



Brussels, 2 May 2019
(OR. en)

8426/19

Interinstitutional File:
2018/0045(COD)

CODEC 896
EF 146
ECOFIN 389
IA 127
PE 162

INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

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
- Outcome of the European Parliament's first reading
(Strasbourg, 15 to 18 April 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p. 5.

In this context, the rapporteur, Wolf KLINZ (ALDE, DE), presented a compromise amendment (amendment 2) to the proposal for a Regulation on behalf of the Committee on Economic and Monetary Affairs. This amendment had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 16 April 2019, the plenary adopted the compromise amendment (amendment 2) to the proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Cross-border distribution of collective investment undertakings (Regulation)

*****I**

European Parliament legislative resolution of 16 April 2019 on the 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 (COM(2018)0110 – C8-0110/2018 – 2018/0045(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0110),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0110/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 11 July 2018¹,
 - having regard to the provisional agreement approved by the responsible committee under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 27 February 2019 to approve Parliament's position, in accordance with Article 294(4) 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 (A8-0431/2018),
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.

¹ OJ C 367, 10.10.2018, p. 50.

Position of the European Parliament adopted at first reading on 16 April 2019 with a view to the adoption of Regulation (EU) 2019/... of the European Parliament and of the Council on facilitating cross-border distribution of collective investment *undertakings* and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 367, 10.10.2018, p. 50.

² Position of the European Parliament of 16 April 2019.

Whereas:

- (1) Divergent regulatory and supervisory approaches concerning the cross-border distribution of alternative investment funds (AIFs), as defined in Directive 2011/61/EU of the European Parliament and of the Council¹, *including european venture capital funds (EuVECA), as defined in Regulation (EU) No 345/2013 of the European Parliament and of the Council², European social entrepreneurship funds (EuSEF), as defined in Regulation (EU) No 346/2013 of the European Parliament and of the Council³, and European Long-Term Investment Funds (ELTIF), as defined in Regulation (EU) 2015/760 of the European Parliament and of the Council⁴, as well as* undertakings for collective investment in transferable securities (UCITS), within the meaning of Directive 2009/65/EC of the European Parliament and of the Council⁵, 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. *A UCITS might be externally or internally managed, depending on its legal form. Any provisions of this Regulation relating to UCITS management companies should apply both to a company, the regular business of which is the management of UCITS and to any UCITS which has not designated a UCITS management company.*

¹ 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).

² 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).

³ 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).

⁴ 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. 98).

⁵ 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).

- (2) In order to enhance the regulatory framework applicable to **collective** investment **undertakings** and to better protect investors, marketing communications addressed to investors in AIFs and UCITS should be identifiable as such, and should **describe** the 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 addressed to investors should be presented in a manner that is fair, clear and not misleading. To safeguard investor protection and secure a level playing field between AIFs and UCITS, the standards for marketing communications should apply to marketing communications of AIFs and UCITS.
- (3) *Marketing communications addressed to investors in AIFs and UCITS should specify where, how and in which language investors can obtain summarised information on investor rights and they should clearly state that the AIFM, the EuVECA manager, the EuSEF manager or the UCITS management company (together, ‘managers of collective investment undertakings’), has the right to terminate the arrangements made for marketing.*

- (4) *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, competent authorities should publish such texts on their websites in, as a minimum, 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 broad overview of those laws, regulations and administrative provisions. The publication should only be for information purposes and should not create legal obligations. For the same reasons, the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹ (ESMA) should create a central database containing summaries of national requirements for marketing communications and hyperlinks to the information published on the websites of competent authorities.*
- (5) *In order to promote good practices of investor protection which are enshrined in the national requirements for fair and clear marketing communications, including on-line aspects of such marketing communications, ESMA should issue guidelines on the application of those requirements for marketing communications.*

¹ *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).*

- (6) Competent authorities should be able to require *prior* notification of marketing communications *for the purpose of ex-ante verification of* compliance of those communications with this Regulation and other applicable requirements, *such as* whether the marketing communications are identifiable as such, whether they *describe* the risks and rewards of purchasing units of a UCITS and, where a Member State allows marketing of AIFs to retail investors, the risks and rewards of purchasing units or shares of an AIF in an equally prominent manner and whether all information in the marketing communications is presented in a manner that is fair, clear and not misleading. *That verification should be performed within a limited timeframe. Where competent authorities require prior notification, this should not prevent them from verifying marketing communications ex-post.*
- (7) *Competent authorities should report to ESMA the results of those verifications, requests for amendments and any sanctions imposed on managers of collective investment undertakings. With a view to increasing awareness and transparency on the rules applicable to marketing communications, on the one hand, and ensuring investor protection, on the other hand, ESMA should every second year prepare and send to the European Parliament, the Council and the Commission a report on those rules and their practical application on the basis of ex-ante and ex-post verifications of marketing communications by competent authorities.*

- (8) To ensure equal treatment of managers of collective investment undertakings and to facilitate their decision-making *regarding* whether to engage in cross-border distribution of investment funds, it is important that fees and charges levied by competent authorities for **■** supervision *of cross-border activities* are proportionate to the supervisory tasks carried out and publicly disclosed, and that, *in order to enhance transparency*, those fees and charges are published on the websites of the competent authorities. For the same reason, *hyperlinks to the information published on the websites of competent authorities in relation to the fees and charges should be published on 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.
- (9) *To ensure better recovery of fees or charges and to increase the transparency and clarity of the fees and charges structure, where such fees or charges are levied by the competent authorities, managers of collective investment undertakings should receive an invoice, an individual payment statement or a payment instruction clearly setting out the amount of fees or charges due and the means of payment.*

- (10) Since ESMA, in accordance with Regulation (EU) No 1095/2010, 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 a central database listing all AIFs and UCITS that are marketed cross-border, the managers of those collective investment undertakings *and the Member States in which the marketing takes place*. For that purpose, and *in order to enable ESMA to maintain the central database up-to-date*, competent authorities should transmit to ESMA *information on the* notifications and notification letters *and information* that they *have* received under Directives 2009/65/EC and 2011/61/EU *in relation to cross-border marketing activity as well as information about any changes which should be reflected in that database*. *In that respect, ESMA should establish a notification portal into which competent authorities should upload all documents regarding the cross-border distribution of UCITS and AIFs.*

- (11) In order to ensure a level playing field between qualifying venture capital funds as defined in Regulation (EU) No 345/2013, or qualifying social entrepreneurship funds as defined in Regulation (EU) No 346/2013, on the one hand, and other AIFs, on the other hand, it is necessary to include in those Regulations rules on pre-marketing that are identical to the rules laid down in Directive 2011/61/EU on pre-marketing. Such 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.

- (12) *In accordance with Regulation (EU) No 1286/2014 of the European Parliament and of the Council¹, certain companies and persons referred to in Article 32 of that Regulation are exempt from the obligations under that Regulation until 31 December 2019. That Regulation also provides that the Commission is to review it by 31 December 2018, in order to assess, inter alia, whether that transitional exemption should be prolonged, or whether, following the identification of any necessary adjustments, the provisions on key investor information in Directive 2009/65/EC should be replaced by or considered equivalent to the key information document as laid down in that Regulation.*
- (13) *In order to allow the Commission to conduct the review in accordance with Regulation (EU) No 1286/2014 as originally provided for, the deadline for that review should be prolonged by 12 months. The competent committee of the European Parliament should support the Commission's review process by organising a hearing on the topic with relevant stakeholders representing industry and consumer interests.*

¹ *Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).*

(14) *In order to avoid investors receiving two different pre-disclosure documents, namely a key investor information document (KIID) as required by Directive 2009/65/EC and a key information document (KID) as required by Regulation (EU) No 1286/2014, for the same collective investment undertaking while the legislative acts resulting from the Commission's review in accordance with that Regulation are being adopted and implemented, the transitional exemption from the obligations under that Regulation should be prolonged by 24 months. Without prejudice to that prolongation, all institutions and supervisory authorities involved should endeavour to act as fast as possible to facilitate the termination of that transitional exemption.*

- (15) The Commission should be empowered to adopt implementing technical standards, developed by ESMA, with regard to the standard forms, templates and procedures for **publication** and notification by competent authorities of the **national** laws, regulations and administrative provisions and their summaries on marketing requirements applicable in their territories, the levels of fees or charges levied by them **for cross-border activities**, and, where applicable, relevant calculation methodologies. Furthermore, to improve the transmission **to** ESMA, implementing technical standards should **also** be adopted with respect to notifications, notification letters and **information** on cross-border marketing activities that are required by Directives 2009/65/EC and 2011/61/EU and the technical arrangements necessary for the functioning of the notification portal to be established by ESMA . The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union (TFEU) and in accordance with Article 15 of Regulation (EU) No 1095/2010.
- (16) It is necessary to **specify the information to be communicated every quarter to ESMA, in order to keep the databases of all collective investment undertakings and their managers up to date.**

- (17) 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 Council¹, and any exchange or transmission of information by ESMA should be undertaken in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council².
- (18) *In order to enable the competent authorities to exercise the functions attributed to them in this Regulation, Member States should ensure that those authorities have all the necessary supervisory and investigative powers.*

¹ **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).**

² **Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).**

- (19) By ... [5 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 collective investment undertakings.
- (20) *By ... [2 years after the entry into force of this Regulation] the Commission should publish a report on reverse solicitation and demand on the own initiative of an investor, specifying the extent of that form of subscription to funds, its geographical distribution including in third countries, and its impact on the passporting regime.*

- (21) In order to ensure legal certainty, it is necessary to synchronise the application dates of *national* laws, regulations and administrative provisions implementing Directive (EU) 2019/... of the European Parliament and of the Council¹⁺ and of this Regulation with regard to provisions on marketing communications and pre-marketing.
- (22) Since the objective 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 that objective,

HAVE ADOPTED THIS REGULATION:

¹ Directive (EU) 2019/... of the European Parliament and of the Council of ... amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings (OJ L ...).

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 54/19 (2018/0041(COD)) and insert the number, date and OJ reference of that Directive in the footnote.

Article 1
Subject matter

This Regulation establishes uniform rules on the publication of national provisions concerning marketing requirements for collective investment undertakings and on marketing communications addressed to investors, as well as common principles concerning fees and charges levied on managers of collective investment undertakings in relation to their cross-border activities. It also provides for the establishment of a central database on the cross-border marketing of collective investment undertakings.

Article 2
Scope

This Regulation shall apply to:

- (a) alternative investment fund managers;
- (b) UCITS management companies, including any UCITS which has not designated a UCITS management company;
- (c) EuVECA managers; and
- (d) EuSEF managers.

Article 3
Definitions

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

- (a) ***'alternative investment funds' or 'AIFs'*** means AIFs as defined in point (a) of Article 4(1) of Directive 2011/61/EU, ***and include EuVECA, EuSEF and ELTIF;***
- (b) ***'alternative investment fund managers' or 'AIFMs'*** means AIFMs as defined in point (b) of Article 4(1) of Directive 2011/61/EU ***and authorised in accordance with Article 6 of that Directive;***
- (c) ***'EuVECA manager' means a manager of a qualifying venture capital fund as defined in point (c) of the first paragraph of Article 3 of Regulation (EU) No 345/2013 and registered in accordance with Article 14 of that Regulation;***
- (d) ***'EuSEF manager' means a manager of a qualifying social entrepreneurship fund as defined in point (c) of Article 3(1) of Regulation (EU) No 346/2013 and registered in accordance with Article 15 of that Regulation;***

- (e) ‘competent authorities’ means competent **authorities** as defined in point (h) of Article 2(1) of Directive 2009/65/EC or in point (f) of Article 4(1) of Directive 2011/61/EU or competent authorities of the EU AIF as defined in point (h) of Article 4(1) of Directive 2011/61/EU;
- (f) ‘home Member State’ means the Member State in which the AIFM, **the EuVECA manager, the EuSEF manager** or the UCITS management company has its registered office;
- (g) ‘UCITS’ means a UCITS authorised in accordance with Article 5 of Directive 2009/65/EC;
- (h) ‘UCITS management company’ means a management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC.

Article 4

Requirements for marketing communications

1. AIFMs, *EuVECA managers, EuSEF managers and* UCITS management companies shall ensure that all marketing communications addressed to investors are identifiable as such and *describe the* risks and rewards of purchasing units or shares of an AIF or *units* of a UCITS in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading.
2. UCITS management companies shall ensure that **█** marketing *communications* that *contain* specific information about a UCITS *do not contradict or diminish* the **█** significance of the information **█** contained in the prospectus referred to in Article 68 of Directive 2009/65/EC *or* the key 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. *Such* marketing *communications* shall specify where, how and in which language investors or potential investors can obtain the prospectus and the key investor information *and shall provide hyperlinks to or website addresses for those documents.*

3. *Marketing communications referred to in paragraph 2 shall specify where, how and in which language investors or potential investors can obtain a summary of investor rights and shall provide a hyperlink to such a summary, which shall include, as appropriate, information on access to collective redress mechanisms at Union and national level in the event of litigation.*

Such marketing communications shall also contain clear information that the manager or management company referred to in paragraph 1 of this Article may decide to terminate the arrangements made for the marketing of its collective investment undertakings in accordance with Article 93a of Directive 2009/65/EC and Article 32a of Directive 2011/61/EU.

4. AIFMs, *EuVECA managers and EuSEF managers* shall ensure that **█** marketing *communications* comprising an invitation to purchase units or shares of an AIF that *contain* specific information about an AIF *do not contradict* the information *which* is to be disclosed to the investors in accordance with Article 23 of Directive 2011/61/EU, *with Article 13 of Regulation (EU) No 345/2013 or with Article 14 of Regulation (EU) No 346/2013, or diminish* its significance.

5. Paragraph 2 of this Article shall apply mutatis mutandis to AIFs which publish a prospectus in accordance with Regulation (EU) 2017/1129 of the European Parliament and the Council¹, 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.
6. By ... [24 months after the date of entry into force of this Regulation], ESMA shall issue guidelines, and thereafter update those guidelines periodically, on the application of the requirements for marketing communications referred to in paragraph 1, taking into account on-line aspects of such marketing communications.

¹ 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).

Article 5

Publication of national provisions concerning marketing requirements

1. Competent authorities shall publish and maintain on their *websites up-to-date and complete information on the* applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS, and the summaries thereof, in, as a minimum, 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.

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

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 ... [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 in accordance with Article 15 of Regulation (EU) No 1095/2010.

█

Article 6

ESMA central database on national provisions concerning marketing requirements

By ... [30 months after the date of entry into force of this Regulation], ESMA shall publish and maintain on its website a central database containing the ■ summaries *referred to in Article 5(1)*, and the hyperlinks to the websites of competent authorities *referred to in Article 5(2)*.

Article 7

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 UCITS ■ management companies intend to use directly or indirectly in their dealings with investors.

The *requirement for prior* notification referred to in the first subparagraph shall not constitute a prior condition for the marketing of units of UCITS *and shall not be part of the notification procedure referred to in Article 93 of Directive 2009/65/EC*.

Where competent authorities require *prior* notification as referred to in the first subparagraph, they shall, within 10 working days of receipt of *marketing communications*, inform the UCITS management company of any request to amend its marketing communications.

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 shall be without prejudice to any supervisory powers to verify marketing communications ex-post.

2. Competent authorities that require *prior* notification of marketing communications shall establish, apply, and publish on their websites, procedures for such *prior* notification. 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 █ AIFMs, *EuVECA managers or EuSEF managers* market units or shares of █ their *AIFs* to retail investors, paragraphs 1 and 2 █ shall apply *mutatis mutandis* to those AIFMs, *EuVECA managers or EuSEF managers*.

Article 8

ESMA report on marketing communications

1. By 31 March 2021 and *every second year thereafter*, competent authorities █ shall report █ 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 verifications*, clearly distinguishing the most frequent breaches, including a description *and the nature of those breaches*;

(c) *a description of the most frequent breaches of the requirements referred to in Article 4; and*

(d) one example of each of the breaches referred to in points (b) and (c).

2. By 30 June 2021 and *every second year thereafter* , ESMA shall submit a report to the *European Parliament, the Council and the Commission which presents an overview of marketing requirements referred to in Article 5(1) in all Member States 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 of this Article.*

Article 9

Common principles concerning fees or charges

1. ***Where fees or charges are levied by competent authorities for carrying out their duties in relation to the cross-border activities of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies, such fees or charges shall be consistent with the overall cost relating to the performance of the functions of the competent authority.***
2. For the fees or charges referred to in paragraph 1 of this Article, competent authorities shall send an invoice, ***an individual payment statement or a payment instruction***, clearly setting out the means of payment and the date when payment is due, ***to the address referred to in the third subparagraph of Article 93(1) of Directive 2009/65/EC or point (i) of Annex IV of Directive 2011/61/EU.***

Article 10

Publication of national provisions concerning fees and charges

1. By ... [6 months after the date of entry into force of this Regulation], competent authorities shall publish and maintain ***up-to-date information*** on their websites ■ listing the fees or charges referred to in Article 9(1), or, where applicable, the calculation methodologies for those fees or charges, in, as a minimum, 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***.

■

3. 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 ... [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 in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 11

ESMA *publication* on fees and charges

1. By ... [30 months after the date of entry into force of this Regulation], ESMA shall publish on its website *hyperlinks to the websites of competent authorities as referred to in Article 10(2)*. Those hyperlinks shall be kept up to date.
2. *By ... [30 months after the date of entry into force of this Regulation], ESMA shall develop and make available on its website an interactive tool publicly accessible in, as a minimum, a language customary in the sphere of international finance that provides an indicative calculation of the fees or charges referred to in Article 9(1) █ . That tool shall be kept up to date.*

█

Article 12

ESMA central database on *cross-border marketing of AIFs and UCITS*

1. By ... [30 months after the date of entry into force of this Regulation], ESMA shall publish
■ on its website a central database *on cross-border marketing of AIFs and UCITS*,
publicly accessible in a language customary in the sphere of international finance,
listing ■ :

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

(b) all UCITS that are marketed in a Member State other than the UCITS home Member State as defined in point (e) of Article 2(1) of Directive 2009/65/EC, their UCITS management company and the Member States in which they are marketed.

That central database shall be kept up to date.

2. *The obligations in this Article and in Article 13 related to the database referred to in paragraph 1 of this Article shall be without prejudice to the obligations related to the list referred to in the second subparagraph of Article 6(1) of Directive 2009/65/EC, to the central public register referred to in the second subparagraph of Article 7(5) of Directive 2011/61/EU, to the central database referred to in Article 17 of Regulation (EU) No 345/2013 and to the central database referred to in Article 18 of Regulation (EU) No 346/2013.*

Article 13

Standardisation of notifications to ESMA

1. *On a quarterly basis, competent authorities of home Member States shall communicate to ESMA the information which is necessary for the creation and maintenance of the central database referred to in Article 12 of this Regulation regarding any notification, notification letter or information referred to in Article 93(1) and Article 93a(2) of Directive 2009/65/EC and in Article 31(2), Article 32(2) and Article 32a(2) of Directive 2011/61/EU, and any changes to that information, if such changes would result in a change to the information in that central database.*

2. ESMA shall *establish a notification portal into which each competent authority shall upload all documents referred to in paragraph 1.*

3. ESMA shall develop draft implementing technical standards to specify the *information to be communicated, as well as the* forms, templates and procedures for *communication* of the information by the competent authorities for the purposes of paragraph 1, *and the technical arrangements necessary for the functioning of the notification portal referred to in paragraph 2.*

ESMA shall submit those draft implementing technical standards to the Commission by ... [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 14

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 pursuant to Directives 2009/65/EC and 2011/61/EU, Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) 2015/760, including those related to penalties or other measures, shall also be exercised with respect to the managers referred to in Article 4 of this Regulation.*

Article 15

Amendments to Regulation (EU) No 345/2013

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

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

‘(o) ‘pre-marketing’ means **■** provision of information *or communication, direct or indirect*, on investment strategies or investment ideas by a 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 *qualifying venture capital fund which is not yet established, or in a qualifying venture capital fund which is established, but not yet notified for marketing in accordance with Article 15, in that Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that* qualifying venture capital fund.’;

(2) the following Article is inserted:

‘Article 4a

1. *A manager of a* qualifying venture capital *fund* may engage in pre-marketing in the Union, *except* where the information presented to potential investors:

■

(a) is sufficient to allow investors to commit to acquiring units or shares of *a* particular qualifying venture capital *fund*;

- (b) amounts to ■ subscription forms or similar documents whether in a draft or a final form ■ ; or
- (c) *amounts to constitutional documents, a prospectus or offering documents of a not-yet-established qualifying venture capital fund in a final form.*

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

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

2. Competent authorities shall not require a manager of a qualifying venture capital fund 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 it engages in pre-marketing.*
3. *Managers of qualifying venture capital funds shall ensure that investors do not acquire units or shares in a qualifying venture capital fund through pre-marketing and that investors contacted as part of pre-marketing may only acquire units or shares in that qualifying venture capital fund through marketing permitted under Article 15.*

Any subscription by professional investors, within 18 months of the manager of a qualifying venture capital fund having begun pre-marketing, to units or shares 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 established as a result of the pre-marketing, shall be considered to be the result of marketing and shall be subject to the applicable notification procedures referred to in Article 15.

4. *Within 2 weeks of having begun pre-marketing, a manager of a qualifying venture capital fund shall send an informal letter, in paper form or by electronic means, to the competent authorities of its home Member State. That letter shall specify the Member States in which and the periods during which the pre-marketing is taking or has taken place, a brief description of the pre-marketing including information on the investment strategies presented and, where relevant, a list of the qualifying venture capital funds which are or were the subject of pre-marketing. The competent authorities of the home Member State of the manager of a qualifying venture capital fund shall promptly inform the competent authorities of the Member States in which the manager of a qualifying venture capital fund is or was engaged in pre-marketing. The competent authorities of the Member State in which pre-marketing is taking or has taken place may request the competent authorities of the home Member State of the manager of a qualifying venture capital fund to provide further information on the pre-marketing that is taking or has taken place on its territory.*

5. *A third party shall only engage in pre-marketing on behalf of an authorised manager of qualifying venture capital fund where it is authorised as an investment firm in accordance with Directive 2014/65/EU of the European Parliament and of the Council*, as a credit institution in accordance with Directive 2013/36/EU of the European Parliament and of the Council**, as a UCITS management company in accordance with Directive 2009/65/EC, as an alternative investment fund manager in accordance with Directive 2011/61/EU, or acts as a tied agent in accordance with Directive 2014/65/EU. Such a third party shall be subject to the conditions set out in this Article.*

6. A manager of a qualifying venture capital fund shall *ensure that pre-marketing is adequately documented.*

* *Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).*

** *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).*

Article 16

Amendments to Regulation (EU) No 346/2013

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

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

‘(o) ‘pre-marketing’ means **■** provision of information *or communication, direct or indirect*, on investment strategies or investment ideas by *a* 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 **■** qualifying social entrepreneurship fund *which is not yet established, or in a qualifying social entrepreneurship fund which is established, but not yet notified for marketing in accordance with Article 16, in that Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that qualifying social entrepreneurship fund.*’;

(2) the following Article is inserted:

‘Article 4a

1. *A manager of a* qualifying social entrepreneurship *fund* may engage in pre-marketing in the Union, *except* where the information presented to potential investors:

■

- (a) is sufficient to allow investors to commit to acquiring units or shares of *a* particular qualifying social entrepreneurship *fund*;
- (b) amounts to ■ subscription forms or similar documents whether in a draft or a final form ■ ; or
- (c) *amounts to constitutional documents, a prospectus or offering documents of a not-yet-established qualifying social entrepreneurship fund in a final form.*

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

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

I

- 2. Competent authorities shall not require a manager of a qualifying social entrepreneurship fund 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 it engages in pre-marketing.*

3. *Managers of qualifying social entrepreneurship funds shall ensure that investors do not acquire units or shares in a qualifying social entrepreneurship fund through pre-marketing and that investors contacted as part of pre-marketing may only acquire units or shares in that qualifying social entrepreneurship fund through marketing permitted under Article 16.*

Any subscription by professional investors, within 18 months of the manager of a qualifying social entrepreneurship fund having begun pre-marketing, to units or shares 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 established as a result of the pre-marketing, shall be considered to be the result of marketing and shall be subject to the applicable notification procedures referred to in Article 16.

4. *Within 2 weeks of having begun pre-marketing, a manager of a qualifying social entrepreneurship fund shall send an informal letter, in paper form or by electronic means, to the competent authorities of its home Member State. That letter shall specify the Member States in which and the periods during which the pre-marketing is taking or has taken place, a brief description of the pre-marketing including information on the investment strategies presented and, where relevant, a list of the qualifying social entrepreneurship funds which are or were the subject of pre-marketing. The competent authorities of the home Member State of the manager of a qualifying social entrepreneurship fund shall promptly inform the competent authorities of the Member States in which the manager of a qualifying social entrepreneurship fund is or was engaged in pre-marketing. The competent authorities of the Member State in which pre-marketing is taking or has taken place may request the competent authorities of the home Member State of the manager of a qualifying social entrepreneurship fund to provide further information on the pre-marketing that is taking or has taken place on its territory.*

5. *A third party shall only engage in pre-marketing on behalf of an authorised manager of a qualifying social entrepreneurship fund where it is authorised as an investment firm in accordance with Directive 2014/65/EU of the European Parliament and of the Council**, as a credit institution in accordance with Directive 2013/36/EU of the European Parliament and of the Council**, as a UCITS management company in accordance with Directive 2009/65/EC, as an alternative investment fund manager in accordance with Directive 2011/61/EU, or acts as a tied agent in accordance with Directive 2014/65/EU. Such a third party shall be subject to the conditions set out in this Article.

6. A manager of a qualifying social entrepreneurship fund shall *ensure that pre-marketing is adequately documented.*

* *Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).*

** *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).*

Article 17
Amendments to Regulation (EU) No 1286/2014

Regulation (EU) No 1286/2014 is amended as follows:

- (1) in Article 32(1), “31 December 2019” is replaced by “31 December 2021”;*
- (2) Article 33 is amended as follows:*
 - (a) in the first subparagraph of paragraph 1, “31 December 2018” is replaced by “31 December 2019”;*
 - (b) in the first subparagraph of paragraph 2, “31 December 2018” is replaced by “31 December 2019”;*
 - (c) in the first subparagraph of paragraph 4, “31 December 2018” is replaced by “31 December 2019”.*

Article 18
Evaluation

By ... [60 months after the date of entry into force *of this Regulation*] 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.

By ... [24 months after the date of entry into force of this Regulation] the Commission shall, on the basis of a consultation of competent authorities, ESMA and other relevant stakeholders, submit a report to the European Parliament and to the Council on reverse solicitation and demand on the own initiative of an investor, specifying the extent of that form of subscription to funds, its geographical distribution, including in third countries, and its impact on the passporting regime. That report shall also examine whether the notification portal established in accordance with Article 13(2) should be developed so that all transfers of documents between competent authorities take place through it.

Article 19

Entry into force and application

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

It shall apply from ... [the date of entry into force of this Regulation].

However, Article 4(1) to (5), Article 5(1) and (2), Article 15 and Article 16 shall apply from ... [24 months after the date of entry into force *of this Regulation*].

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

Done at ...,

For the European Parliament

For the Council

The President

The President