EUROPEAN COMMISSION

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REGULATORY SCRUTINY BOARD OPINION

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

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EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
Ares(2017)

Opinion

Title: Impact Assessment / Cross-border distribution of investment funds

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Context

A common way for retail investors to buy securities is through shares in investment funds. Investment funds hold portfolios of stocks, bonds or other securities. Management companies set up and manage these portfolios on behalf of clients, in exchange for fees. There are over 58000 funds in the EU, collectively managing over €14000 billion. By comparison, the United States has fewer than 16000 funds collectively managing over €16000 billion. Average fees are higher in Europe.

EU legislation permits asset managers to be active across the EU. This is to encourage capital to flow where it will be the most productive. Increased competition across national markets should also lead to greater choice and value for investors. In practice, however, EU investment funds are still mostly organised along national lines. Relatively few funds are registered for sale in more than three Member States.

This initiative seeks to remove some of the remaining obstacles to competition in the investment fund sector. This could lead to a larger share of investment funds operating cross-border. It could thus result in less market fragmentation, more competition, and provide EU investors with more and better investment opportunities.

In its Mid-Term Review of the Capital Markets Union Action Plan, the Commission announced that it would examine ways to facilitate the cross-border distribution and supervision of investment funds.[1]

(B) Main considerations

The Board notes that the initiative has a modest scope and ambition. The report does a good job of quantifying costs and benefits.

However, the report contains significant shortcomings that need to be addressed. As a result, the Board expresses reservations and gives a positive opinion only on the understanding that the report shall be adjusted in order to integrate the Board's recommendations on the following key aspects.

[1] See http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1507119301191&uri=CELEX:52017DC0292, Priority action 7.

1) The report does not stress sufficiently that this initiative leaves out several important factors that affect cross-border presence of funds.

2) The baseline does not adequately describe recent initiatives that have an (indirect) impact on cross-border distribution of funds.

3) The structure, presentation, assessment and comparison of the options is weak.

4) The quantitative methods applied and their results are not adequately presented, documented and qualified.

The Board takes note of the quantification of the various costs and benefits associated to the preferred option of this initiative, as assessed in the report considered by the Board and summarised in the attached quantification tables.

(C) Further considerations and adjustment requirements

(1) The report should justify better the timing of the initiative, notably vis-à-vis upcoming reviews of the AIFM and UCITS directives. It should be more upfront regarding the limited envisaged direct and indirect effects of the initiative. In particular, the important role of factors that are left outside the scope of analysis (such as tax schemes), recent initiatives with supporting effects and the generally positive "do nothing" scenario imply that the scope, potential and merits of the proposal are modest. It is not clear that any of the options would substantially increase competition and result in large changes in terms of capital allocation, risk diversification and enhanced competition. The analysis should recognise the limited potential to fundamentally influence prevalent distribution structures for cross-border transactions in the professional and retail markets.

(2) The baseline does not sufficiently incorporate potential impacts of recent and ongoing initiatives (such as MIFID and PRIIPs, ESAs review or the work on a code of conduct for withholding tax relief and refund principles). It also does not discuss potential effects of new fin-tech solutions, which could encourage further cross-border activities. The baseline should also consider the effect of the planned ban on inducements on distribution channels.

(3) The presentation, assessment and comparison of options should be significantly improved. The report should better explain the approach of presenting options by area, rather than by packages. In doing so, it should clearly show the extent to which the areas are independent. The report could also regroup options in some areas with clear similarities. Possible examples include options regarding notifications and de-notification, or options concerning transparency of national marketing requirements and transparency of regulatory fees. The report should avoid adding options that do not address an appraised problem (reverse solicitiation) and should discard upfront any unrealistic options (e.g. cap costs charged by local facilities), based on a firm justification. It should also reconsider if the set of possible (sub-)options is complete. The need for a fee calculator is currently not well argued. It is not always clear whether an option covers UCITS, AIF or both and what is the reason behind this. In most cases, the description of options clarifies whether options are substitutes or complements, but not in all. The way that the report assesses options ('++', etc.) should be better justified. The report should assess better the cost incurred by the proposed measures and their financing.

(4) The application of quantitative methods is welcome. Their presentation is, however, not sufficiently clear and complete and their results and reliability should be better justified. The evaluation that preceded this initiative presents much consultation evidence but is vague about its analytical work. The regression analysis is especially hard to make sense of. The report should describe the relationship that was tested, interpret the regression coefficients and discuss the robustness of the findings. The report needs to include more information about the different components of the estimated model. In particular, it should better explain what market entry variable it has used as a proxy for the attractiveness of the local market. The report should also make a clearer distinction between the statistical significance and economic relevance of the findings.

Some more technical comments have been transmitted directly to the author DG.

(D) RSB scrutiny process

The lead DG shall ensure that the report is adjusted in accordance with the recommendations of the Board prior to launching the interservice consultation.

The attached quantification tables may need to be adjusted to reflect any changes in the choice or the design of the preferred option in the final version of the report.

Full title	Reducing barriers to cross border distribution of investment funds
Reference number	2016/FISMA/082
Date of RSB meeting	29/11 - 2017