# Cross-border distribution of collective investment funds: marketing and regulatory fees

2018/0045(COD) - 12/03/2018 - Legislative proposal

PURPOSE: to reduce the barriers to the cross-border distribution of investment funds in the EU.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: this proposal should be seen in the broader context of the Capital Markets Union (CMU) action plan and the CMU Mid-Term Review, to establish a genuine internal capital market by addressing fragmentation in the capital markets, removing regulatory barriers to the financing of the economy and increasing the supply of capital to businesses.

Investment funds are investment products created with the sole purpose of pooling investors' capital, and investing that capital collectively through a portfolio of financial instruments such as stocks, bonds and other securities. In the EU, investment funds can be categorised as undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs) managed by alternative investment fund managers (AIFMs).

While EU investment funds have seen rapid growth, with a total of EUR 14 310 billion in assets under management in June 2017, **the EU investment fund market is still predominantly organised as a national market**:

- 70 % of all assets under management are held by investment funds authorised or registered for distribution only in their domestic market;
- only 37 % of UCITS and about 3 % of AIFs are registered for distribution in more than three Member States.

**Regulatory barriers**, namely Member States' marketing requirements, regulatory fees and administrative and notification requirements represent a significant disincentive to the cross-border distribution of funds. These barriers were identified in response to the Green Paper on Capital Markets Union.

These new measures are expected to reduce the cost of going cross-border and should **support a more integrated single market for investment funds**. They should, in turn, should reduce market fragmentation, increase competition, and ultimately help to deliver greater choice and better value for investors in the EU.

This proposal is presented together with a Directive amending Directive 2009/65/EC and Directive 2011/61/EU with regard to cross-border distribution of collective investment funds.

IMPACT ASSESSMENT: following the evaluation of the strategic options being considered, the policy choices are as follows:

- more transparent national marketing requirements at both national and EU level, harmonisation of the definition of pre-marketing in Directive 2011/61/EU and clearer guidance on the process of checking marketing material;
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greater transparency of regulatory fees at EU level, and the establishment of key principles to ensure greater consistency in the way these fees are determined;
- the choice of facilities to support local investors should be left to investment fund managers, with safeguards for investors;
- increased harmonisation of procedures and conditions for updating or withdrawing notifications on the use of the marketing passport.

For all investment funds currently marketed on a cross-border basis in the EU, the policy choices together are expected to **save an annual EUR 306 to 440 million** in costs (recurrent costs).

CONTENT: the proposal for a Regulation aims to remove the regulatory barriers that currently hinder the cross-border distribution of investment funds in order to make their cross-border distribution simpler, faster and less costly.

The proposed Regulation seeks to:

- **harmonise the procedure and requirements on marketing communications** by the national competent authorities. The marketing communications must fulfil, namely (i) the communications are identifiable as such, (ii) present the risks and rewards of purchasing units or shares of AIFs and UCITS in an equally prominent manner and (iii) all information included in marketing communications is fair, clear and not misleading;
- **improve transparency by harmonising national marketing requirements and regulatory fees**: the competent authorities will publish online all applicable national laws, regulations and administrative provisions governing marketing rules for AIFs and UCITS, and their summaries, in at least a language customary in the sphere of international finance, requesting the publication in that language next to the official languages or one of the official languages used in a given Member State. Competent authorities have to publish and maintain on their websites central databases on the fees or charges or relevant calculation methodologies;
- **introduces the concept of pre-marketing** in Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds. The change would allow managers registered in accordance with those Regulations to target investors by testing their appetite for upcoming investment opportunities or strategies through pre-marketing;
- **introduces a requirement on the European Securities and Markets Authority (ESMA) to better monitor investment funds** and to publish and maintain on its website a central database on all AIFMs, UCITS management companies, AIFs and UCITS.

BUDGETARY IMPLICATION: this proposal will have **two budgetary implications for ESMA**. ESMA will have to prepare regulatory and implementing technical standards, and develop and maintain databases that the public can use for free.

The impact on expenditure is estimated at **EUR 0.441 million** for the year of the start of the implementation of the proposal. The financial impact on the EU budget after 2020 will depend on Commission proposals for the next multiannual financial framework.