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EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

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

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

{COM(2018) 92 final} - {COM(2018) 110 final} - {SWD(2018) 54 final}

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Executive Summary Sheet

Impact assessment on the initiative on reducing barriers to cross-border distribution of investment funds

A. Need for action

Why? What is the problem being addressed?

European legislation allows asset managers to passport their investment funds across the EU, with the objective of creating a single market for investment funds. While cross-border distribution of EU investment funds has grown, the EU investment fund market is still predominantly organised along national lines: 70% of the total Assets under Management held by investment funds registered for sale only in its domestic market[1]. Only 37% of UCITS and about 3% of AIFs are registered for sale to more than 3 Member States.

Moreover, even though the EU market is smaller, there are considerably more funds in the EU than in the US, implying a significantly smaller average fund size in the EU. This has a negative impact on the economies of scale that can be realised by asset managers in the EU and on the fees investors have to pay. The evaluation has shown that regulatory barriers represent a significant disincentive to cross-border distribution. These barriers concern national marketing requirements, regulatory fees, administrative requirements and notification requirements.

What is this initiative expected to achieve?

The initiative aims at reducing regulatory barriers to cross-border distribution by removing unnecessary complexity and burdensome requirements and improving transparency of national requirements, while safeguarding investor protection.

Removing inefficiencies in the functioning of the single market for investment funds should reduce the costs for cross-border distribution. This should accelerate the growth of cross-border distribution in the EU, reducing market fragmentation, increasing competition, and ultimately providing for more investment opportunities for investors in the EU.

What is the value added of action at the EU level?

National implementation of UCITS and AIFM Directives have resulted in differing interpretations of the rules applicable to the use of the marketing passports under these two Directives. Although Member States have the ability to adress the problem by (voluntarily) amending national legislation or practices, uniformity and legal certainty regarding the use of the passport can be better ensured by taking action at EU level. Previous efforts to converge national (supervisory) practices in this area through ESMA, have not succeeded in solving the identified problem. Therefore, the remaining barriers to cross-border distribution of investment funds across the EU can be most efficiently addressed at EU level.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

The policy options that have been considered aim to address unnecessary complexity and legal uncertainty of the existing rules for cross-border distribution of funds, increase the transparency of these rules, and safeguard investor protection. Given the technical and detailed nature of the regulatory framework that is being addressed, specific policy options have been developed for each problem driver. Both legislative and non-legislative options were considered. For some problem drivers the preferred option was to increase transparency at national level and/or European level, while for others more harmonisation was identified as the best way forward. The policy options retained are as follows:

- As to the lack of transparency regarding national requirements, transparency is improved at national and EU

[1] This includes so-called 'round-trip' funds, i.e. where a manager domiciles a fund in another Member State and then distributes it only back into the market where they are based.

level with respect to national marketing requirements and regulatory fees.

- As to diverging national marketing requirements, a harmonised definition of pre-marketing is introduced[2] and the process of checking of marketing material is framed more clearly.
- As to diverging regulatory fees, high-level principles are introduced in order to ensure more consistency in the way regulatory fees are determined.
- As to administrative requirements, the choice of how facilities to support local investors are provided (local presence or electronically) is left to the asset manager, but with the introduction of safeguards for investors[3].
- As to notification requirements, further harmonisation of the procedures and requirements for updating notifications and de-notification of use of the marketing passport is introduced.

Who supports which option?

Asset managers are strongly in favour of reducing regulatory barriers. However, they are divided on whether this could best be achieved through legislative or non-legislative action. Investors' associations also support the elimination of regulatory barriers to increase investor choice; this however under the condition that investor protection is safeguarded. National competent authorities and Member States also support reducing regulatory barriers to cross-border distribution of funds. Nonetheless, most competent authorities would prefer non-legislative measures. Furthermore, they stressed the importance of retaining their ability to ensure investor protection, including in host jurisdictions.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

The benefits of the preferred options are tangible both for asset managers and investors:

- The preferred options will significantly reduce compliance costs by further harmonising and increasing the level of transparency regarding national requirements. For existing cross-border funds, the preferred options are expected to lead to costs savings of at least € 306 million per year. Moreover, it is expected that more asset managers will chose to distribute their funds cross-border or increase their existing cross-border activities.
- The preferred options safeguard investor protection and should ultimately increase investors' choice. This effect will benefit in particular investors from Member States with markets that currently offer limited choice and are strongly dominated by domestic products.

What are the costs of the preferred option (if any, otherwise main ones)?

The preferred options have no significant negative economic, social or environmental impact. The preferred options do result in limited enforcement costs. These costs concern national competent authorities and ESMA. For example, ESMA will be tasked with setting up a database on cross-border notifications and a regulatory fees calculator. However, national competent authorities and ESMA will also benefit from the notification database, as it will allow them to better analyse cross-border distribution of investment funds.

How will businesses, SMEs and micro-enterprises be affected?

Reducing regulatory barriers will decrease the costs of distributing funds across borders. These cost reductions will benefit in particular small fund managers, as the costs associated with regulatory barriers have a bigger impact on these managers.

Although the proposed policy options do not have a direct impact on small and medium enterprises (SMEs), they will indirectly benefit from the initiative as increased cross-border distribution of investment funds would increase the availability of financing for SMEs offered through these investment funds – in particular venture capital funds.

Will there be significant impacts on national budgets and administrations?

Enforcement costs at national level will be minor.

[2] This concerns only the AIFM Directive.
[3] This concerns only the UCITS Directive.

Will there be other significant impacts?
There are no other significant impacts.
D. Follow up
When will the policy be reviewed?
No sooner than five years after the date of transposition of the Directives forming part of this legislative initiative (UCITS and AIFM Directives), the Commission shall carry out an evaluation of the application of the Directive and the Regulation. The Commission will rely on a public consultation and discussions with ESMA and competent authorities. The evaluation shall be conducted according to the Commission's better regulation Guidelines.