (EU) No 346/2013.~~

~~5. Before suspending the marketing as referred to in paragraph 4, ESMA shall send its draft findings to the UCITS, AIFM, EuVECA manager or EuSEF manager concerned and to the competent authorities of their home Member States. The competent authorities concerned may submit to ESMA a reasoned statement within 30 calendar days of the receipt of the draft findings.~~

~~6. ESMA shall promptly notify the UCITS, AIFM, EuVECA manager or EuSEF manager, as well as the competent authorities of their host Member States of the suspension of the ability to market units or shares of UCITS or AIFs on a crossborder basis. The suspension may start at the date of notification to the UCITS, AIFM, EuVECA manager or EuSEF manager and shall start no later than 30 calendar days following that notification.~~

~~7.~~ **4.** ESMA shall publish a report on its activity in accordance with paragraphs 1 to 4 at least annually.

Article 14d

Dispute settlement

In case competent authorities disagree on an assessment, action or omission of one competent authority in areas where this Regulation requires cooperation or coordination between competent authorities from more than one Member State, one or more competent authorities may refer the matter to ESMA which shall act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

(16) The following Articles 17a to 17i are inserted:

'Article 17a

Conditions for the marketing of UCITS in the Union

1. UCITS shall be allowed to market their units in the Union outside their home Member State upon authorisation obtained from the competent authority of their home Member State in accordance with the procedure laid down in Article 17c.

2. For the purposes of paragraph 1, no additional requirements or administrative procedures shall be imposed on UCITS in respect of the fields governed by this Regulation and by Directive 2009/65/EC.

3. For the purposes of this Article and of Articles 17b, 17c and 17d, a UCITS shall include investment compartments thereof.

4. For the purpose of pursuing its activities in a host Member State, a UCITS may use the same reference to its legal form (such as investment company or common fund) in its designation in a UCITS host Member State as it uses in its home Member State.

Article 17b

Facilities in the UCITS host Member State

1. A UCITS shall make 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 of Directive 2009/65/EC;

(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 of Directive 2009/65/EC 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 of Directive 2009/65/EC available to investors under the conditions laid down in Article 12a, 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. Host Member States shall not require a UCITS to have a physical presence in their territory or to appoint a third party in that host Member State for the purposes of paragraph 1 or for any other purposes relating to the activities of the UCITS in that host Member State.

3. 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 UCITS host Member State, in a language approved by the competent authorities of that Member State, or in a language customary in the sphere of international finance;

(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) of the first subparagraph, 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 is to receive all the relevant information and documents from the UCITS.

The liability of the UCITS shall not be affected by the fact that the tasks referred to in paragraph 1 are performed by a third party in accordance with the second subparagraph of this paragraph.

Article 17c

Passporting based on authorisation of a UCITS

1. At the time of authorisation of a UCITS in accordance with Article 5 of Directive 2009/65/EC, where a UCITS proposes to market its units in a Member State other than its home Member State, it shall indicate those Member States in its application for authorisation to the competent authorities of its home Member State.

The application for authorisation shall include information on arrangements made for marketing units of the UCITS in the host Member States, including, where relevant, in respect of share classes and an indication that the UCITS is marketed by the management company that manages the UCITS.

The application for authorisation shall also include information on the facilities for performing the tasks referred to in Article 17b.

2. For the purposes of paragraph 1, a UCITS shall enclose with its application for authorisation the following:

(a) its fund rules or its instruments of incorporation;

(b) its prospectus and, where appropriate, its latest annual report;

(c) its key information document as referred to in Regulation (EU) No 1286/2014 translated in accordance with that Regulation; and

(d) where available, the marketing communications referred to in Article 4, accompanied by an attestation from the UCITS that it complies with the requirements of that Article.

The information referred to in points (a), and (b) and the attestation referred to in point (d) of the first subparagraph shall be provided at least in a language customary in the sphere of international finance.

3. The competent authorities of the UCITS home Member State shall verify ~~whether~~ the information and documentation submitted by the UCITS in accordance with paragraphs 1 and 2 ~~is complete~~.

4. Upon authorisation, the competent authorities of the UCITS home Member State shall prepare a letter of authorisation containing an Annex listing the host Member States in which the UCITS intends to market its units, together with a statement that the UCITS fulfils the conditions imposed by this Regulation and Directive 2009/65/EC.

5. Upon authorisation, the competent authorities of the UCITS home Member State shall notify ESMA by transmitting the documentation referred to in paragraphs 1, 2 and 4 to ESMA through the data platform referred to in Article 12.

The competent authorities of the UCITS host Member States shall immediately receive a notification from the data platform indicating that a new UCITS is to be marketed in their territory and shall have immediate and direct access to the documentation transmitted pursuant to the first subparagraph.

The competent authorities of the UCITS home Member State shall promptly notify the UCITS of the transmission referred to in the first subparagraph. As of the date of that transmission, the UCITS may access the markets of the UCITS host Member States.

6. The competent authorities of the UCITS home Member State shall ensure that the letter of authorisation referred to in paragraph 4 is provided at least in a language customary in the sphere of international finance.

7. Where a UCITS has already been authorised and wishes to market its units or shares in a new Member State, it shall notify the competent authorities of its home Member State of the new host Member States in which it intends to market its units or shares and it shall include information on arrangements made for marketing and where available marketing communications referred to in Article 4, accompanied by an attestation from the UCITS that it complies with the requirements of that Article.

The competent authorities of the UCITS home Member State shall update the Annex to the letter of authorisation, listing the new host Member States in which the UCITS intends to market its units and notify ESMA by transmitting the updated letter of authorisation and where relevant the updated information and documentation through the data platform referred to in Article 12.

The competent authorities of the UCITS new host Member States shall immediately receive a notification from the data platform indicating that a new UCITS is to be marketed in their territory and shall have immediate and direct access to the documentation transmitted pursuant to the first and second subparagraphs of this paragraph.

The competent authorities of the UCITS home Member State shall immediately notify the UCITS of the transmission referred to in the second subparagraph. As of the date of that transmission, the UCITS may access the markets of the new host Member States.

8. For the purpose of the procedure set out in this Article, the competent authorities of the host Member State in which the UCITS proposes to market its units shall not

request or require any additional documents, certificates or information other than those referred to in paragraphs 1, 2 and 4 of this Article.

9. In the event of a material change to the information and documentation submitted to the competent authorities of the UCITS home Member State pursuant to paragraphs 1 and 2, the UCITS shall give written notice thereof to the competent authorities of its home Member State at least ~~15~~ **10** working days before implementing that change.

10. Where, pursuant to a change as referred to in paragraph 9, the UCITS would no longer comply with this Regulation or with Directive 2009/65/EC, the competent authorities of the UCITS home Member State shall inform the UCITS within 10 working days of receipt of the information that it is not to implement that change. In that case, the competent authorities of the UCITS home Member State shall notify ESMA accordingly through the data platform referred to in Article 12.

The competent authorities of the UCITS host Member States shall immediately receive a notification from the data platform with the information referred to in the first subparagraph.

11. Where a material change referred to in paragraph 9 is implemented after information has been transmitted in accordance with paragraph 10 and where pursuant to that change the UCITS no longer complies with this Regulation or Directive 2009/65/EC, the competent authorities of the home Member State of the UCITS shall take all appropriate measures in accordance with Article 98 of Directive 2009/65/EC, including, where necessary, the express prohibition of marketing of the UCITS. The competent authorities of the UCITS home Member State shall notify ESMA of such measures without delay through the data platform referred to in Article 12.

The competent authorities of the UCITS host Member States shall immediately receive a notification from the data platform, indicating the measures referred to in the first subparagraph.

12. If, despite the measures taken by the competent authorities of the home Member State of the UCITS or because such measures prove to be inadequate, the competent authorities of the host Member State have clear and demonstrable grounds to consider that, further to the changes referred to in paragraph 9, the UCITS continues to be in breach of the requirements of this Regulation or of Directive 2009/65/EC in a manner that is clearly prejudicial to the interests of the host Member State's investors, the competent authorities of the UCITS host Member State, may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

Article 17d

Arrangements to de-notify the marketing of UCITS

1. Where a UCITS intends to terminate the marketing of its 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 17c, it shall submit a de-notification to the competent authorities of its home Member State, which shall include the intention to terminate arrangements made for marketing such units in that Member State. Such intention shall be made public by electronic means, which is customary for marketing UCITS and suitable for a typical UCITS investor.

The information referred to in the first subparagraph shall be provided at least in a language customary in the sphere of international finance.

2. The competent authorities of the UCITS home Member State shall verify ~~whether~~ the de-notification submitted by the UCITS in accordance with paragraph 1 ~~is complete~~.

The competent authorities of the UCITS home Member State shall, no later than 5 working days from the receipt of a complete de-notification, transmit that de-notification to ESMA through the data platform referred to in Article 12 and promptly notify the UCITS of that transmission.

The competent authorities of the host Member State identified in the de-notification shall immediately receive a notification from the data platform, indicating the intention of a UCITS to terminate marketing arrangements in that Member State in accordance with paragraph 1.

As of the date of the transmission referred to in the second subparagraph, the UCITS shall cease any new or further, direct or indirect, offering or placement of its units in the Member State in respect of which it has submitted a de-notification in accordance with paragraph 1.

Article 17e

Pre-marketing in the Union by an EU AIFM

1. An EU AIFM shall be allowed to engage in pre-marketing in the Union.
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 Articles 17f or 17g.
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[14], as a credit institution in accordance with Directive 2013/36/EU of the European Parliament and of the Council[15], as a UCITS management company in accordance with Directive 2009/65/EC, as an AIFM in accordance with Directive 2011/61/EU, 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. Member States shall not impose any additional requirements on the pre-marketing of UCITS and AIFs in their territory than those set out in this Article.

Article 17f

Passporting based on authorisation for an EU AIFM marketing units or shares of EU AIFs in its home Member State

1. Where at the time of authorisation of an EU AIFM in accordance with Article 7 of Directive 2011/61/EU, that AIFM proposes to market to professional investors in its home Member State the units or shares of an EU AIF it intends to manage, it shall indicate this in its application for authorisation to the competent authorities of its home Member State.

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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).

Where the EU AIF is a feeder AIF the right to market referred to in the first subparagraph is subject to the condition that the master AIF is also an EU AIF which is managed by an authorised EU AIFM.

2. For the purposes of paragraph 1, the AIFM shall enclose with its application for authorisation, the following:

(a) a programme of operations identifying the EU AIF that the AIFM intends to market in its home Member State and information on where the EU AIF is established;

(b) the EU AIF rules or instruments of incorporation;

(c) identification of the depositary of the EU AIF;

(d) information on where the master AIF is established if the EU AIF is a feeder AIF;

(e) any additional information referred to in Article 23 (1) of Directive 2011/61/EU for each EU AIF that the AIFM intends to market;

(f) where relevant, for each EU AIF that the AIFM intends to market, its prospectus and offering documents; **and**

(g) where relevant, information on the arrangements established to prevent units or shares of the EU AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the EU AIF~~; and~~

(h) ~~[where available, for each EU AIF that the AIFM intends to market, the marketing communications referred to in Article 4, accompanied by an attestation from the AIFM that it complies with the requirements of that Article.~~]

The information referred to in the first subparagraph shall be provided at least in a language customary in the sphere of international finance.

3. The competent authorities of the home Member State of the AIFM shall verify ~~whether~~ the information and documentation submitted by the AIFM in accordance with paragraph 2 ~~is complete~~.

4. From the date of authorisation of the AIFM and provided that the condition set out in paragraph 3 is met, the AIFM may start marketing the EU AIF identified in the application for authorisation in its home Member State.

5. Where the EU AIF identified in the application for authorisation is established in a Member State other than the home Member State of the AIFM, the competent authorities of the home Member State of the AIFM shall, in addition to the requirements referred to in paragraphs 2, 3 and 4, prepare a letter of authorisation containing an Annex listing the EU AIFs which the AIFM intends to market in its home Member State, as well as the Member States of those EU AIFs together with a statement that the AIFM fulfils the conditions of this Regulation and of Directive 2011/65/EC.

Upon authorisation, the competent authorities of the home Member State of the AIFM shall notify ESMA, by transmitting the information referred to in paragraph 2 and the first subparagraph of this paragraph through the data platform referred to in Article 12.

The competent authorities of the home Member State of the EU AIF shall immediately receive a notification from the data platform, indicating the AIFM's intention to market the EU AIF in the AIFM's home Member State and shall have immediate and direct access to the documentation transmitted pursuant to the second subparagraph.

6. The competent authorities of the home Member State of the AIFM shall ensure that

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the letter of authorisation referred to in the first subparagraph of paragraph 5 is provided at least in a language customary in the sphere of international finance.

7. Where the AIFM proposes to market to professional investors in its home Member State the units or shares of an EU AIF it intends to manage, in accordance with this Article, the competent authorities of the home Member State of the AIFM and the home Member State of the EU AIF shall not request or require any additional documents, certificates or information other than those referred to in paragraphs 2 and 5.

8. Where an AIFM has already been authorised and wishes to market to professional investors in its home Member State the units or shares of new EU AIFs, than those referred to in its application for authorisation, it shall notify the competent authorities of its home Member State of the new EU AIFs which it intends to market, in accordance with the procedure set out in this Article, and it shall provide the information and documentation referred to in paragraph 2.

The competent authorities of the home Member State of the AIFM shall verify ~~whether~~ the information and documentation submitted by the AIFM in accordance with the first subparagraph ~~is complete~~.

The AIFM shall be able to market the new EU AIFs in its home Member State as of the date of the notification referred to in the first subparagraph, provided that the condition referred to in the second subparagraph is met.

For the purposes of the first subparagraph, the AIFM shall not be required to submit to the competent authorities of its home Member State information or documentation that it has already provided for the purpose of its authorisation and that has not been materially amended since then.

9. Where the AIFM intends to market in its home Member State new EU AIFs that are established in Member States other than the home Member State of the AIFM, in addition to the procedure referred to in the paragraph 8, the competent authorities of the home Member State of the AIFM shall update the Annex to the letter of authorisation referred to in paragraph 5, listing the new EU AIFs which the AIFM markets in its home Member State, as well as the Member States of those new EU AIFs and shall notify ESMA by transmitting the updated letter of authorisation through the data platform referred to in Article 12.

The competent authorities of the Member States of the new EU AIFs shall immediately receive a notification from the data platform, indicating the AIFM's intention to market those EU AIFs in its home Member State and shall have immediate and direct access to the documentation transmitted pursuant to the first subparagraph.

The competent authorities of the home Member State of the AIFM shall promptly notify the AIFM of the transmission referred to in the first subparagraph. As from the date of that transmission, the AIFM shall be able to market the new EU AIFs in its home Member State.

10. In the event of a material change to the information and documentation submitted to the competent authorities of the home Member State of the AIFM in accordance with this Article, the AIFM shall give written notice thereof to the competent authorities of its home Member State at least ~~15~~ **10** working days before implementing that change.

11. Where, pursuant to a change as referred to in the first subparagraph, the AIFM would no longer comply with this Regulation or with Directive 2011/61/EU, the competent authorities of the home Member State of the AIFM shall inform the AIFM within 10 working days of receipt of the information that it is not to implement that change.

Where the AIFM markets in its home Member State an EU AIF that is established in a

Member State other than the home Member State of the AIFM, the competent authorities of the home Member State of the AIFM shall notify ESMA accordingly through the data platform referred to in Article 12.

The competent authorities of the home Member State of the EU AIF shall immediately receive a notification from the data platform with the information referred to in the first subparagraph.

12. Where a change referred to in the paragraph 10 is implemented after information has been transmitted in accordance with paragraph 11 and pursuant to that change the AIFM or the AIFM's management of the EU AIF no longer complies with this Regulation or Directive 2011/61/EU, the competent authorities of the home Member Stat of the AIFM shall take all appropriate measures in accordance with Article 46 of Directive 2011/61/EU, including, where necessary, the express prohibition of marketing of the EU AIF.

Where the AIFM markets in its home Member State an EU AIF that is established in a Member State other than the home Member State of the AIFM, the competent authorities of the home Member State of the AIFM shall notify without delay ESMA of such measures through the data platform referred to in Article 12.

The competent authorities of the home Member State of the EU AIF shall immediately receive a notification from the data platform, indicating the measures referred to in the first subparagraph.

13. Where the AIFM markets in its home Member State an EU AIF that is established in a Member State other than the home Member State of the AIFM and the competent authorities of the home Member State of the EU AIF have clear and demonstrable reasons not to agree with the measures taken by the competent authorities of the home Member State of the AIFM pursuant to paragraph 12, or with the absence of those measures, the competent authorities of the home Member State of the EU AIF, may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

Article 17g

Passporting based on authorisation for an EU AIFM marketing units or shares of EU AIFs in a Member State other than the home Member State of the AIFM

1. At the time of authorisation of an EU AIFM in accordance with Article 7 of Directive 2011/61/EU, where an EU AIFM proposes to market to professional investors in another Member State than the home Member State of the AIFM the units or shares of an EU AIF that it intends to manage, it shall indicate this in its application for authorisation to the competent authorities of its home Member State.

Where the EU AIF is a feeder AIF the right to market referred to in the first subparagraph is subject to the condition that the master AIF is also an EU AIF and is managed by an authorised EU AIFM.

2. For the purposes of paragraph 1, the AIFM shall enclose with its application for authorisation, the following, where appropriate:

(a) a programme of operations identifying the EU AIF that the AIFM intends to market and information on where the EU AIF is established;

(b) the EU AIF rules or instruments of incorporation;

(c) identification of the depositary of the EU AIF;

(d) information on where the master AIF is established if the AIF is a feeder AIF;

(e) any additional information referred to in Article 23 (1) of Directive 2011/61/EU for each EU AIF that the AIFM intends to market;

(f) where relevant, for each EU AIF that the AIFM intends to market, its prospectus and offering documents;

(g) the indication of the Member State in which it intends to market the units or shares of the EU AIF to professional investors;

(h) information about arrangements made for the marketing of EU AIFs and, where relevant, information on the arrangements established to prevent units or shares of the EU AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the EU AIF; **and**

(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**.** ~~; and~~

(j) ~~where available, for each EU AIF that the AIFM intends to market, the marketing communications referred to in Article 4, accompanied by an attestation from the AIFM that it complies with the requirements of that Article.~~

The information referred to in the first subparagraph shall be provided at least in a language customary in the sphere of international finance.

3. The competent authorities of the home Member State of the AIFM shall verify ~~whether~~ the information and documentation submitted by the AIFM in accordance with paragraph 2 ~~is complete~~.

4. Upon authorisation, the competent authorities of the home Member State of the AIFM shall prepare a letter of authorisation containing an Annex listing the EU AIFs which the AIFM intends to market, as well as the host Member States where it is intended that the EU AIFs be marketed, together with a statement that the AIFM fulfils the conditions imposed by this Regulation and Directive 2011/61/EU.

5. Upon authorisation, the competent authorities of the home Member State of the AIFM shall notify ESMA by transmitting the documentation referred to in paragraphs 2 and 4 through the data platform referred to in Article 12.

The competent authorities of the host Member State of the AIFM shall immediately receive a notification from the data platform, indicating the AIFM's intention to market an EU AIF in their territory and shall have immediate and direct access to the documentation transmitted pursuant to the first subparagraph.

The competent authorities of the home Member State of the AIFM shall promptly notify the AIFM of the transmission referred to in the first subparagraph. As from the date of that transmission, the AIFM may access the markets of the host Member States.

6. The competent authorities of the home Member State of the AIFM shall ensure that the letter of authorisation referred to in paragraph 4 is provided at least in a language customary in the sphere of international finance.

7. For the purpose of the procedure set out in this Article, the competent authorities of the home and host Member States shall not request or require any additional documents, certificates or information other than those referred to in paragraphs 2 and 4 of this Article.

Host Member States shall not require an AIFM to have a physical presence in their territory or to appoint a third party in that host Member State for the purposes of

marketing EU AIFs in that host Member State or for any other purposes relating to the activities of the AIFM in that host Member State.

8. Where an AIFM has already been authorised and wishes to market to professional investors in a new host Member State that is not referred to in its application for authorisation the units or shares of EU AIFs, or it wishes to market in a host Member State that is already referred to in its application for authorisation new EU AIFs that are not referred to in its application for authorisation, it shall notify the competent authorities of its home Member State of the new host Member States in which it intends to market or the new EU AIFs which it intends to market, in accordance with the procedure set out in this Article, and it shall provide the information and documentation referred to in paragraph 2.

The competent authorities of the home Member State of the AIFM shall verify ~~whether~~ the information and documentation submitted by the AIFM in accordance with the first subparagraph ~~is complete~~.

The competent authorities of the home Member State of the AIFM shall update the Annex to the letter of authorisation referred to in paragraph 4, listing the new EU AIFs which the AIFM intends to market or the new host Member States in which the AIFM intends to market and shall notify ESMA by transmitting the updated letter of authorisation and the information and documentation referred to in paragraph 2 through the data platform referred to in Article 12.

The competent authorities of the host Member States shall immediately receive a notification from the data platform, indicating the AIFM's intention to market EU AIFs in their territory and shall have immediate and direct access to the documentation transmitted pursuant to the third subparagraph.

The competent authorities of the home Member State of the AIFM shall promptly notify the AIFM of the transmission referred to in the third subparagraph. As from the date of that transmission, the AIFM shall be able to market the new EU AIFs in the host Member States or the EU AIFs in the new host Member States.

For the purposes of the first subparagraph, the AIFM shall not be required to submit to the competent authorities of its home Member State information or documentation that it has already provided for the purpose of its authorisation and that has not been materially amended since then.

9. In the event of a material change to the information and documentation submitted to the competent authorities of the home Member State of the AIFM in accordance with paragraph 2, the AIFM shall give written notice thereof to the competent authorities of its home Member State at least ~~15~~ **10** working days before implementing that change.

10. Where, pursuant to a change as referred to in paragraph 9, the AIFM would no longer comply with this Regulation or with Directive 2011/61/EU, the competent authorities of the home Member State of the AIFM shall inform the AIFM within 10 working days of receipt of the information that it is not to implement that change. In that case, the competent authorities of the home Member State of the AIFM shall notify ESMA accordingly through the data platform referred to in Article 12.

The competent authorities of the of the host Member State of the AIFM shall immediately receive a notification from the data platform with the information referred to in the first subparagraph.

11. Where a change referred to in the paragraph 9 is implemented after information has been transmitted in accordance with paragraph 10 and pursuant to that change the AIFM or the AIFM's management of the EU AIF no longer complies with this Regulation or Directive 2011/61/EU, the competent authorities of the home Member

State of the AIFM shall take all appropriate measures in accordance with Article 46 of Directive 2011/61/EU, including, where necessary, the express prohibition of marketing of the EU AIF. The competent authorities of the home Member State of the AIFM shall notify ESMA of such measures without delay through the data platform referred to in Article 12.

The competent authorities of the host Member State of the AIFM shall immediately receive a notification from the data platform, indicating the measures referred to in the first subparagraph.

12. Where the competent authorities of the host Member State of the AIFM have clear and demonstrable reasons not to agree with the measures taken by the competent authorities of the home Member State of the AIFM pursuant to paragraph 11, or with the absence of those measures, the competent authorities of the host Member State of the AIFM, may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

Article 17h

Arrangements to de-notify the marketing of AIFs

1. Where an EU AIFM intends to terminate the marketing of the units or shares of some or all of the EU AIFs it manages in a Member State in respect of which it has made a notification in accordance with Article 17g, it shall submit a de-notification to the competent authorities of its home Member State, which shall include the intention to terminate arrangements made for marketing units or shares of some or all of the EU AIFs it manages in that Member State. Such intention shall be made public by electronic means.

The information referred to in the first subparagraph shall be provided at least in a language customary to the sphere of international finance.

2. The competent authorities of the home Member State of the AIFM shall verify ~~whether~~ the de-notification submitted by the AIFM in accordance with paragraph 1 ~~is complete~~.

The competent authorities of the home Member State of the AIFM shall, no later than 5 working days from the receipt of the complete de-notification, transmit the de-notification to ESMA through the data platform referred to in Article 12 and promptly notify the AIFM of that transmission.

The competent authorities of the host Member State identified in the de-notification shall immediately receive a notification from the data platform, indicating the intention of an AIFM to terminate marketing arrangements in that Member State in accordance with paragraph 1.

As of the date of the transmission referred to in the second subparagraph, the AIFM shall cease any new or further, direct or indirect, offering or placement of units or shares of the EU AIFs it manages in the Member State in respect of which it has submitted a de-notification in accordance with paragraph 1.

Article 17i

ESMA fees

1. ESMA shall charge fees to AIFMs and UCITS for the expenditure relating to the passporting and de-notification procedures referred to in Articles 17c to 17h, including an appropriate share of the maintenance costs of the data platform used for that purpose, as referred to in Article 12(1).

The fees referred to in the first subparagraph shall be paid by an AIFM or UCITS where they propose to market the units or shares of AIFs or UCITS in a Member State other than their home Member State in accordance with the procedures laid down in Articles 17c and 17g of this Regulation.

2. The Commission shall adopt, by means of a delegated acts in accordance with Article 18b, measures specifying the arrangements for the levy and payment of the fees referred to in paragraph 1. Those delegated acts shall specify, in particular:

(a) the amount of fees payable to ESMA;

(b) the methodology to calculate the maximum amount of those fees in accordance with a tiered charging structure based on the number of host Member States where the AIFM or UCITS proposes to market the units or shares of AIFs or UCITS;

(c) the matters in respect of which those fees are due;

(d) the manner in which those fees are to be paid;

(e) the frequency and timing of those fees.';

(17) Article 18 is replaced by the following:

'By [entry into application + 5 years] 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 Regulation.'

(18) The following Articles 18a and 18b are inserted:

'Article 18a
Transitional provisions

Articles 17f and 17g shall not apply to the marketing of units or shares of AIFs that are subject to a current offer to the public under a prospectus that has been drawn up and published in accordance with Directive 2003/71/EC before 22 July 2013 for the duration of validity of that prospectus.

Article 18b
Delegation of powers

1. The power to adopt delegated acts referred to in Article 4 and Article 17i is conferred on the Commission subject to the conditions laid down in this Article.

The powers to adopt delegated acts referred to in Article 4 and Article 17i shall be conferred on the Commission for a period of 4 years from [Please insert date of entry into force of this Regulation].

The Commission shall draw up a report in respect of the delegated powers no later than 6 months before the end of the 4-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with paragraph 5.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. A delegated act adopted pursuant to paragraph 1 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

4. The delegation of power referred to in paragraph 1 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.';

Article 15

Entry into force and application

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

Article 1 shall apply from [OP insert date = 12 months after the entry into force of this Regulation] with the exception of point (33).

Article 2 shall apply from [OP insert date = 12 months after the entry into force of this Regulation], with the exception of point (15) as regards Articles 22a(2) and 22a(3) of Regulation (EU) No 648/2012.

Article 3, points 2(a)(xiii), (15) and (16) shall apply from [*OP insert date = the day following the expiry of the first period of 5 years referred to in Article 27da of Regulation (EU) No 600/2014 with respect to the CTP for shares and ETFs*.

Article 3, points (29) and (32) to (37) shall apply from [*OP insert date = 12 months after the entry into force of this Regulation*].

Article 3, point (30) shall apply from [*OP insert date = 24 months after the entry into force of this Regulation*].

Article 4 point (2)(a), (j) and (k), point (8), point (9) as regards Article 11(1) and (4) to (10) of Regulation (EU) No 909/2014, and points (11), (12), (13), (21) and (26) shall apply from [*OP insert date = 24 months after the entry into force of this amending Regulation*].

Articles 5 to 14 shall apply from [*OP insert date = 12 months after the entry into force of this Regulation].*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

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