Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 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)

REGULATION (EU) 2019/1156 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

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 Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

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 Council[(3)], including European venture capital funds (EuVECA) as defined in Regulation (EU) No 345/2013 of the European Parliament and of the Council[(4)], European social entrepreneurship funds (EuSEF) as defined in Regulation (EU) No 346/2013 of the European Parliament and of the Council[(5)], and European Long-Term Investment Funds (ELTIF) as defined in Regulation (EU) 2015/760 of the European Parliament and of the Council[(6)], 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 Council[(7)], 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 companies, the regular business of which is the management of UCITS and to any UCITS which has not designated a UCITS management company.

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(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 Council[(8)] (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.

(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.

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(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

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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 Council[9], 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 extended 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.

(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,

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should be undertaken in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council[10], 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 Council[11].

(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.

(19) By 2 August 2024, 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 August 2021 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) 2019/1160 of the European Parliament and of the Council[12] 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:

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: