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From:	Presidency
To:	Permanent Representatives Committee
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/65/EC of the European Parliament and of the Council and Directive 2011/61/EU of the European Parliament and of the Council with regard to cross-border distribution of collective investment funds - Confirmation of the final compromise text with a view to agreement

DIRECTIVE (EU) 2019/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure,

[1] OJ C , , p. .

Whereas:

(1) A common objective of 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 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.

(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.

(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.

(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.

(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.

(6) The provisions of Directive 2009/65/EC, which require UCITS to provide facilities to investors, as implemented by certain national legal systems, have proven to be burdensome. Moreover, the local facilities are rarely used by investors as intended by the Directive. The preferred method of contact has shifted to direct interaction of investors with the fund manager – either electronically or by telephone, whereas payments and redemptions are executed through other channels. While these facilities are used for administrative purposes such as cross-border recovery of regulatory fees, such issues, however, should be addressed via other means including cooperation between the competent authorities. Consequently, rules should be established, which modernise and specify the requirements for providing facilities to retail investors, and a local physical presence providing such facilities should not be required by Member States. At the same time rules should ensure that investors have access to the information to which they are entitled.

(7) In order to ensure a coherent treatment of retail investors, it is necessary that the requirements relating to facilities are also applied to AIFMs where Member States allow them to market units or shares of AIFs to retail investors in their territories.

(8) The absence of clear and uniform conditions for the discontinuation of marketing of units or shares of a UCITS or an EU AIF in a host Member State creates economic and legal uncertainty for the fund managers. Therefore, this proposal lays down clear conditions under which denotification of the arrangements made for marketing as regards some or all of its units or shares 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 terminate their arrangements made for marketing of their shares or units when the established conditions are met, and on the other hand, the interests of investors in such undertakings.

(9) The possibility to stop marketing UCITS or EU AIFs in a particular Member State should not come at a cost to investors, nor diminish their safeguards under Directive 2009/65/EC or Directive 2011/61/EU, in particular with regard to their right to accurate information on the continued activities of those funds.

(10) There are cases where an AIFM willing to test investor appetite for a particular investment idea or investment strategy is faced with a divergent treatment of pre-marketing in different national legal systems. In some Member States where pre-marketing is permitted, its definition and conditions vary considerably. However, in other Member States there is no concept of pre-marketing at all. To address these divergences, a harmonised definition of pre-marketing should be provided and conditions under which an EU AIFM can engage in pre-marketing should be established.

(11) For pre-marketing to be recognised as such under this Directive, it should be addressed to a professional investor and concern an investment idea or investment strategy an AIF which is not yet established, or an AIF which is established, but not yet notified for marketing in accordance with Article 31 or 32, or in compartments of such AIFs. Accordingly, during the course of pre-marketing, investors are unable to subscribe to the units or shares of an AIF and no subscription forms or similar documents whether in a draft or a final form should be permitted to be distributed to potential investors during this stage.

AIFMs should ensure that investors do not acquire units or shares in an AIF through pre-marketing and that investors contacted as part of pre-marketing may only acquire units or shares in that AIF under marketing permitted under Article 31 or 32.

Any subscription by professional investors, within 18 months of the EU AIFM beginning pre-marketing, to units or shares of an AIF referred to in the information provided in the context of pre-marketing, or of an AIF established as a result of the pre-marketing should be considered the result of marketing and should be subject to the applicable notification procedures referred to in Articles 31 and 32.

To ensure that national competent authorities can exercise their control over pre-marketing in their Member State, AIFMs should send, within two weeks of it beginning pre-marketing, an informal letter, in paper form or by electronic means, to the competent authorities of their home Member State , mentioning inter alia in which Member State or Member States they conducted pre-marketing, the periods of time in which the pre-marketing took place and, where relevant, a list of AIFs and compartments of AIFs which were subject of pre-marketing. The competent authorities of the home Member State of the AIFM should promptly inform the competent authorities of the Member States in which AIFM was engaged in pre-marketing.

(11a) EU AIFMs should ensure that their pre-marketing is adequately documented.

(11b) National Laws, regulations and administrative provisions necessary to comply with this Directive and, in particular, with harmonised rules on pre-marketing, should not disadvantage an EU AIFM vis-à-vis a non-EU AIFM in any case. This concerns both the current situation in which non-EU AIFMs do not have passporting rights, and the situation where the provisions on passporting in Directive 2011/61/EU become applicable.

(12) In order to ensure legal certainty, it is necessary to synchronise the application dates of national 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.

(13) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[2], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

[2] OJ C 369, 17.12.2011, p. 14.

Article 1

Amendments to Directive 2009/65/EC

Directive 2009/65/EC is amended as follows:

(1) In Article 17(8), the following subparagraphs are 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.

In that 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 accordingly.

Where a change referred to in this paragraph is implemented after notification has been made in accordance with the first subparagraph and pursuant to that change the management company no longer complies 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.'

(3) Article 77 is deleted.

(4) In Article 91, paragraph 3 is deleted.

(5) Article 92 is replaced by the following:

‘Article 92

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

(a) process subscription, repurchase and redemption orders and make other payments to unit-holders relating to the units of the UCITS, in accordance with the conditions set out in the UCITS documents;

(b) provide investors with information on how orders referred to in point (a) can be made and how repurchase and redemption proceeds are paid;

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

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

(e) provide investors with information relevant to the tasks the facilities perform in a durable medium as defined in Article 2(1)(m);

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

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.

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

(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;

(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;

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 and that the third party receives all the relevant information and documents from the UCITS .'

(6) Article 93 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

"The notification letter shall also include information and the address necessary for the invoicing, or communication 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).";

(b) paragraph 8 is replaced by the following:

'8. In the event of a change to the information in the notification letter submitted in accordance with paragraph 1, or a change regarding share classes to be marketed, the UCITS shall give written notice thereof to the competent authorities of both the UCITS home Member State and the host Member State at least one month before implementing that change.

Where, pursuant to a change referred to in the first subparagraph the UCITS would no longer comply with this Directive, the 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.

In that case, the competent authorities of the UCITS home Member State shall notify the competent authorities of the UCITS host Member State accordingly.

Where a change referred to in this paragraph 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.

(7) the following Article 93a is inserted:

‘Article 93a

1. Member States shall ensure that a UCITS may de-notify arrangements made for marketing as regards some or all of its units in a Member State in respect of which it has made a notification in accordance with Article 93, where all the following conditions are fulfilled:

(b) a blanket offer is made to repurchase or redeem, free of any charges or deductions, all such units held by investors in that Member State, is publicly available for at least 30 working days, and is addressed, directly or through financial intermediaries, individually to all investors in the host Member State whose identity is known;

(c) the intention to terminate arrangements made for marketing such units in that Member State 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.

(d) any contractual arrangements with financial intermediaries or delegates are modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the units identified in the notification letter referred to in paragraph 2.

The information referred to in points (b) and (c) shall make clear the consequences for investors if they do not accept the offer to redeem or repurchase their units.

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.

As of the date referred to in point (d) of the first subparagraph, the UCITS shall cease any new or further, direct or indirect, offering or placement of its units in the Member State referred to in the first subparagraph.

2. The UCITS shall submit a notification letter to the competent authorities of its home Member State containing the information referred to in points (b), (c) and (d) of the first subparagraph of paragraph 1.

3. The competent authorities of the UCITS home Member State shall verify whether the notification submitted by the UCITS in accordance with paragraph 2 is complete. The competent authorities of the UCITS home Member State shall, no later than 15 working days from the receipt of a complete notification , transmit that notification to the competent authorities of the Member State referred to in the first subparagraph of paragraph 1, and to ESMA.

Upon transmission of the notification file pursuant to the first subparagraph, the competent authorities of the UCITS home Member State shall immediately notify the UCITS of that transmission.

4. The UCITS shall provide investors who remain invested in the UCITS as well as the competent authorities of the home Member State of the UCITS with the information required under Articles 68 to 82 and under Article 94.

4a. The competent authorities of the home Member State of the UCITS shall transmit to the competent authorities of the Member State referred to in the first subparagraph of paragraph 1 of this Article information on any changes to the documents referred to in Article 93(2).

4b. The competent authorities of the Member State referred to in the first subparagraph of paragraph 1 of this Article shall have the same rights and obligations as the competent authorities of the UCITS host Member State as set out in Article 21(2), Article 97(3) and Article 108.
Without prejudice to other monitoring activities and supervisory powers as referred to in Article 21(2) and Article 97, as from the date of transmission under paragraph 4a of this Article, the competent authorities of the Member State referred to in the first subparagraph of paragraph 1 of this Article shall not require the concerned UCITS to demonstrate compliance with national laws, regulations and administrative provisions governing marketing requirements referred to in [Article 3 of the 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) 346/2013.

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 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.'

(8) in Article 95(1), point (a) is deleted.

Article 2

Amendments to Directive 2011/61/EU

Directive 2011/61/EU is amended as follows:

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

'(aea)'pre-marketing' means provision of information or communication, direct or indirect, on investment strategies or investment ideas by an EU AIFM or on its behalf, to potential professional investors domiciled or registered in the Union in order to test their interest in an AIF which is not yet established, or in an AIF which is established, but not yet notified for marketing in accordance with Article 31 or 32, or in compartments of such AIFs, in that Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the investor to invest in the units or shares of that AIF or compartment.';

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

'Article 30a

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

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

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

(c a) amounts to subscription forms or similar documents whether in a draft or a final form;

(d) amounts to constitutional documents, a prospectus or offering documents of a not-yet-established AIF in a final form .

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

(a) the document does not constitute an offer or an invitation to subscribe to units or shares of an AIF;

(b) the information presented in those documents should not be relied upon because it is incomplete and may be subject to change.

Member States shall ensure that EU AIFMs are not required to notify the competent authorities of the content or of the addressees of pre-marketing, or to fulfil any conditions or requirements other than those set out in this Article, before they engage in pre-marketing.

3. AIFMs shall ensure that investors do not acquire units or shares in an AIF through pre-marketing and that investors contacted as part of pre-marketing may only acquire units or shares in that AIF under marketing permitted under Article 31 or 32.

Any subscription by professional investors, within 18 months of the EU AIFM beginning pre-marketing, to units or shares of an AIF referred to in the information provided in the context of pre-marketing, or of an AIF established as a result of the pre-marketing shall be considered the result of marketing and shall be subject to the applicable notification procedures referred to in Articles 31 and 32.

Member States shall ensure that an EU AIFM sends, within two weeks of it beginning pre-marketing, an informal letter, in paper form or by electronic means, to the competent authorities of its home Member State. That letter shall contain references to the Member States and the periods of time in which the pre-marketing took place, a brief description of the pre-marketing including the information on the investment strategies presented and, where relevant, a list of the AIFs and compartments of AIFs which were subject of pre-marketing. The competent authorities of the home Member State of the AIFM shall promptly inform the competent authorities of the Member States in which the AIFM was engaged in pre-marketing. The competent authorities of the Member State in which premarketing took place may request the competent authorities of the home Member State of the AIFM to provide further information on the pre-marketing that took place on its territory.

3a. A third party shall only engage in pre-marketing on behalf of an authorised EU AIFM where it is authorised as an investment firm in accordance with Directive 2014/65/EU, as a credit institution in accordance with Directive 2013/36/EU, as a UCITS management company in accordance with Directive 2009/65/EC, as an AIFM in accordance with this Directive, or acts as a tied agent in accordance with Directive 2014/65/EU. Such a third party shall be subject to all conditions set out in this Article.

4. EU AIFMs shall ensure that pre-marketing is adequately documented.

(4) Article 32 is amended as follows:

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

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

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

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

(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 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.'

(5) the following Article 32a is inserted:

‘Article 32a

Denotification of arrangements made for the marketing of units or shares of some or all EU AIFs in the Member States other than in the home Member State of the AIFM

1. Member State shall ensure that an EU AIFM may de-notify arrangements made for marketing as regards units or shares of some or all of its AIFs in a Member State in respect of which it has made a notification in accordance with Article 32, where all the following conditions are fulfilled:

(b) except in the case of closed-ended AIFs and funds regulated by Regulation (EU) 2015/760, a blanket offer is made to repurchase or redeem, free of any charges or deductions, all such AIF units or shares held by investors in that Member State, is publicly available for at least 30 working days, and is addressed, directly or through financial intermediaries, individually to all investors in the host Member State whose identity is known;

(c) the intention to terminate arrangements made for marketing units or shares of some or all of its AIFs in that Member State is made public by means of a publicly available medium, including by electronic means, which is customary for marketing AIFs and suitable for a typical AIF investor.

(ca) any contractual arrangements with financial intermediaries or delegates are modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the units or shares identified in the notification referred to in paragraph 2.

As of the date referred to in point (d) of the first subparagraph, the AIFM shall cease any new or further, direct or indirect, offering or placement of units or shares of the AIF it manages in the Member State referred to in the first subparagraph.

2. The AIFM shall submit a notification to the competent authorities of its home Member State containing the information referred to in points (b), (c) and (ca) of the first subparagraph of paragraph 1.

3. The competent authorities of the home Member State of the AIFM shall verify whether the notification submitted by the AIFM in accordance with paragraph 2 is complete. The competent authorities of the home Member State of the AIFM shall, no later than 15 working days from the receipt of a complete notification, transmit that notification to the competent authorities of the Member State referred to in the first subparagraph of paragraph 1, and to ESMA.

Upon transmission of the notification file pursuant to the first subparagraph, the competent authorities of the home Member State of the AIFM shall immediately notify the AIFM of that transmission.

For a period of 36 months from the date referred to in point (d) of the first subparagraph of paragraph 1, the AIFM shall not engage in pre-marketing of units or shares of the EU AIFs referred to in the notification, or in respect of similar investment strategies or investment ideas, in the Member State referred to in the first subparagraph of paragraph 1.

4. The AIFM shall provide investors who remain invested in the EU AIF as well as the competent authorities of the home Member State of the AIFM with the information required under Articles 22 and 23.

4a. The competent authorities of the home Member State of the AIFM shall transmit to the competent authorities of the Member State referred to in the first subparagraph of paragraph 1, information on any changes to the documentation and information referred to in points (b) to (f) of Annex IV.

4b. The competent authorities of the Member State referred to in the first subparagraph of paragraph 1 of this Article shall have the same rights and obligations as the competent authorities of the host Member State of the AIFM as set out in in Article 45.

4c. Without prejudice to other supervisory powers as referred to in Article 45(3), as from the date of transmission under paragraph 4a of this Article, the competent authorities of the Member State referred to in the first subparagraph of paragraph 1 of this Article, shall not require the AIFM concerned to demonstrate compliance with national laws, regulations and administrative provisions governing marketing requirements referred to in [Article 3 of the 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) 346/2013].

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

(5a) Article 33(6) is amended as follows:

(a) 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.’;

(b) 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 and shall notify accordingly the competent authorities of the host Member State of the AIFM without undue delay.’;

(7) the following Article 43a is inserted:

‘Article 43a

Facilities available to retail investors

1. Without prejudice to Article 26 of Regulation (EU) 2015/760[3], 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:

(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;

(b) provide investors with information on how orders referred to in point (a) can be made and how repurchase and redemption proceeds are paid;

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

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

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

(e) provide investors with information relevant to the tasks the facilities perform in a durable medium as defined in Article 2(1)(m) of Directive 2009/65/EC;

(ea) act as contact point for communication with the competent authorities.

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

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

(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;

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

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.'

(7a) The following article is inserted:

‘Article 69a

Assessment of the passport regime

Before Article 35 and Articles 37 to 41 become applicable, the Commission shall submit a report to the European Parliament and to the Council, taking into account the result of an assessment of the passport regime provided in this Directive including the extension of that regime to non-EU AIFMs. That report shall be accompanied, where appropriate, by a legislative proposal.’

(7b) In Annex IV, the following points are added:

‘(ha) information and the address necessary for the invoicing or communicating of any applicable regulatory fees or charges by the competent authority of the host Member State;

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

Article 3

Transposition

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

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

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

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

Article 4

Evaluation

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

Article 4a

Review

By ... [PO: Please insert date 24 months after the date for transposition of this Directive], the Commission shall present a report assessing, 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 Directive 2009/65/EC are needed to that end.

Article 5

Entry into force

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

Article 6

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	For the Council
The President	The President