



Council of the  
European Union

Brussels, 1 June 2018  
(OR. en)

9583/18

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**Interinstitutional File:**  
**2018/0045 (COD)**

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EF 154  
ECOFIN 551  
CODEC 916  
IA 160

**NOTE**

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From: Presidency  
To: Delegations

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on facilitating cross-border distribution of collective investment funds and amending Regulations (EU) No 345/2013 and (EU) No 346/2013  
*- Presidency compromise*

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Delegations will please find below a Presidency compromise text for the above-mentioned proposal. Additions to the text of the Commission proposal (doc. 6987/18) are marked in **underlined bold** and deletions are indicated in ~~striketrough~~.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on facilitating cross-border distribution of collective investment undertakings funds and**  
**amending Regulations (EU) No 345/2013 and (EU) No 346/2013**

(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 Central Bank,

Having regard to the opinion of the European Economic and Social Committee,<sup>1</sup>

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C., p. .

Whereas:

- (1) Divergent regulatory and supervisory approaches concerning the cross-border distribution of alternative investment funds ('AIFs'), as defined in Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the Council<sup>2</sup>, **including EuVECA, EuSEF and ELTIF**, and undertakings for collective investment in transferable securities ('UCITS'), within the meaning of Directive 2009/65/EC of the European Parliament and of the Council<sup>3</sup>, result in fragmentation and barriers to cross-border marketing and access of AIFs and UCITS, which in turn could prevent them from being marketed in other Member States.
- (2) In order to enhance the regulatory framework applicable to **collective** investment **undertakings** funds and to better protect investors, marketing communications to investors in AIFs and UCITS should be identifiable as such, and should present risks and rewards of purchasing units or shares of an AIF or UCITS in an equally prominent manner. In addition, all information included in marketing communications should be presented in a manner that is fair, clear and not misleading. To safeguard investors' protection and secure a level playing field between AIFs and UCITS, the standards for marketing communications should therefore equally apply to marketing communications for AIFs and UCITS.

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<sup>2</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

<sup>3</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).

- (2a) In order to increase transparency and investor protection and facilitate access to information on national laws and regulations and administrative provisions applicable to marketing communications, national competent authorities should publish such texts on their websites in at least a language customary in the sphere of international finance, including their non-official summaries which would allow managers of collective investment undertakings to get a first indication of these requirements. The publication should only be for informational purposes and should not create legal obligations. For the same reasons, the European Securities and Markets Authority ('ESMA') should create a central database containing hyperlinks to the information published on the websites of competent authorities.**
- (2b) In order to promote good practices of investor protection which are enshrined in the national requirements for fair and clear marketing communications, including their on-line aspects, ESMA may adopt guidelines on the application of these rules to marketing communications.**
- (3) Competent authorities ~~may~~ **may** that decide to require **prior** systematic notification of marketing communications **for the purpose of ex-ante verification of** ~~should verify~~ compliance of those communications with this Regulation and other applicable requirements, **such as** ~~namely~~ whether the marketing communications are identifiable as such, whether they present risks and rewards of purchasing units or shares of a UCITS and, where a Member State allows marketing of AIFs to retail investors, of an AIF in an equally prominent manner and whether all information in marketing communications is presented in a manner that is fair, clear and not misleading. **This task should be performed within a limited timeframe. Where competent authorities require ex-ante notification, this should not prevent them from verifying marketing communications ex-post.**

- (4) ~~To enhance transparency and investor protection, access to information on marketing requirements for shares or units of AIFs or UCITS enshrined in national laws, regulations and administrative provisions should be improved by requiring competent authorities and the European Securities and Markets Authority ('ESMA') to maintain central databases on their websites in at least a language customary in the sphere of international finance.~~
- (5) To ensure equality in treatment and facilitate decision-making of AIFMs and UCITS management companies whether to engage in cross border distribution of investment funds, it is important that fees and charges levied by competent authorities for ~~the authorisation, registration and supervision~~ **of crossborder activities** referred to in Directives 2009/65/EC and 2011/61/EU **should be** proportionate to the supervisory tasks carried out and publicly disclosed, and that those fees and charges **should be** published on their websites. For the same reason, **hyperlinks to the information published on the websites of competent authorities in relation to the fees and charges will also be published at** the ESMA website **in order to have a central point for information. The ESMA website should also include an interactive tool enabling indicative calculations of those fees and charges levied by competent authorities.** ~~should include an interactive tool enabling calculations of fees and charges levied by competent authorities.~~
- (5a) To ensure better recovery of fees or charges and to increase transparency and clarity of the fees and charges structure, where such fees or charges are levied by the competent authorities, AIFMs and UCITS management companies should receive an invoice or an individual payment statement clearly stating the amount of fees or charges due and payment modalities.**

- (6) Since ESMA, in accordance with Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>4</sup>, should monitor and assess market developments in the area of its competence, it is appropriate and necessary to enhance the knowledge of ESMA by enlarging ESMA's currently existing databases to include all AIFMs and UCITS management companies, **the Member States in which they are providing services** and all AIFs and UCITS which those **AIFMs and UCITS** management companies manage and market, as well as all the Member States in which those **collective investment undertakings** investment funds are marketed. For that purpose, **in order to enable ESMA to maintain the central database with up to date information,** competent authorities should transmit to ESMA **information on the** notifications, notification letters **and information** or written notices that they **have** received under Directives 2009/65/EC and 2011/61/EU **in relation to crossborder activity as well as transmit information about any change which should be reflected in the database.**

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<sup>4</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (7) In order to secure a level playing field between qualifying venture capital funds as defined in Article 3(b) of Regulation (EU) No 345/2013 of the European Parliament and of the Council<sup>5</sup>, or qualifying social entrepreneurship funds as defined in Article 3(b) of Regulation (EU) No 346/2013 of the European Parliament and of the Council,<sup>6</sup> on the one hand, and other AIFs, on the other hand, it is necessary to include into those Regulations rules on pre-marketing that are identical to the rules laid down in Directive 2011/61/EU on pre-marketing. Those rules should enable managers registered in accordance with those Regulations to target investors by testing their appetite for upcoming investment opportunities or strategies through qualifying venture capital funds and qualifying social entrepreneurship funds.
- ~~(8) The Commission should be empowered to adopt draft regulatory technical standards, developed by ESMA, with regard to the specification of information on fees or charges or, where applicable, relevant calculation methodologies for those fees or charges, levied by the competent authorities. Furthermore, the Commission should be empowered to adopt draft regulatory technical standards, developed by ESMA, with regard to the specification of information to be notified in notifications, notification letters and written notices on cross-border activities that are required by Directives 2009/65/EC and 2011/61/EU. The Commission should adopt those draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

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<sup>5</sup> Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

<sup>6</sup> Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

- (9) The Commission should be empowered to adopt implementing technical standards, developed by ESMA, with regard to the standard forms, templates and procedures for **publication** ~~notifications~~ by competent authorities of the laws, regulations and administrative provisions and their summaries on marketing requirements applicable in their territories, the levels of fees or charges **for crossborder activity** levied by them, and, where applicable, relevant calculation methodologies. Furthermore, to improve the transmission of ~~information to competent authorities and among competent authorities and~~ ESMA, implementing technical standards should **also** cover notifications, notification letters and **information** ~~written notices~~ on cross-border activities that are required by Directives 2009/65/EC and 2011/61/EU. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.
- (10) It is necessary to coordinate the empowerments granted to the Commission to adopt draft regulatory technical standards and implementing technical standards, as developed by ESMA, in the area of notifications, notification letters or written notices on cross-border activities under this Regulation and under Directives 2009/65/EC and 2011/61/EU. [*Directive amending Directive 2009/65/EC and Directive 2011/61/EU with regard to cross-border distribution of collective investment **undertakings funds***] should therefore delete those empowerments from Directives 2009/65/EC and 2011/61/EU.



- (11) Any processing of personal data carried out within the framework of this Regulation, such as the exchange or transmission of personal data by the competent authorities, should be undertaken in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>7</sup>, and any exchange or transmission of information by ESMA should be undertaken in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>8</sup>.
- (12) Five years after the entry into force of this Regulation, the Commission should conduct an evaluation of the application of this Regulation. The evaluation should take account of market developments and assess whether the measures introduced have improved the cross-border distribution of investment funds.
- (13) In order to ensure legal certainty, it is necessary to synchronise the application dates of laws, regulations and administrative provisions implementing [*Directive amending Directive 2009/65/EC and Directive 2011/61/EU with regard to cross-border distribution of collective investment undertakings funds*] and of this Regulation with regard to provisions on marketing communications and pre-marketing.
- (14) Since the objectives of this Regulation, namely to enhance market efficiency while establishing the Capital Markets Union, cannot be sufficiently achieved by the Member States but can rather, by reason of its effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

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<sup>7</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

<sup>8</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

HAVE ADOPTED THIS REGULATION:

*Article 1*

**Definitions**

For the purposes of this Regulation, the following definitions apply:

- (a) ‘AIF’ means an AIF as defined in Article 4(1)(a) of Directive 2011/61/EU;
- (b) ‘AIFM’ means an AIFM as **authorised in accordance with Article 6** ~~defined in Article 4(1)(b)~~ of Directive 2011/61/EU;
- (ba) ‘EuVECA or EuSEF managers’ means a manager of a qualifying venture capital fund registered in accordance with Article 14 of Regulation (EU) No 345/2013 or a manager of a qualifying social entrepreneurship fund registered in accordance with Article 15 of Regulation (EU) No 346/2013;**
- (c) ‘competent authority’ means a competent authority as defined in Article 2(1)(h) of Directive 2009/65/EC or a competent authority as defined in Article 4(1)(f) of Directive 2011/61/EU or Article 4(1)(h) of Directive 2011/61/EU;
- (d) ‘home Member State’ means the Member State in which the AIFM or the UCITS management company has its registered office;
- (e) ‘UCITS’ means a UCITS authorised in accordance with Article 5 of Directive 2009/65/EC;
- (f) ‘UCITS management company’ means a management company as defined in Article 2(1)(b) of Directive 2009/65/EC.

## Article 2

### Requirements for marketing communications

1. AIFMs, **EuVECA, EuSEF managers and** UCITS management companies shall ensure that all marketing communications to investors shall be identifiable as such, present risks and rewards of purchasing units or shares of an AIF or of an UCITS in an equally prominent manner and that all information included in marketing communications is fair, clear and not misleading.
2. UCITS management companies shall ensure that no marketing communication that contains specific information about a UCITS contradicts the information, or diminishes its significance, contained in the prospectus referred to in Article 68 of Directive [2009/65/EC](#) and the key investor information referred to in Article 78 of that Directive. UCITS management companies shall ensure that all marketing communications indicate that a prospectus exists and that the key investor information is available. The marketing communication shall specify where, how and in which language investors or potential investors can obtain the prospectus and the key investor information.
3. AIFMs shall ensure that no marketing communication comprising an invitation to purchase units or shares of an AIF that contains specific information about an AIF makes any statement that contradicts the information that needs to be disclosed to the investors in accordance with Article 23 of Directive [2011/61/EU](#), or diminishes its significance.

4. Paragraph 2 of this Article shall apply *mutatis mutandis* to AIFs which publish a prospectus in accordance with Regulation 2017/1129 of the European Parliament and the Council,<sup>9</sup> or in accordance with national law, or apply rules on the format and content of the key investor information referred to in Article 78 of Directive 2009/65/EC.
5. By [PO: *Please insert date 24 months after the date of entry into force*] ESMA **may** ~~shall~~ issue guidelines, and thereafter update those guidelines periodically, on the application of the requirements for marketing communications referred to in the first paragraph, taking into account on-line aspects of marketing communications.

### Article 3

#### **Publication of national provisions concerning marketing requirements**

1. Competent authorities shall publish and maintain **up to date** on their websites **complete information on the** ~~central databases containing all~~ applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS, and the summaries thereof, in at least a language customary in the sphere of international finance.
2. Competent authorities shall notify to ESMA ~~the laws, regulations and administrative provisions, and~~ the summaries thereof, referred to in paragraph 1 and the hyperlinks to the websites of competent authorities where that information is published.

~~Competent authorities shall notify to ESMA any change in the information provided under the first subparagraph of this paragraph without delay.~~

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<sup>9</sup> 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).

3. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the **publications and** notifications under this Article.

ESMA shall submit those draft implementing standards to the Commission by [*PO: Please insert date 18 months after the date of entry into force*].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

- ~~4. By [*PO: Please insert date 48 months after the date of entry into force*] ESMA shall examine in a report the marketing requirements referred to in paragraph 1 and inform the Commission thereof. ESMA shall update that report every two years.~~

#### Article 4

#### **ESMA central database on national provisions concerning marketing requirements**

By [*PO: Please insert date 30 months after the date of entry into force*], ESMA shall publish and maintain on its website a central database containing ~~the national laws, regulations and administrative provisions concerning marketing requirements, and~~ the summaries thereof **as referred to in Art. 3 (1)**, and the hyperlinks to the websites of competent authorities **as referred to in Art.3 (2)**.

#### Article 5

#### **Ex-ante verification of marketing communications**

1. For the sole purpose of verifying compliance with this Regulation and with national provisions concerning marketing requirements, competent authorities may require prior notification of marketing communications which the management companies intend to use directly or indirectly in their dealings with investors.

**The prior notification referred to in the first subparagraph may be required on a systematic basis or in accordance with any other verification practices and is without prejudice to further supervisory powers to verify marketing communications ex-post.**

The **requirement for prior** systematic notification referred to in the first subparagraph shall not constitute a prior condition for the marketing of units of UCITS.

**In cases** where competent authorities require **prior** notification of marketing communications referred to in the first subparagraph **with the purpose of ex-ante verification**, they shall, within 10 working days, starting on the working day following that of the receipt of a notification, inform the UCITS management company of any request to amend its marketing communications. **In the absence of any request for amendments upon expiry of the 10 working days period the relevant marketing communications shall be deemed to be compliant with this Regulation and with national provisions concerning marketing requirements.**

2. Competent authorities that require **prior** systematic notification of marketing communications shall establish, apply, and publish on their websites, procedures for the **prior** systematic notification of marketing communications. The internal rules and procedures shall ensure transparent and non-discriminatory treatment of all UCITS, regardless of the Member States in which the UCITS are authorised.

3. Where ~~Member States allow~~ AIFMs to market to retail investors units or shares of **their** AIFs ~~in their territories~~, paragraphs 1 and 2 of this Article shall apply *mutatis mutandis* to those AIFMs.

### **Article 5a**

#### **ESMA report on marketing communications**

- 1. Competent authorities shall, by 31 March of each year, report annually the following information to ESMA:**
  - (a) the number of requests for amendments of marketing communications made on the basis of ex-ante verification, where applicable;**
  - (b) the number of requests for amendments and decisions taken on the basis of ex-post checks, clearly distinguishing the most frequent breaches, including a description and the nature of these breaches;**
  - (c) a description of the most frequent breaches of the requirements referred to in Article 2;**
  - (d) one concrete example for each of the breaches referred to in point (a).**
- 2. By 30 June of each year, ESMA shall submit a report to the Commission which presents an overview of marketing requirements in all Member States referred to in Article 3, paragraph 1 and contains an analysis of the effects of national laws, regulations and administrative provisions governing marketing communications based also on the information received in accordance with paragraph 1.**

## Article 6

### Common principles concerning fees or charges

1. **In cases where fees or charges are levied by competent authorities in carrying out their duties in relation to the crossborder activity of AIFMs and management companies, fees or charges shall be consistent with** proportionate to the **overall operational cost** expenditure relating to ~~the authorisation or registration and~~ the performance of the **functions of the competent authority** supervisory and investigatory powers pursuant to Articles 44, 45 and 46 of Directive 2011/61/EU and Articles 97 and 98 of Directive 2009/65/EC.
2. Competent authorities shall send an invoice **or an individual payment statement** ~~for the given financial year~~ to the registered office of the AIFM or UCITS management company. ~~The invoice shall indicate~~ **for** the fees or charges referred to in paragraph 1, the means of payment and the date when payment is due.

## Article 7

### Publication of national provisions concerning fees and charges

1. By [*PO: Please insert date 6 months after the date of entry into force*], competent authorities shall publish and maintain **up to date information** on their websites ~~central databases~~ listing the fees or charges referred to in Article 6(1), or, where applicable, the calculation methodologies for those fees or charges, in at least a language customary in the sphere of international finance.
2. Competent authorities shall notify to ESMA **the hyperlinks to the websites of competent authorities where the information referred to in paragraph 1 is published** ~~the levels of fees or charges referred to in Article 6(1), and where applicable, the calculation methodologies for those fees or charges.~~

~~Competent authorities shall notify to ESMA any change in the information provided under the first subparagraph without delay.~~



~~3. ESMA shall develop draft regulatory technical standards to specify the information to be notified to ESMA by the competent authorities under this Article.~~

~~ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 18 months after the date of entry into force].~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

**3 4.** ESMA shall develop draft implementing technical standards to determine the standard forms, templates and procedures for the **publications and** notifications under this Article.

ESMA shall submit those draft implementing standards to the Commission by [PO: Please insert date 18 months after the date of entry into force].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

## Article 8

### **ESMA publication interactive database on fees and charges**

1. By [*PO: Please insert date 30 months after the date of entry into force*], ESMA shall publish and maintain on its website **hyperlinks to the websites of competent authorities as referred to in Article 7(2)** an interactive database, publicly accessible in at least a language customary in the sphere of international finance, listing the fees or charges referred to in Article 6(1), or, where applicable, the calculation methodologies for those fees or charges.
2. **By [*PO: Please insert date 30 months after the date of entry into force*], ESMA shall develop, make available and maintain on its website an interactive tool publicly accessible in at least a language customary in the sphere of international finance that provides an indicative calculation of the fees and charges referred to in Article 6(1). The interactive tool shall constitute a part of the database referred to in paragraph 1.**  
The interactive database shall contain the hyperlinks to the websites of competent authorities referred to in Article 7(1).

## Article 9

### **ESMA ~~interactive tool on fees and charges~~**

~~By [*PO: Please insert date 30 months after the date of entry into force*] ESMA shall develop, make available and maintain on its website an interactive tool publicly accessible in at least a language customary in the sphere of international finance presenting the fees and charges referred to in Article 6(1).~~

~~The interactive tool shall constitute a part of the interactive database referred to in Article 8.~~

Article 10

**ESMA central database on AIFMs, UCITS management companies, AIFs and UCITS**

- 1.** By [*PO: Please insert date 30 months after the date of entry into force*], ESMA shall publish and maintain **up to date** on its website a central database, publicly accessible in a language customary in the sphere of international finance, listing:

  - (a)** all **authorised** AIFMs, **a list of the Member States in which they pursue activities under the freedom of establishment and/or the freedom to provide services, as well as the Member States in which the AIFMs manage and/or market AIFs;**
  - (b)** all UCITS management companies, **a list of the Member States in which they pursue activities under the freedom of establishment and/or under the freedom to provide services, as well as the Member States in which the UCITS they manage are marketed;**
  - (c)** AIFs and UCITS, which those AIFMs and UCITS management companies manage and/or market, ~~as well as the Member States in which those funds are marketed.~~
- 2.** **The list referred to in the second subparagraph of Article 6 (1) of Directive 2009/65/EC, the central public register referred to in the second subparagraph of Article 7(5) of Directive 2011/61/EU and the central database referred to in Article 18 of Regulation (EU) No 346/2013 shall be part of the database referred to in the first subparagraph.**

## Standardisation of notifications to ESMA

1. The competent authorities of the home Member States shall transmit to ESMA **without undue delay** any notification, ~~any notification letter, any written notice or any~~ information referred to in ~~paragraphs 3 and 8 of Article 17(1), paragraphs 2 and 4 of Article 18(1), paragraphs 3 and 8 of Article 93(1), Article 93a(23) of Directive 2009/65/EC, and in paragraphs 2 and 4 of Article 31(2), paragraphs 3 and 7 of Article 32(2), Article 32a(23) and paragraphs 2 and 3 Article 33(2) of Directive 2011/61/EU~~ **without delay which are necessary for creating and maintaining the central database referred to in Article 10.**

**The competent authorities of the home Member States shall also transmit to ESMA any change of the information referred to in the first subparagraph in a case when this leads to a change of the information in the ESMA central database as referred to in Article 10(1).**

2. ESMA shall develop draft regulatory technical standards to specify **the** information to be notified in accordance with ~~paragraphs 1, 2, 3, 8 and 9 of Article 17, paragraphs 1, 2 and 4 of Article 18, paragraphs 1, 2 and 8 of Article 93 and Article 93a(2) of Directive 2009/65/EC and Article 32a(2) and paragraphs 2, 3 and 6 of Article 33 of Directive 2011/61/EU.~~

ESMA shall submit those draft regulatory technical standards to the Commission by [*PO: Please insert date 18 months after the date of entry into force*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

3. ESMA shall develop draft implementing technical standards to specify the forms, templates and procedures for the transmission of the information ~~referred to in paragraphs 1, 2, 3, 8 and 9 of Article 17, paragraphs 1, 2 and 4 of Article 18, paragraphs 1, 2 and 8 of Article 93 and Article 93a(2) of Directive 2009/65/EC and paragraphs 2 and 4 of Article 31, paragraphs 2 and 7 of Article 32, Article 32a(2) and paragraphs 2, 3 and 6 of Article 33 of Directive 2011/61/EU, including the procedure of transmission of the information~~ by the competent authorities for the purposes of paragraph 1.

ESMA shall submit those draft implementing technical standards to the Commission by [PO: Please insert date 18 months after the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

### **Article 11a**

#### **Powers of competent authorities**

1. **Competent authorities shall have all supervisory and investigatory powers that are necessary for the exercise of their functions pursuant to this Regulation.**
2. **The powers conferred on competent authorities in accordance with Directive 2009/65/EC and Directive 2011/61/EU, including those related to penalties, shall also be exercised with respect to the managers referred to in Article 2 of this Regulation.**

*Article 12*

**Amendments to Regulation (EU) No 345/2013 on European venture capital funds**

Regulation (EU) No 345/2013 is amended as follows:

(1) in Article 3, the following point (o) is added:

‘(o) ‘pre-marketing’ means a direct or indirect provision of information **or communication** on investment strategies or investment ideas by the manager of a qualifying venture capital fund, or on its behalf, to potential investors domiciled or with a registered office in the Union in order to test their interest in a ~~not yet registered~~ qualifying venture capital fund **which does not amount to an offer or placement to the investor to invest in the units or shares of that qualifying venture capital fund**’;

(2) the following Article 4a is inserted:

*‘Article 4a*

1. Managers of qualifying venture capital funds may engage in pre-marketing in the Union, excluding where the information presented to potential investors:

~~(a) — relates to established qualifying venture capital funds;~~

~~(b) — contains any reference to established qualifying venture capital funds;~~

**(a)** ~~(e)~~ enables investors to commit to acquiring units or shares of particular qualifying venture capital funds;

**(b)** ~~(d)~~ amounts to a ~~prospectus, constitutional documents of not yet registered qualifying venture capital funds, offering documents,~~ subscription forms or similar documents whether in a draft or a final form **allowing investors to take an investment decision**;

- (c) **amounts to constitutional documents, a prospectus or offering documents of a not-yet-registered qualifying venture capital fund in a final form.**

**Where a draft prospectus or offering documents are provided, such documents shall not contain all relevant information allowing investors to take an investment decision and shall clearly state that:**

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

2. Competent authorities shall not require managers of qualifying venture capital funds to notify their intention to engage in pre-marketing.

3. Subscription by investors to units or shares, **following the pre-marketing,** of **a** qualifying venture capital fund **referred to in the information provided in the context of pre-marketing, or of a qualifying venture capital fund** registered **as a result of** following the pre-marketing ~~in accordance with paragraph 1 or to the units or shares of qualifying venture capital funds managed and marketed by managers of qualifying venture capital funds that engaged in pre-marketing of not yet registered qualifying venture capital funds with the similar features~~ shall be considered the result of marketing.

4. Managers of qualifying venture capital funds offering for subscription units or shares of qualifying venture capital funds that were the object of pre-marketing shall inform the competent authority in accordance with Article 15.’

*Article 13*

**Amendments to Regulation (EU) No 346/2013 on European social entrepreneurship funds**

Regulation (EU) No 346/2013 is amended as follows:

(1) in Article 3, the following point (o) is added:

‘(o) ‘pre-marketing’ means a direct or indirect provision of information **or communication** on investment strategies or investment ideas by the manager of a qualifying social entrepreneurship fund, or on its behalf, to potential investors domiciled or with a registered office in the Union in order to test their interest in a ~~not yet registered~~ qualifying social entrepreneurship fund **which does not amount to an offer or placement to the investor to invest in the units or shares of that social entrepreneurship fund**’;

(2) the following Article 4a is inserted:

*‘Article 4a*

1. Managers of qualifying social entrepreneurship funds may engage in pre-marketing in the Union, excluding where the information presented to potential investors:

~~(a) — relates to established qualifying social entrepreneurship funds;~~

~~(b) — contains any reference to established qualifying social entrepreneurship funds;~~

**(a) (e)** enables investors to commit to acquiring units or shares of particular qualifying social entrepreneurship funds;



- (b) ~~(d)~~ **amounts to subscription forms or similar documents whether in a draft or a final form;** a prospectus, constitutional documents of not yet registered qualifying social entrepreneurship funds, offering documents, subscription forms or similar documents whether in a draft or a final form allowing investors to take an investment decision.
- (c) **amounts to constitutional documents, a prospectus or offering documents of a not-yet-registered qualifying venture capital funds in a final form.**

**Where a draft prospectus or offering documents are provided, such documents shall not contain all relevant information allowing investors to take an investment decision and shall clearly state that:**

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

2. Competent authorities shall not require managers of qualifying social entrepreneurship funds to notify their intention to engage in pre-marketing.

3. Subscription by investors to units or shares, **following the pre-marketing,** of **a** qualifying social entrepreneurship fund **referred to in the information provided in the context of pre-marketing, or of a qualifying social entrepreneurship fund** registered **as a result of** following the pre-marketing ~~or to the units or shares of qualifying social entrepreneurship funds managed and marketed by managers of qualifying social entrepreneurship funds that engaged in pre-marketing of not yet registered qualifying social entrepreneurship funds with the similar features~~ shall be considered the result of marketing.

4. Managers of qualifying social entrepreneurship funds offering for subscription units or shares of qualifying social entrepreneurship funds that were the object of pre-marketing shall inform the competent authority in accordance with Article 16.’

#### *Article 14*

#### **Evaluation**

By [*PO: Please insert date 60 months after the date of entry into force*] 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.

#### *Article 15*

#### **Entry into force**

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

It shall apply from [*PO: Please insert the twentieth day following that of its publication in the Official Journal of the European Union*], except for paragraphs 1 and 4 of Article 2, paragraph 1 and 2 of Article 3, Article 12 and Article 13, which shall apply from [*PO: Please insert date 24 months after the date of entry into force*] **and paragraph 2 of Article 5a which shall apply from [*PO: Please insert date 48 months after the date of entry into force*].**~~]~~

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*