



**2018/0041(COD)**

18.9.2018

**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/65/EC of the European Parliament and of the Council and Directive 2011/61/EU of the European Parliament and of the Council with regard to cross-border distribution of collective investment funds (COM(2018)0092 – C8-0111/2018 – 2018/0041(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Wolf Klinz

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/65/EC of the European Parliament and of the Council and Directive 2011/61/EU of the European Parliament and of the Council with regard to cross-border distribution of collective investment funds  
(COM(2018)0092 – C8-0111/2018 – 2018/0041(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0092),
  - having regard to Article 294(2) and Article 53(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0111/2018),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### Proposal for a directive Title 1

*Text proposed by the Commission*

Proposal for a  
DIRECTIVE OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
amending Directive 2009/65/EC of the  
European Parliament and of the Council  
and Directive 2011/61/EU of the European  
Parliament and of the Council with regard  
to cross-border distribution of collective  
investment *fonds*

*Amendment*

Proposal for a  
DIRECTIVE OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
amending Directive 2009/65/EC of the  
European Parliament and of the Council  
and Directive 2011/61/EU of the European  
Parliament and of the Council with regard  
to cross-border distribution of collective  
investment *undertakings*

Or. en

## Amendment 2

### Proposal for a directive Recital 1

*Text proposed by the Commission*

(1) A common objective of Directive 2009/65/EC of the European Parliament and of the Council<sup>25</sup> and Directive 2011/61/EU of the European Parliament and of the Council<sup>26</sup> is to ensure a level playing field among collective investment undertakings and to remove restrictions to the free movement of units and shares of collective investment *fonds* in the Union at the same time ensuring more uniform protection for investors. While these objectives have been largely achieved, certain barriers still hamper fund managers' ability to fully benefit from the internal market.

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<sup>25</sup> Directive 2009/65/EC of the European

*Amendment*

(1) A common objective of Directive 2009/65/EC of the European Parliament and of the Council<sup>25</sup> and Directive 2011/61/EU of the European Parliament and of the Council<sup>26</sup> is to ensure a level playing field among collective investment undertakings and to remove restrictions to the free movement of units and shares of collective investment *undertakings* in the Union at the same time ensuring more uniform protection for investors. While these objectives have been largely achieved, certain barriers still hamper fund managers' ability to fully benefit from the internal market.

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<sup>25</sup> Directive 2009/65/EC of the European

Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 302, 17.11.2009, p. 32.

<sup>26</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (AIFM), OJ L 174, 1.7.2011, p. 1.

Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 302, 17.11.2009, p. 32.

<sup>26</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (AIFM), OJ L 174, 1.7.2011, p. 1.

Or. en

### Amendment 3

#### Proposal for a directive Recital 2

##### *Text proposed by the Commission*

(2) The rules proposed in this Directive are complemented by a dedicated Regulation [on facilitating cross-border distribution of collective investment *fund*s and amending Regulations (EU) No 345/2013 and (EU) No 346/2013]. It lays down additional rules and procedures concerning undertakings for collective investment in transferable securities (UCITS) and alternative investment fund managers (AIFMs) That Regulation and this Directive should collectively further coordinate the conditions for fund managers operating in the internal market and facilitate cross-border distribution of the funds they manage.

##### *Amendment*

(2) The rules proposed in this Directive are complemented by a dedicated Regulation [on facilitating cross-border distribution of collective investment *undertakings* and amending Regulations (EU) No 345/2013 and (EU) No 346/2013]. It lays down additional rules and procedures concerning undertakings for collective investment in transferable securities (UCITS) and alternative investment fund managers (AIFMs) That Regulation and this Directive should collectively further coordinate the conditions for fund managers operating in the internal market and facilitate cross-border distribution of the funds they manage.

Or. en

### Amendment 4

#### Proposal for a directive Recital 3

*Text proposed by the Commission*

(3) It is necessary to fill in the regulatory gap and align the **procedure governing** notification to the competent authorities of the changes **that UCITS are planning in relation to their managed funds with those which are** laid down in Directive 2011/61/EU.

*Amendment*

(3) It is necessary to fill in the regulatory gap and align the notification **procedure** to the competent authorities of the changes **regarding UCITS with the notification procedure** laid down in Directive 2011/61/EU.

Or. en

## Amendment 5

### Proposal for a directive Recital 4

*Text proposed by the Commission*

(4) Regulation [on facilitating cross-border distribution of collective investment **funds** and amending Regulations (EU) No 345/2013 and (EU) No 346/2013] establishes new rules requiring the European Securities and Markets Authority (ESMA), to develop draft regulatory technical standards and draft implementing technical standards to specify the information required and the forms, templates and procedures to be used for the transmission of that information in relation to management **of funds**, take-up or discontinuing of marketing of **funds** under Directive 2009/65/EC and Directive 2011/61/EU. Therefore, the provisions of those two Directives providing ESMA with discretionary empowerments to develop regulatory technical standards and draft implementing technical standards for notifications are no longer necessary and therefore should be deleted.

*Amendment*

(4) Regulation [on facilitating cross-border distribution of collective investment **undertakings** and amending Regulations (EU) No 345/2013 and (EU) No 346/2013] establishes new rules requiring the European Securities and Markets Authority (ESMA), to develop draft regulatory technical standards and draft implementing technical standards to specify the information required and the forms, templates and procedures to be used for the transmission of that information in relation to **the** management, take-up or discontinuing of marketing of **collective investment undertakings** under Directive 2009/65/EC and Directive 2011/61/EU. Therefore, the provisions of those two Directives providing ESMA with discretionary empowerments to develop regulatory technical standards and draft implementing technical standards for notifications are no longer necessary and therefore should be deleted.

Or. en



## Amendment 6

### Proposal for a directive

#### Recital 5

##### *Text proposed by the Commission*

(5) Regulation [on facilitating cross-border distribution of collective investment *fonds* and amending Regulations (EU) No 345/2013 and (EU) No 346/2013] further strengthens the principles applicable to marketing communications governed by Directive 2009/65/EC and extends their application to the AIFMs, thus resulting in a high standard of investor protection, regardless of the type of investor. As a result, the corresponding provisions of Directive 2009/65/EC relating to marketing communications and accessibility of national laws and regulation relevant to the arrangement of marketing units of UCITS are no longer necessary and therefore should be deleted.

##### *Amendment*

(5) Regulation [on facilitating cross-border distribution of collective investment *undertakings* and amending Regulations (EU) No 345/2013 and (EU) No 346/2013] further strengthens the principles applicable to marketing communications governed by Directive 2009/65/EC and extends their application to the AIFMs, thus resulting in a high standard of investor protection, regardless of the type of investor. As a result, the corresponding provisions of Directive 2009/65/EC relating to marketing communications and accessibility of national laws and regulation relevant to the arrangement of marketing units of UCITS are no longer necessary and therefore should be deleted.

Or. en

## Amendment 7

### Proposal for a directive

#### Recital 6

##### *Text proposed by the Commission*

(6) The provisions of Directive 2009/65/EC, which require UCITS to provide facilities to investors, as implemented by certain national legal systems, have proven to be burdensome. Moreover, the local facilities are rarely used by investors as intended by the Directive. The preferred method of contact has shifted to direct interaction of investors with the fund manager — either electronically or by telephone, whereas payments and redemptions are executed through other channels. While these

##### *Amendment*

(6) The provisions of Directive 2009/65/EC, which require UCITS to provide facilities to investors, as implemented by certain national legal systems, have proven to be burdensome. Moreover, the local facilities are rarely used by investors as intended by the Directive. The preferred method of contact has shifted to direct interaction of investors with the fund manager — either electronically or by telephone, whereas payments and redemptions are executed through other channels. While these

facilities are used for administrative purposes such as cross-border recovery of regulatory fees, such issues, however, should be addressed via other means including cooperation between the competent authorities. Consequently, rules should be established, which modernise and specify the requirements for providing facilities to retail investors, a physical presence should not be required by Member States. At the same time rules should ensure that investors have access to the information to which they are entitled.

facilities are used for administrative purposes such as cross-border recovery of regulatory fees, such issues, however, should be addressed via other means including cooperation between the competent authorities. Consequently, rules should be established, which modernise and specify the requirements for providing facilities to retail investors, **and a local physical presence *providing such facilities*** should not be required by Member States. At the same time, rules should ensure that investors have access to the information to which they are entitled.

Or. en

## Amendment 8

### Proposal for a directive Recital 8

#### *Text proposed by the Commission*

(8) The absence of clear and uniform conditions for the discontinuation of marketing of units or shares of a UCITS or an EU AIF in a host Member State creates economic and legal uncertainty for the fund managers. Therefore, this proposal lays down clear conditions, ***including thresholds***, under which ***deregistration*** could take place. ***The thresholds are indicative of when a fund manager may consider that its activities have become insignificant in a particular host Member State.*** The conditions are set in such a way that they balance, on the one hand, the ***interests of fund managers to be able to deregister marketed funds*** when the established conditions are met, and on the other hand, the interests of investors in ***the fund from the host Member State concerned.***

#### *Amendment*

(8) The absence of clear and uniform conditions for the discontinuation of marketing of units or shares of a UCITS or an EU AIF in a host Member State creates economic and legal uncertainty for the fund managers. Therefore, this proposal lays down clear conditions under which ***denotification*** could take place. The conditions are set in such a way that they balance, on the one hand, the ***ability of collective investment undertakings or their managers to end their marketing activities*** when the established conditions are met, and on the other hand, the interests of investors in ***such undertakings.***

Or. en

## Amendment 9

### Proposal for a directive

#### Recital 11

*Text proposed by the Commission*

(11) For pre-marketing to be recognised as such under *this* Directive, it should concern an investment idea or strategy *without having an actual AIF already established. Accordingly, during the course* of pre-marketing, investors *are unable to subscribe to the* units or shares of an AIF *because the fund does not exist yet, and no offering documents, even in a draft form, should be permitted to be distributed to potential investors during this stage. However, when following the pre-marketing activities the AIFM offers for subscription units or shares of an AIF with the features akin to the pre-marketed investment idea, the appropriate marketing notification procedure should be observed and the AIFM should not be able to invoke reverse solicitation.*

*Amendment*

(11) For pre-marketing to be recognised as such under Directive *2011/61/EU*, it should concern an investment idea or strategy *of an AIF or a compartment of an AIF, which is not yet established in the Member State where the potential investors are domiciled or have their registered office. In order to prevent AIFMs from invoking reverse solicitation through pre-marketing activities, within 18 months of being contacted as part of pre-marketing, it should only be possible for investors to acquire units or shares in the AIF or compartment of the AIF referred to in the information provided in the context of pre-marketing or of an AIF or compartment of an AIF established as a result of the pre-marketing in the case of marketing permitted under Directive 2011/61/EU.*

Or. en

## Amendment 10

### Proposal for a directive

#### Recital 11 a (new)

*Text proposed by the Commission*

*Amendment*

*(11 a) AIFMs should ensure that information relating to their pre-marketing activities is available, and provided upon request, to their competent authorities after that activity takes place. Such information should include a reference to the Member States and the period of time in which the pre-marketing*

*activities took place and a description of the investment strategies or investment ideas presented in the course of the pre-marketing activities.*

Or. en

## **Amendment 11**

### **Proposal for a directive**

#### **Recital 12**

##### *Text proposed by the Commission*

(12) In order to ensure legal certainty, it is necessary to synchronise the application dates of laws, regulations and administrative provisions implementing this Directive Regulation [on facilitating cross-border distribution of collective investment *fonds* and amending Regulations (EU) No 345/2013 and (EU) No 346/2013] with regard to relevant provisions on marketing communications and pre-marketing. It is also necessary to coordinate the empowerments granted to the Commission to adopt draft regulatory technical standards and implementing technical standards, as developed by ESMA, under Regulation [on facilitating cross-border distribution of collective investment *fonds* and amending Regulations (EU) No 345/2013 and (EU) No 346/2013] in the area of notifications, notification letters or written notices on cross-border activities that are to be deleted by this Directive from Directive 2009/65/EC and Directive 2011/61/EU respectively.

##### *Amendment*

(12) In order to ensure legal certainty, it is necessary to synchronise the application dates of laws, regulations and administrative provisions implementing this Directive *and* Regulation [on facilitating cross-border distribution of collective investment *undertakings* and amending Regulations (EU) No 345/2013 and (EU) No 346/2013] with regard to relevant provisions on marketing communications and pre-marketing. It is also necessary to coordinate the empowerments granted to the Commission to adopt draft regulatory technical standards and implementing technical standards, as developed by ESMA, under Regulation [on facilitating cross-border distribution of collective investment *undertakings* and amending Regulations (EU) No 345/2013 and (EU) No 346/2013] in the area of notifications, notification letters or written notices on cross-border activities that are to be deleted by this Directive from Directive 2009/65/EC and Directive 2011/61/EU respectively.

Or. en

## **Amendment 12**

### **Proposal for a directive**

**Article 1 – paragraph 1 – point 1 – point -a (new)**

Directive 2009/65/EC

Article 17 – paragraph 8 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**(-a) in paragraph 8, the following subparagraph is added:**

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

Or. en

**Amendment 13**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 1 – point - a a (new)**

Directive 2009/65/EC

Article 17 – paragraph 8 – subparagraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

**(-aa) in paragraph 8, the following subparagraph is added:**

***‘In this case, the competent authorities of the management company’s home Member State shall inform the competent authorities of the management company’s host Member State that the change will not be implemented. Where a change is implemented notwithstanding the first and second subparagraphs pursuant to which the management company would no longer comply with this Directive, the competent authorities of the management company’s home Member State shall take all due measures in accordance with Article 98 and shall notify accordingly the competent authorities of the management***

*company's host Member State without undue delay.'*

Or. en

## **Amendment 14**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 1 – point a**

Directive 2009/65/EC

Article 17 – paragraph 8a

*Text proposed by the Commission*

*Amendment*

**(a) *the following paragraph 8a is inserted:*** ***deleted***

*Where, pursuant to a change referred to in paragraph 8, the UCITS would no longer comply with this Directive, the relevant competent authorities referred to in paragraph 8 shall notify the management company within 10 working days that it is not to implement that change.*

*Where a change referred to in paragraph 8 is implemented after notification has been made in accordance with the first subparagraph and pursuant to that change the UCITS no longer complies with this Directive, the competent authorities of the home Member State of the UCITS shall take all due measures in accordance with Article 98.*

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

Or. en

## Amendment 15

### Proposal for a directive

#### Article 1 – paragraph 1 – point 1 – point b

Directive 2009/65/EC

Article 17 – paragraph 10

*Text proposed by the Commission*

*Amendment*

(b) *paragraph 10 is deleted.*

*deleted*

Or. en

## Amendment 16

### Proposal for a directive

#### Article 1 – paragraph 1 – point 3

Directive 2009/65/EC

Article 77

*Text proposed by the Commission*

*Amendment*

(3) *Article 77 is deleted.*

*deleted*

Or. en

## Amendment 17

### Proposal for a directive

#### Article 1 – paragraph 1 – point 5

Directive 2009/65/EC

Article 92 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

## Amendment 18

### Proposal for a directive

#### Article 1 – paragraph 1 – point 5

Directive 2009/65/EC

Article 92 – paragraph 1 – point a

*Text proposed by the Commission*

(a) process **investors'** subscription, **payment**, repurchase and redemption orders relating to the units of the UCITS, in accordance with the conditions set out in the UCITS **marketing** documents;

*Amendment*

(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 UCITS documents;

Or. en

## Amendment 19

### Proposal for a directive

#### Article 1 – paragraph 1 – point 5

Directive 2009/65/EC

Article 92 – paragraph 1 – point c

*Text proposed by the Commission*

(c) facilitate the handling of information relating to the investors' exercise of their rights arising from their investment in the UCITS in the Member State where the UCITS is marketed;

*Amendment*

(c) facilitate the handling of information **and access to procedures and arrangements referred to in Article 15** relating to the investors' exercise of their rights arising from their investment in the UCITS in the Member State where the UCITS is marketed;

Or. en

## Amendment 20

### Proposal for a directive

#### Article 1 – paragraph 1 – point 5

Directive 2009/65/EC

Article 92 – paragraph 1 – point d – introductory part

*Text proposed by the Commission*

*Amendment*



(d) make available to investors, for inspection and for the obtaining of copies of:

(d) make available to investors, for inspection and for the obtaining of copies of *information and documents required pursuant to Chapter IX, in accordance with Article 94;*

Or. en

## **Amendment 21**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 5**

Directive 2009/65/EC

Article 92 – paragraph 1 – point d – point i

*Text proposed by the Commission*

*Amendment*

(i) *fund rules or instruments of incorporation of the UCITS;*

*deleted*

Or. en

## **Amendment 22**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 5**

Directive 2009/65/EC

Article 92 – paragraph 1 – point d – point ii

*Text proposed by the Commission*

*Amendment*

(ii) *the latest annual report of the UCITS;*

*deleted*

Or. en

## **Amendment 23**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 5**

Directive 2009/65/EC

Article 92 – paragraph 1 – point e a (new)

*Text proposed by the Commission*

*Amendment*

**(e a) act as contact point for communicating with the competent authority.**

Or. en

## **Amendment 24**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 5**

Directive 2009/65/EC

Article 92 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Member States shall not require the UCITS ***management company*** to have a physical presence for the ***purpose*** of paragraph 1.

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

Or. en

## **Amendment 25**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 5**

Directive 2009/65/EC

Article 92 – paragraph 3 – subparagraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

The UCITS ***management company*** shall ensure that the facilities referred to in paragraph 1 are ***of the following types and have the following characteristics***:

The UCITS shall ensure that the facilities ***to perform the tasks*** referred to in paragraph 1 are ***provided***:

Or. en

## **Amendment 26**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 5**  
Directive 2009/65/EC  
Article 92 – paragraph 3 – point a

*Text proposed by the Commission*

(a) ***their tasks are performed*** in the official language or official languages of the Member State where the UCITS is marketed;

*Amendment*

(a) in the official language or ***one of the*** official languages of the Member State where the UCITS is marketed ***or in a language approved by the competent authorities of that Member State;***

Or. en

**Amendment 27**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 5**  
Directive 2009/65/EC  
Article 92 – paragraph 3 – point b

*Text proposed by the Commission*

(b) ***their tasks are performed*** the UCITS ***management company*** itself or a third ***entity*** subject to regulation governing the tasks to be performed, or both;

*Amendment*

(b) ***by*** the UCITS itself or a third ***party*** subject to regulation ***and supervision*** governing the tasks to be performed, or both, ***including by the use of electronic means;***

Or. en

**Amendment 28**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 5**  
Directive 2009/65/EC  
Article 92 – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

For the purposes of point (b), where the ***facilities*** are performed by a third ***entity***, the appointment of a third ***entity*** shall be evidenced by a written contract, which

*Amendment*

For the purposes of point (b), where the ***tasks*** are performed by a third ***party***, the appointment of a third ***party*** shall be evidenced by a written contract, which

specifies which of the tasks referred to in paragraph 1 are not performed by the UCITS *management company* and that the third *entity* receives all the relevant information and documents from the UCITS *management company*.

specifies which of the tasks referred to in paragraph 1 are not performed by the UCITS and that the third *party* receives all the relevant information and documents from the UCITS.

Or. en

## **Amendment 29**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 5 a (new)**

Directive 2009/65/EC

Article 93 – paragraph 1 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**(5 a) in Article 93(1), the following subparagraph is added:**

***‘The notification letter shall also include information and the address necessary for the invoicing, or communicating of any applicable regulatory fees or charges by the competent authorities of the host Member State and an indication of the facilities for performing the tasks referred to in Article 92(1).’***

Or. en

## **Amendment 30**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 6**

Directive 2009/65/EC

Article 93 – paragraph 8 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

In the event of a change to the information in the notification letter submitted in accordance with paragraph 1, or a change regarding share classes to be marketed, the UCITS shall give written notice thereof to

In the event of a change to the information in the notification letter submitted in accordance with paragraph 1, or a change regarding share classes to be marketed, the UCITS shall give written notice thereof to

the competent authorities of the home Member State at least one month before implementing that change.

the competent authorities of the *UCITS* home Member State at least one month before implementing that change.

Or. en

### **Amendment 31**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 6**

Directive 2009/65/EC

Article 93 – paragraph 8 – subparagraph 2

#### *Text proposed by the Commission*

Where, pursuant to a change referred to in the first subparagraph the UCITS would no longer comply with this Directive, the *relevant* competent authorities shall notify the UCITS within **10** working days that it is not to implement that change.

#### *Amendment*

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

Or. en

### **Amendment 32**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 6**

Directive 2009/65/EC

Article 93 – paragraph 8 – subparagraph 2 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

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

Or. en

## Amendment 33

### Proposal for a directive

#### Article 1 – paragraph 1 – point 6

Directive 2009/65/EC

Article 93 – paragraph 8 – subparagraph 3

*Text proposed by the Commission*

Where a change referred to in the first subparagraph is implemented after notification has been made in accordance with the second subparagraph and pursuant to that change the UCITS no longer complies with this Directive, the competent authorities of the home Member State of the UCITS shall take all due measures in accordance with Article 98, including, where necessary, the express prohibition of marketing of the UCITS.

*Amendment*

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

Or. en

## Amendment 34

### Proposal for a directive

#### Article 1 – paragraph 1 – point 6

Directive 2009/65/EC

Article 93 – paragraph 8 – subparagraph 4

*Text proposed by the Commission*

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

*Amendment*

***deleted***

Or. en

## Amendment 35

### Proposal for a directive

#### Article 1 – paragraph 1 – point 7

Directive 2009/65/EC

Article 93a – paragraph 1 – point a

*Text proposed by the Commission*

*Amendment*

*(a) no investor which is domiciled or has a registered office in a Member State where the UCITS has notified its activities in accordance with Article 93 holds units of that UCITS, or no more than 10 investors which are domiciled or have a registered office in that Member State hold units of the UCITS representing less than 1 % of assets under management of that UCITS;*

*deleted*

Or. en

## Amendment 36

### Proposal for a directive

#### Article 1 – paragraph 1 – point 7

Directive 2009/65/EC

Article 93a – paragraph 1 – point b

*Text proposed by the Commission*

*Amendment*

*(b) a blanket offer to repurchase, free of any charges or deductions, all its UCITS units held by investors in a Member State where the UCITS has notified its activities in accordance with Article 93 is made public for at least 30 working days and is addressed individually to all investors in the host Member State **whose identity is known**;*

*(b) a blanket offer to repurchase, free of any charges or deductions, all its UCITS units held by investors in a Member State where the UCITS has notified its activities in accordance with Article 93 is made public for at least 30 working days and is addressed, **directly or through financial intermediaries**, individually to all investors in the host Member State;*

Or. en

## Amendment 37

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 7**  
Directive 2009/65/EC  
Article 93a – paragraph 1 – point c

*Text proposed by the Commission*

(c) the intention to stop the marketing activities in the Member State where the UCITS has notified its activities in accordance with Article 93 is made public by means of a publicly available medium which is customary for marketing UCITS and suitable for a typical UCITS investor.

*Amendment*

(c) the intention to stop the marketing activities in the Member State where the UCITS has notified its activities in accordance with Article 93 is made public by means of a publicly available medium, ***including by electronic means***, which is customary for marketing UCITS and suitable for a typical UCITS investor.

Or. en

**Amendment 38**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 7**  
Directive 2009/65/EC  
Article 93a – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

The information referred to in points (b) and (c) shall be provided in the official languages of the Member State where the UCITS has been marketed.

*Amendment*

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

Or. en

**Amendment 39**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 7**  
Directive 2009/65/EC  
Article 93a – paragraph 2



*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 40**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 7**

Directive 2009/65/EC

Article 93a – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

The competent authorities of the UCITS home Member State shall, no later than **20** working days from the receipt of the notification referred to in paragraph 2, transmit **it** to the competent authorities of the Member State where marketing of the UCITS is intended to be discontinued and to ESMA.

*Amendment*

***The competent authorities of the UCITS home Member State shall verify whether the notification submitted by the UCITS in accordance with paragraph 2 is complete.*** The competent authorities of the UCITS home Member State shall, no later than **15** working days from the receipt of the **complete** notification referred to in paragraph 2, transmit **that notification** to the competent authorities of the Member State where marketing of the UCITS is intended to be discontinued and to ESMA.

Or. en

**Amendment 41**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 7**

Directive 2009/65/EC

Article 93a – paragraph 4

*Text proposed by the Commission*

4. The UCITS shall continue

*Amendment*

4. ***As long as investors remain***

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

*invested in the UCITS after marketing is discontinued:*

(a) the UCITS shall continue providing investors who remain invested in the UCITS with the information required under Articles 68 to 82 and under Article 94;

(b) *the competent authorities of the home Member State of the UCITS shall continue providing the competent authorities of the Member State where the marketing has been discontinued with the information required to be provided to the competent authorities of the UCITS host Member State under Article 93;*

(c) *the competent authorities of the Member State where the marketing has been discontinued shall continue exercising the rights and obligations conferred on competent authorities of the UCITS host Member State under Articles 97 and 108 of this Directive and, if applicable, may continue levying fees or charges for carrying out these activities in accordance with the provisions applicable for competent authorities pursuant to Article 6 of Regulation [on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013 and (EU) No 346/2013].*

Or. en

## Amendment 42

### Proposal for a directive

#### Article 1 – paragraph 1 – point 7

Directive 2009/65/EC

Article 93a – paragraph 5

*Text proposed by the Commission*

5. Member States shall allow for the use of all electronic or other distance

*Amendment*

5. Member States shall allow for the use of all electronic or other distance

communication means for the purposes of paragraph 4, provided the information and communication means are available for investors in the official languages of the Member State where the investor is located.

communication means for the purposes of paragraph 4, provided the information and communication means are available for investors in the official **language or one of the official** languages of the Member State where the investor is located **or in a language approved by the competent authorities of that Member State**.

Or. en

## Amendment 43

### Proposal for a directive

#### Article 2 – paragraph 1 – point 1

Directive 2011/61/EU

Article 4 – paragraph 1 – point aea

#### *Text proposed by the Commission*

(aea) ‘pre-marketing’ means a direct or indirect provision of information on investment strategies or investment ideas by an AIFM or on its behalf to professional investors domiciled or registered in the Union in order to test their interest in an AIF which is not yet established.

#### *Amendment*

(aea) ‘pre-marketing’ means a direct or indirect provision of information **or communication** on investment strategies or investment ideas by an **EU** AIFM or on its behalf to **potential** professional investors domiciled or registered in the Union in order to test their interest in an AIF **or a compartment of an AIF**, which is not yet established **in the Member State where the potential investors are domiciled or have their registered office**.

Or. en

## Amendment 44

### Proposal for a directive

#### Article 2 – paragraph 1 – point 2

Directive 2011/61/EU

Article 30a – paragraph 1 – introductory part

#### *Text proposed by the Commission*

1. Member States shall ensure that an authorised EU AIFM may engage in pre-

#### *Amendment*

1. Member States shall ensure that an authorised EU AIFM may engage in pre-

marketing in the Union, *excluding where the information presented to potential professional investors:*

marketing in the Union.

Or. en

#### **Amendment 45**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point 2**

Directive 2011/61/EU

Article 30a – paragraph 1 – point a

*Text proposed by the Commission*

*Amendment*

(a) *relates to an established AIF;* **deleted**

Or. en

#### **Amendment 46**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point 2**

Directive 2011/61/EU

Article 30a – paragraph 1 – point b

*Text proposed by the Commission*

*Amendment*

(b) *contains reference to an established AIF;* **deleted**

Or. en

#### **Amendment 47**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point 2**

Directive 2011/61/EU

Article 30a – paragraph 1 – point c

*Text proposed by the Commission*

*Amendment*

(c) *enables investors to commit to* **deleted**

*acquiring units or shares of a particular AIF;*

Or. en

#### **Amendment 48**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point 2**

Directive 2011/61/EU

Article 30a – paragraph 1 – point d

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

#### **Amendment 49**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point 2**

Directive 2011/61/EU

Article 30a – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. *Subscription by professional investors to units or shares of an AIF established following the pre-marketing in accordance with paragraph 1 or to the units or shares of AIFs managed or marketed by the EU AIFM that had engaged in pre-marketing of a not-yet-established AIF with the similar features shall be considered the result of marketing.*

3. *AIFMs shall ensure that investors, within 18 months of being contacted as part of pre-marketing, may acquire units or shares in the AIF or compartment of the AIF referred to in the information provided in the context of pre-marketing or of an AIF or compartment of an AIF established as a result of the pre-marketing only under marketing permitted under Article 31 or 32.*

Or. en

## Amendment 50

### Proposal for a directive

#### Article 2 – paragraph 1 – point 2

Directive 2011/61/EU

Article 30a – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3 a. AIFMs shall ensure that information relating to their pre-marketing activities is available, and provided upon request, to their competent authorities after that activity takes place. That information shall include a reference to the Member States and the period of time in which the pre-marketing activities took place and a description of the investment strategies or investment ideas presented in the course of the pre-marketing activities.**

Or. en

## Amendment 51

### Proposal for a directive

#### Article 2 – paragraph 1 – point 4 – point a

Directive 2011/61/EU

Article 32 – paragraph 7 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Directive or the AIFM would otherwise no longer comply with this Directive, the relevant competent authorities shall inform the AIFM within **20** working days that it is not to implement the change.

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

**Amendment 52****Proposal for a directive****Article 2 – paragraph 1 – point 4 – point a a (new)**

Directive 2011/61/EU

Article 32 – paragraph 7 – subparagraph 3

*Present text*

If a planned change is implemented notwithstanding the first and second subparagraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with this Directive or the AIFM otherwise would no longer comply with this Directive, the competent authorities of the home Member State of the AIFM shall take all due measures in accordance with Article 46, including, if necessary, the express prohibition of marketing of the AIF.

*Amendment****(a a) the third subparagraph of paragraph 7 is replaced by the following:***

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

Or. en

**Amendment 53****Proposal for a directive****Article 2 – paragraph 1 – point 4 – point b**

Directive 2011/61/EU

Article 32 – paragraph 7 – subparagraph 4

*Text proposed by the Commission****(b) the fourth subparagraph of paragraph 7 is replaced by the following:***

***'If the changes do not affect the compliance of the AIFM's management***

*Amendment****deleted***

*of the AIF with this Directive, or the compliance by the AIFM with this Directive otherwise, the competent authorities of the home Member State of the AIFM shall within one month inform the competent authorities of the host Member State of the AIFM of those changes.'*

Or. en

#### **Amendment 54**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point 5**

Directive 2011/61/EU

Article 32a – paragraph 1 – point a

*Text proposed by the Commission*

*Amendment*

*(a) no investor, which is domiciled or has a registered office in the Member State, where a notification of its marketing activities has been transmitted in accordance with Article 32, holds units or shares of that AIF or no more than 10 investors, which are domiciled or have a registered office in that Member State, hold units or shares of the AIF representing less than 1 % of assets under management of that AIF;*

*deleted*

Or. en

#### **Amendment 55**

##### **Proposal for a directive**

##### **Article 2 – paragraph 1 – point 5**

Directive 2011/61/EU

Article 32a – paragraph 1 – point b

*Text proposed by the Commission*

*Amendment*

*(b) a blanket offer to repurchase, free of any charges or deductions, all its AIF*

*(b) with the exception of closed-ended AIFs and funds regulated by Regulation*



units or shares held by investors in the Member State, where a notification of *its* marketing activities has been transmitted in accordance with Article 32, is made public at least for 30 working days and is addressed individually to all investors in that Member State *whose identity is known*;

*(EU) 2015/760*, a blanket offer to repurchase, free of any charges or deductions, all its AIF units or shares held by investors in the Member State, where a notification of marketing activities has been transmitted in accordance with Article 32, is made public at least for 30 working days and is addressed, *directly or through an intermediary*, individually to all investors in that Member State;

Or. en

## Amendment 56

### Proposal for a directive

#### Article 2 – paragraph 1 – point 5

Directive 2011/61/EU

Article 32a – paragraph 2

#### *Text proposed by the Commission*

2. The AIFM shall submit a notification to the competent *authority* of its home Member State comprising the information referred to in paragraph 1.

#### *Amendment*

2. The AIFM shall submit a notification to the competent *authorities* of its home Member State comprising the information referred to in paragraph 1.

Or. en

## Amendment 57

### Proposal for a directive

#### Article 2 – paragraph 1 – point 5

Directive 2011/61/EU

Article 32a – paragraph 3 – subparagraph 1

#### *Text proposed by the Commission*

The competent authorities of the home Member State of the AIFM shall, no later than **20** working days following the receipt of the complete notification referred to in paragraph 2, transmit it to the competent authorities of the Member State where marketing of AIF is intended to be

#### *Amendment*

*The competent authorities of the home Member State of the AIFM shall verify whether the notification submitted by the AIFM in accordance with paragraph 2 is complete.* The competent authorities of the home Member State of the AIFM shall, no later than **15** working days following the

discontinued and to ESMA.

receipt of the complete notification referred to in paragraph 2, transmit it to the competent authorities of the Member State where marketing of AIF is intended to be discontinued and to ESMA.

Or. en

## Amendment 58

### Proposal for a directive

#### Article 2 – paragraph 1 – point 5

Directive 2011/61/EU

Article 32a – paragraph 4

#### *Text proposed by the Commission*

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

#### *Amendment*

4. ***As long as investors remain invested in the EU AIF after marketing is discontinued:***

(a) the AIFM shall continue providing investors who remain invested in the EU AIF with the information required under Articles 22 and 23;

(b) ***the competent authorities of the home Member State of the AIFM shall continue providing the competent authorities of the Member State where the marketing has been discontinued with the information required to be provided to the competent authorities of the host Member State of the AIFM under Article 32;***

(c) ***the competent authorities of the Member State where the marketing has been discontinued shall continue exercising the rights and obligations conferred on competent authorities of the host Member State of the AIFM under Article 45 of this Directive and, if applicable, may continue levying fees or charges for carrying out these activities in accordance with the provisions applicable for competent authorities pursuant to Article 6 of Regulation [on facilitating cross-border distribution of collective***

## **Amendment 59**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 5 a (new)**

Directive 2011/61/EU

Article 33 – paragraph 6 – subparagraph 2

#### *Present text*

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Directive or the AIFM would otherwise no longer comply with this Directive, the competent authorities of the home Member State of the AIFM shall inform the AIFM *without undue delay* that it is not to implement the change.

#### *Amendment*

***(5a) In Article 33(6), the second subparagraph is replaced by the following:***

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

## **Amendment 60**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 5 b (new)**

Directive 2011/61/EU

Article 33 – paragraph 6 – subparagraph 3

#### *Present text*

#### *Amendment*

***(5a) In Article 33(6), the third subparagraph is replaced by the following:***

If a planned change is implemented notwithstanding the first and second subparagraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with this Directive or the AIFM otherwise would no longer comply with this Directive, the competent authorities of the home Member State of the AIFM shall take all due measures in accordance with Article 46.

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

Or. en

## Amendment 61

### Proposal for a directive

#### Article 2 – paragraph 1 – point 7

Directive 2011/61/EU

Article 43a – paragraph 1 – introductory part

#### *Text proposed by the Commission*

1. Without prejudice to Article 26 of Regulation (EU) 2015/760, Member States shall ensure that an AIFM **establishes**, in each Member State where it intends to market units or shares of an AIF to retail investors, facilities to perform the following tasks:

#### *Amendment*

1. Without prejudice to Article 26 of Regulation (EU) 2015/760, Member States shall ensure that an AIFM **makes available**, in each Member State where it intends to market units or shares of an AIF to retail investors, facilities to perform the following tasks:

Or. en

## Amendment 62

### Proposal for a directive

#### Article 2 – paragraph 1 – point 7

Directive 2011/61/EU

Article 43a – paragraph 1 – point a

#### *Text proposed by the Commission*

#### *Amendment*

(a) process investors' subscription, payment, repurchase and redemption orders relating to the units or shares of the AIF, in accordance with the conditions set out in the AIF's *marketing* documents;

(a) process investors' subscription, payment, repurchase and redemption orders relating to the units or shares of the AIF, in accordance with the conditions set out in the AIF's documents;

Or. en

### **Amendment 63**

#### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 7**

Directive 2011/61/EU

Article 43a – paragraph 1 – point d – introductory part

*Text proposed by the Commission*

*Amendment*

(d) make available to investors for inspection and for the obtaining copies of:

(d) make available to investors for inspection and for the obtaining copies of *information and documents in compliance with Articles 22 and 23;*

Or. en

### **Amendment 64**

#### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 7**

Directive 2011/61/EU

Article 43a – paragraph 1 – point d – point i

*Text proposed by the Commission*

*Amendment*

(i) *fund rules or instruments of incorporation of the AIF;*

*deleted*

Or. en

### **Amendment 65**

#### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 7**

Directive 2011/61/EU  
Article 43a – paragraph 1 – point d – point ii

*Text proposed by the Commission*

*Amendment*

(ii) *the latest annual report of the AIF;* *deleted*

Or. en

## **Amendment 66**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 7**

Directive 2011/61/EU

Article 43a – paragraph 1 – point e a (new)

*Text proposed by the Commission*

*Amendment*

*(e a) act as contact point for communicating with the competent authority.*

Or. en

## **Amendment 67**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 7**

Directive 2011/61/EU

Article 43a – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Member States shall not require an AIFM to have a physical presence for the purpose of paragraph 1.

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

Or. en

## **Amendment 68**

**Proposal for a directive**

**Article 2 – paragraph 1 – point 7**

Directive 2011/61/EU

Article 43a – paragraph 3 – subparagraph 1 – introductory part

*Text proposed by the Commission*

The AIFM shall ensure that the facilities referred to in paragraph 1 are ***of the following types and have the following characteristics:***

*Amendment*

The AIFM shall ensure that the facilities ***for performing the tasks*** referred to in paragraph 1 are ***provided:***

Or. en

**Amendment 69**

**Proposal for a directive**

**Article 2 – paragraph 1 – point 7**

Directive 2011/61/EU

Article 43a – paragraph 3 – point a

*Text proposed by the Commission*

(a) ***their tasks are performed*** in the official language or official languages of the Member State where the AIF is marketed;

*Amendment*

(a) in the official language or ***one of the*** official languages of the Member State where the AIF is marketed ***or in a language approved by the competent authorities of that Member State;***

Or. en

**Amendment 70**

**Proposal for a directive**

**Article 2 – paragraph 1 – point 7**

Directive 2011/61/EU

Article 43a – paragraph 3 – point b

*Text proposed by the Commission*

(b) ***their tasks are performed*** by AIFM itself or a third ***entity***, subject to regulation governing the tasks to be performed, or both.

*Amendment*

(b) by ***the*** AIFM itself or a third ***party***, subject to regulation ***and to supervision*** governing the tasks to be performed, or both.

## Amendment 71

### Proposal for a directive

#### Article 2 – paragraph 1 – point 7

Directive 2011/61/EU

Article 43a – paragraph 3 – subparagraph 2

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

## Amendment 72

### Proposal for a directive

#### Article 2 – paragraph 1 – point 7 a (new)

Directive 2011/61/EU

Annex IV – point 1 – point h a (new)

#### *Text proposed by the Commission*

#### *Amendment*

**(7 a) In Annex IV, the following point is added:**

***‘(ha) information and the address necessary for the invoicing or communicating of any applicable regulatory fees or charges;’***

Or. en

## Amendment 73

### Proposal for a directive



**Article 2 – paragraph 1 – point 7 b (new)**  
Directive 2011/61/EU  
Annex IV – point 1 – point h b (new)

*Text proposed by the Commission*

*Amendment*

**(7b) In Annex IV, the following point is added:**

**‘(hb) an indication of the facilities for performing the tasks referred to in Article 43a.’**

Or. en

## **Amendment 74**

**Proposal for a directive**  
**Article 4 a (new)**

*Text proposed by the Commission*

*Amendment*

### **Article 4 a**

#### **Review**

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

Or. en

## EXPLANATORY STATEMENT

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

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

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

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

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

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

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

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

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