Comments

Legislative proposal for a Regulation on facilitating cross-border distribution of investment funds and a Directive on cross-border distribution of investment funds

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 1,700 banks.

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The German Banking Industry Committee (GBIC) welcomes the opportunity to comment on the European Commission's legislative proposal for a Regulation on facilitating cross-border distribution of investment funds and a Directive on cross-border distribution of investment funds.

We fully support the aim of the European Commission to improve transparency, remove overly complex and burdensome requirements and to harmonise diverging national rules in order to increase the proportion of funds marketed and sold across the EU. Greater cross-border distribution allows funds to grow and become more efficient, allocate capital more efficiently across the EU, and compete within national markets to deliver better value and greater innovation. This can to a great extent help to foster retail and institutional investment in investment funds, which is generally a high priority of the Capital Markets Union project.

The limitations of cross-border distribution are mainly embedded in a lack of harmonisation of definitions (e.g. marketing or market exit procedures) as well as deviating requirements on local agents or requested information. The fees of different supervisory authorities vary significantly (e.g. fee for authorisation).

Therefore, we very much welcome the following parts of the proposal:

- We appreciate the **abolishment of physical presences** for both UCITS and AIF managers, since physical presences are costly and have limited added value given the use of digital technology.
- We also appreciate the proposed rules regarding **transparency on applicable national requirements and on fees** through databases to be maintained by both NCAs and ESMA in Art. 3, 4, 7 and 8 of the Distribution Regulation as well as the attempt for common principles on fees in Art. 6 of the Distribution Regulation.

Apart from that, we would like to highlight our concerns with regard to the following propositions:

De-Registration [Art. 1 (7) Amendments to Directive 2009/65/EC, Art. 2 (5) Amendments to Directive 2011/61/EU]:

According to the proposal, the management company shall no longer be free to decide on withdrawing from a market. This is not appropriate, in particular if investors in a fund will continue to receive the legally required information. This part of the proposal introduces a new barrier instead of eliminating it, since management companies will likely decide not to enter a market in the first place if they are no longer free to decide to de-register. **We therefore suggest to delete the thresholds to be reached before the funds are allowed to discontinue marketing [Art. 93a (1) (a) UCITS Directive, Art. 32a (1) (a) AIFM Directive].**

Should the Commission stick to its proposed arrangements regarding De-Registration, we see a conflict between investor protection and the general principle of proportionality when it comes to applying the requirements of Art. 93a (4) and Art. 32a (4) of the proposal to amend the UCITS/AIFM directives in cases where information has to be supplied to a small number of remaining investors in their own official languages. We would recommend supplying the information in the official language of the home country of the UCIT/AIFM.

Pre-Marketing (Art. 2 Amendments to Directive 2011/61/EU):

The pre-marketing provision as suggested by the European Commission is very restrictive and may have the potential to alter the marketing practices on domestic markets. It will likely have a negative impact on the set-up of AIFs to the detriment of professional investors (like banks) generally, since it does not only relate to cross-border situations but also to the general understanding of marketing. For professional investors, it is very important to be able to discuss with the asset manager concrete possible investment ideas and strategies. This also comprises the possibility to review draft documents. It will be difficult in practice for investors as well as asset managers to ensure that the investor in no case will be able to make an investment decision on the basis of the documents exchanged or discussed.

As a consequence, the flexibility prior to the set-up of an AIF, which is of utmost importance in order to find the ideal solution for the investor, will suffer. This is for instance very relevant for Germany, where AIFs are a successful, safe and alternative solution (so called *Spezialfonds*, which qualify as AIFs). **We therefore suggest deleting the proposed Art. 30a (1) (d) AIFMD in Art. 2 of the Amending Directive.**

National marketing requirements (Art. 5 Proposal for a Regulation – COM (2018) 110 final)

National Rules regarding marketing requirements contradict the aim of the Regulation to reduce barriers for cross-border distribution. Instead of implementing new requirements to notify marketing communication to national regulators, the EU regulator should aim for the harmonisation of (national) marketing requirements. Therefore, the requirements stipulated in Art. 5 are not very helpful.

At the very least, management companies should not be required to submit marketing material to national authorities that complies with MiFID II requirements. The reason for that is, that asset managers, who are subject to MiFID II, are not required to notify their marketing communication to national regulators.

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