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BVI[1] position on the Market Integration Package – proposals on asset management
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BVI and its members are committed to shaping a competitive EU Single Market for financial services and dismantling the remaining obstacles to effective cross-border operations. Hence, while supporting the political objectives of the Market Integration Package, it is important that the specific policy measures remain targeted and proportionate, addressing genuine obstacles without introducing additional complexity or new layers of supervision. The following premises of the EU initiative should be reassessed:

- **Regardless of the remaining operational hurdles, the internal market for funds is working well.** The UCITS brand is highly successful and has delivered positive outcomes throughout the EU. Nearly two out of three UCITS are distributed cross-border to at least one other jurisdiction. UCITS making use of the EU passport account for more than 77 percent of the total assets under management.[2] Only 36 percent of UCITS and only 8 percent of ETFs held by German investors are domiciled in Germany.[3] Fund managers are well accustomed to the system of product and company passports that allow them to operate across the EU. Obstacles resulting from the persisting differences in the supervision of UCITS and AIF managers can be tackled by targeted improvements of the current passporting regimes (as proposed in the package). In contrast, more radical steps, including centralisation of supervisory powers at the EU level, would only entail additional costs and complexity. **Efficiency gains can be much easier achieved by targeted improvements and a more proportionate approach to regulation.**

- **The package overestimates both the fragmentation in the asset management sector and the benefits it can deliver.** The fragmented nature of the Single Market for funds does not primarily originate from regulation or supervision. It rather results from significant differences in market structures across Member States (e.g., local distribution networks and remuneration practices, investor bases, national attitudes toward investment risk and overall investment culture or tax considerations). Due to these divergences in the operating environment, asset managers often decide to create (feeder) funds targeting specific markets as the most efficient way of servicing them. This explains that EU funds are statistically more numerous and smaller than in the U.S., even though large funds still account for the bulk of the assets under management.[4]

- **While scale is an important determinant of competitiveness, it should not be treated as the only or decisive one.** Competitiveness can also derive from specialised expertise, technology, efficient infrastructures, and innovative distribution models. It would be a mistake to focus solely on

[1] BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 114 members manage assets of EUR 4.8 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 26%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.
[2] Source: Morningstar, as of June 2025.
[3] As of September 2025, source: BVI statistics.
[4] EFAMA, Fact Book, June 2023, p. 26.

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helping large cross-border asset managers to scale their operations. There are many smaller and/or local asset managers that provide value for money to investors without benefiting from the scale gained from distributing their products across the single market. These firms are able to operate efficiently in their local markets e.g. by deploying the "Master-KVG" model in Germany, whereby a generalised management company (the Master-KVG) offers its expertise in product set-up, risk management, compliance and administration while a considerable part of the portfolio management function is provided by specialised firms under delegation agreements.

- **The impact assessment for proposals reshaping the fund market architecture is insufficient.** Already today, 63 percent of UCITS distributed cross-border in terms of AuM is managed by non-EU owned groups, reflecting in particular the global reach and dominance of major American firms. Only two out of ten fund managers with the largest cross-border business in the EU are actually headquartered in the EU.[5] Against this background, the effects of the intended simplifications in terms of cross-border operations on the EU competitive landscape need to be thoroughly analysed and taken into account by EU legislators. Extended deliberations should also pertain to the proposals on intra-group arrangements, ESMA annual reviews and ESMA's power to take corrective measures against NCAs and market participants to determine their costs and benefits and to analyse whether they present the most appropriate solutions to the identified problems. It is important to ensure that the proposed measures entail viable simplification and do not introduce any new obligations in the group context.

- **ESMA needs a shift of supervisory culture rather than a shift of powers.** The success of several proposals, such as harmonising authorisation processes or giving ESMA the mandate to identify and address cross-border barriers, will effectively depend on ESMA's willingness to take an approach that balances various objectives, including the EU's global competitiveness. In the asset management context, this means fostering innovation, facilitating growth and scale in EU asset management, and enhancing investor outcomes through the most efficient supervisory measures to drive consistency and coherence. Without an explicit mandate to foster competitiveness and innovation, there is a real risk that the Market Integration Package will increase the regulatory burden across the board rather than removing barriers impacting cross-border activities. **This means ensuring that ESMA should have an explicit competitiveness objective to sit alongside its other objectives.** This would align the prerogatives for ESMA's work with the mandates of other leading securities supervisors around the world.

I. Amending Directives 2009/65/EC, 2011/61/EU and 2014/65/EU as regards the further development of capital market integration and supervision within the Union

(1) Reliefs for the allocation of functions within 'EU groups' of UCITS and AIF managers

To improve the competitiveness of the European investment fund industry and to remove administrative burdens in a group context to reduce the high costs associated with implementing regulatory requirements, we welcome the EU initiative to facilitate delegation of functions and tasks within a group. However, it is important to ensure that the proposed measures entail viable simplification and do not introduce any new obligations in the group context that would cause more implementation and bureaucratic efforts. We do not believe that this has been achieved in the current proposal. Therefore, the proposed 'simplifications' should

[5] ALFI/Broadridge study on "Cross-border distribution of investment funds" from April 2025.

be reviewed in the context of the overall objective. Targeted adjustments to the existing regulations as outlined below could already be sufficient.

In our view, the following aspects have not been sufficiently considered in the current proposal:

- **Different group structures:** It must be taken into account that there are pronounced differences with regard to any assignment of investment fund managers to a group structure. According to our research, the vast majority of the assets held by German investors are managed by AIF or UCITS management companies which are embedded in group structures. 73 percent are assigned to a parent company that is itself subject to prudential consolidation under EU regulations. 46 percentage points of these assets are managed by management companies assigned to a banking group (CRD/CRR regime), followed by 25 percentage points that are assigned to an insurance group (Solvency II regime) and 2 percentage points that are assigned to an investment firm group (IFD/IFR regime). The remaining 27 percent of the assets held by German investors are managed by companies who have other group structures (e.g. affiliation to industrial companies or other holding company structures) or are independent. In the existing group structures in the German fund market, asset managers are typically not the parent company, but a subsidiary. For 68 percent of the assets held by German investors, the ultimate parent of the management company is based in the EU, 24 percent in the UK, and 5 percent in the US.

- **Definition of 'EU groups':** We do not believe that a sophisticated new definition of an EU group is necessary in the AIFMD and the UCITS Directive. For example, the AIMFD and the UCITS Directive already recognise the concept of a group to which AIF and UCITS managers belong without needing to define it further (see Delegated Regulation (EU) 231/2013, Directive 2010/43/EU). Besides, we consider the proposed definition of an 'EU group' in Article 1(2)(v) UCITS Directive and Article 4(1)(av) AIFMD too narrow, as it does not account for all of the above-mentioned group structures and delegation practices that would lead to actual relief in the group context. If there is a need for a group definition, we suggest referring solely to the definition in Article 2(11) Directive 2013/34/EU, which defines a group as a parent undertaking and all its subsidiary undertakings.

- **Scope of the reliefs:** We conclude from the wording proposed for Article 13(3) UCITS Directive and Article 20(6a) AIFMD that the reliefs on delegation are only intended to apply to tasks and functions within the meaning of Annex II UCITS Directive, Annex I AIFMD or to additional permitted services and ancillary services beyond collective asset management which are delegated to supervised entities. However, we see room for improvement regarding the following questions:

    - **Which specific activities and functions should be covered?** According to the EU proposal, the delegation of infrastructure and company-related functions (such as business and continuity management, information and communication technology, human resources, legal or tax departments) or mandatory statutory control functions (such as internal audit / compliance) to a group company would not benefit from this relief. In the supervisory practice, centralisation of these functions in group entities is regularly treated as an intra-group delegation/outsourcing which results in delegation agreements between the group companies as well as additional reporting, notification and oversight obligations. This includes the obligation of the supervised management company to monitor the corresponding group company.

    - In order to simplify the framework, we see the need for a clarification that group-internal delegation of infrastructure and company-related or mandatory statutory control functions does

not have to meet the strict requirements for delegation (e.g. due diligence, delegation control, reporting, notifications).

- **Who is permitted to perform the functions under simplified conditions in a group?** Under the current proposal, the reliefs only apply if the tasks mentioned are delegated to a supervised entity within a group. In practice, however, fund-related (apart from portfolio management) and company-related functions are also regularly delegated to other companies within the group that are not regulated and supervised (e.g. service companies). These companies provide the relevant services on behalf of the management companies in accordance with their instructions. Such delegations would not currently benefit from the relief measures.

  In order to simplify the framework, it should be possible for other group companies to take on tasks that do not require special permission (e.g. risk management, fund administration) without complying with the delegation/outsourcing rules (subject to approval by the competent authority, if necessary).

- **Intra-group obligations:** Based on certain EU requirements (such as frameworks involving prudential consolidation regulations at parent company level like CRD/CRR, IFD/IFR, Solvency II or accounting requirements for groups like Accounting Directive 2013/34/EU), management companies being part of a group must also forward group reports internally to the parent company or have to fulfil certain requirements on a consolidated basis. These obligations are regularly linked to the risk profiles of the parent company, which are regularly immaterial at management company level. These include the following examples:

  - Although asset managers do not operate a lending business within the meaning of the CRD, as subsidiaries they must comply with the parent company's credit risk requirements (e.g. detailed requirements on the definition of default).

  - Extensive data quality requirements based on BCBS 239: Many of these requirements were designed for the lending business of banks. The added value for asset managers is limited.

  - The parent company expects deliveries and analyses on the periodic interest rate risk (at the asset manager's company level) which is completely immaterial for an asset manager from a management perspective.

  - The parent company expects validations for the expected losses under IFRS9. Here, too, the asset manager's contribution to the group is immaterial.

  - There are differences between Article 109 CRD V and Article 25 IFD with regard to the group approach. According to Article 109(4)(a) CRD V, it is possible to apply other remuneration provisions to subsidiaries if they are subject to specific remuneration requirements in accordance with other EU legislation (e.g. AIFM/UCITS Directive). There is no comparable provision in Article 25 IFD. Even though CRD V was negotiated at EU level at almost the same time as the IFD, it is important to realise that the EU legislators only agreed on the group remuneration rules under CRD V at a very late stage. It was therefore no longer possible to transpose these rules into the IFD in a comparable manner.

  - Another peculiarity is usually observed in groups with regulated parent companies with prudential consolidation requirements such as those of CRD/CRR, IFD/IFR, or Solvency II.

Even though different sector-specific requirements often apply to various companies in a group, it is regular practise to implement uniform requirements within a group based on the often much stricter requirements of the parent company. Examples of this include requirements for remuneration or risk management processes. Such agreements are only possible on a voluntary basis, i.e. with the consent of the respective subsidiary (here: the management company as subsidiary). As a rule, however, the EU legislator has deliberately adopted other sector-specific regulations for management companies. As a result, there are often unnecessary discussions with the parent company in which the management companies have to explain why their own legal rules deviate from the group approach. A clear reference to the validity and sole application of sector-specific rules in the group context would be very helpful.

Therefore, relief measures in the AIFM and UCITS Directives alone will not help if strict requirements continue to exist in these other frameworks. We propose reviewing the existing group requirements in other EU frameworks and introduction of facilitations such as:

- Adaption of Article 25 IFD to Article 109 CRD V. At least it should be possible to apply other remuneration provisions to subsidiaries if they are subject to sector-specific remuneration rules in accordance with other EU legislation (e.g. AIFM/UCITS Directives).

- Extension of Article 109 CRD (and corresponding adjustment in Article 25 IFD) by the following exception: Introduction of an exemption from the prudential consolidation requirement in Article 109 CRD regarding all CRD governance rules (Section II of the Chapter), insofar as sector-specific rules apply to the subsidiaries such as AIF and UCITS managers.

- Review of the Accounting Directive 2013/34/EU in terms of group reporting on expected losses under IFRS9.

Moreover, **effective simplifications of the delegation arrangements could be achieved by the following targeted measures:**

- **Reporting requirements pertaining to delegation of portfolio management:** We suggest removing one of the two reporting requirements, either the obligation on notification in Article 20(1) AIFMD and Article 13(1) UCITS Directive or the obligation on reporting in Article 24(2)(d) AIFMD and Article 20a(2)(d) UCITS Directive.

  It should be emphasised that AIF and UCITS managers have already been legally obliged for many years to notify the NCAs of all indicated delegations (not only portfolio and risk management functions) before they become effective (cf. Art. 20(1) AIFMD and Art. 15(1) UCITS Directive). There are currently no uniform standards (content and reporting formats) for these prior notifications, which is why the data is not available at the NCAs in a uniform manner and cannot be systematically retrieved/analysed. However, the latest AIFMD review (Directive (EU) 2024/927) requires management companies to provide additional reports on information regarding delegation arrangements concerning portfolio or risk management functions. Together with the advance notices, this leads to unnecessary double reporting. We expect that the removal of a reporting requirement will lead to a 50 percent reduction in the burden in relation to delegation notices/reports. Depending on ESMA proposals on Article 24(5a) AIFMD and Article 20a(5) UCITS Directive, considerable cost savings can also be expected here.

- **Delegation of (collective) portfolio management in the MiFID context:** We strongly advocate that the contractual relationship between an AIF/UCITS management company that launches a fund and a portfolio manager that the management company commissions to manage the fund under a delegation agreement should not be regarded as a service of portfolio management within the meaning of MiFID. This should be made clear at Level 1 of the MiFID. UCITS Directive and AIFMD already provide comprehensive rules and conditions for delegation, in particular by stipulating that collective portfolio management may only be delegated to authorised and supervised financial market participants.

  This problem affects all cases of delegation of portfolio management, including delegations in the group. This concerns the contractual relationship between an AIF or UCITS management company that launches a fund and delegates the portfolio management to a third party in the EU, for example, if a Luxembourg management company delegates portfolio management to a German management company. This also applies to purely national matters. Unfortunately, a common understanding of the classification of delegated management services to UCITS or AIFs does not exist in the EU. The German legislator qualified this kind of insourcing activities as a service of (discretionary) portfolio management within the meaning of Article 4(1)(8) MiFID as a result of a statement made by the European Commission in 2007 in its FAQ to MiFID I. This leads to a number of problems:

  - The third party to which portfolio management is delegated (insourcer) must comply with the MiFID obligations in relation to the management company in addition to the contractual obligations to comply with the rules from the AIFM/UCITS Directives. The management company which delegates the portfolio management is considered a professional client of the third party in this MiFID relationship.

  - Since many of the detailed MiFID II requirements cannot be waived even by professional clients, the insourcer acting as portfolio manager often has the same obligations towards the management company as towards retail clients. This applies in particular to the information and reports to be provided under MiFID II, for which management companies have no use. The exchange of information between the management company and the portfolio manager is stipulated in the outsourcing contract in accordance with the requirements of the AIFMD and the UCITS Directive. The result is massive red tape without any recognisable benefit for any party involved.

  - The classification of the delegated fund management as a service of portfolio management within the meaning of MiFID also hinders the commissioning of service providers from third countries, to which the requirements for ‘reverse solicitation’ in terms of MiFIR apply. According to the interpretation of ESMA, in the context of reverse solicitation it is difficult to provide information about the range of services offered in third countries through group companies in the EU. This makes it more challenging for management companies to make use of the available expertise for the management of funds with an investment focus on global markets or markets outside the EU (see Art 46 (5) subparagraph 3 MiFIR and ESMA Q&A on MiFID II and MiFIR investor protection and intermediaries topics, Section 13 Questions 1 - 3).

(2) ESMA reviews for 'large EU groups' of UCITS and AIF managers

We strictly object to the proposal under Art. 110b UCITS Directive, 47a AIFMD entrusting ESMA with annual (and potentially more frequent) reviews of 'large EU groups' of UCITS management companies and AIFMs. Such ESMA reviews would effectively amount to double supervision of group entities, entail additional costs and thus, would stand in total contrast to the envisaged efficiency gains. They are also missing a clear policy objective that could justify intensified ESMA supervision at the group level.

It is very clear that the regular reviews to be performed by ESMA at the group level shall come on top of the ongoing supervision of individual group entities by the NCAs. The proposed review scope is very wide, encompassing in particular – but not limited to – organisational structure and governance, allocation of resources and functions and risk management systems. For this purpose, ESMA shall compile and consolidate at group level all relevant information, including that available to the NCAs, and shall conduct the review in cooperation with the NCAs. This means that costs associated with the review will not only occur at the ESMA level. The NCAs will also need to allocate additional resources and time to contributing their insights and expertise to the review and potentially, reaching out to the supervised entities on behalf of ESMA with requests for further information. In the end, it must be feared that the reviews will not only result in additional fees to be charged by ESMA (as foreseen in recital 15), but will also increase the costs of national supervision.

Such cost-intensive and complex approach to supervision stands in blatant contradiction to the policy objective of the reviews as specified in recital 14, namely, to enhance the efficiency of large asset management groups and remove barriers to their cross-border activities. Efficiency in operations will not be achieved by introducing additional layers of supervision and giving ESMA the powers to question the decisions of the NCAs. Increasing supervisory costs is also the opposite of efficient operations, as such costs will in the end be absorbed by the end-investors.

Moreover, the ESMA reviews of large EU groups are neither necessary nor effective for removing barriers to cross-border activities of asset managers. ESMA shall anyway receive extensive competences under Articles 110c UCITS Directive, 47b AIFMD and 14c CBFDR to identify on an ongoing basis 'diverging, duplicative, redundant and deficient supervisory actions' that hinder the effective exercise of EU passporting rights and to propose corrective actions or otherwise initiate measures to tackle the identified issues. Given this mandate and the wide array of powers for ensuring supervisory convergence and remedy any deficiencies in the general supervisory approaches of the NCAs, vesting ESMA with additional competences for reviewing the functioning of large EU groups would be excessive. The problems to be tackled by group reviews and by the additional powers to address cross-border issues are exactly the same (cf. para. 6 of Articles 110b UCITS Directive, 47a AIFMD and 14b CBFDR, respectively). Lastly, as explained above, it is highly unlikely that the group-level reviews, or indeed any kind of EU-centralised supervision, will substantially boost the cross-border activities in the asset management sector. Other factors, in particular local distribution networks, tax benefits and preferences of local investors, are much more relevant for shaping the opportunities in cross-border business.

(3) Scope of powers conferred on ESMA (corrective actions)

We strongly oppose granting ESMA far-reaching powers under Art. 110c(4) UCITS Directive and Art. 47b(4) AIFMD to take direct supervisory actions towards fund managers or depositaries bypassing the NCAs.

While understanding that effective enforcement of corrective actions requires an appropriate escalation process, we believe that the powers conferred to ESMA under paragraph 3 of Art 110c UCITS Directive and 47b AIFMD, respectively, are entirely sufficient to address any issues in relation to the actions of the NCAs. Those powers relate to the general competences of ESMA that shall be enhanced under Articles 17, 17aaa, 19 and 19a of the ESMA Regulation. It is neither appropriate nor necessary to allow ESMA to bypass the regular process and directly suspend the passporting rights of market participants, “notwithstanding” any corrective actions taken with the involvement of the NCAs.

(4) Harmonisation of authorisation procedures for funds and their managers

We welcome the proposed EU-wide harmonisation of authorisation procedures for UCITS and UCITS management companies as well as AIFMs, as this should lead to a simplification of administrative processes and thus to efficiency gains in the medium term. However, the multiple new mandates for regulatory technical standards specifying the details of the information and procedures to be followed must be handled in a pragmatic manner with due regard to the implementation costs and efforts, especially in IT terms. By no means should the full EU harmonisation be misused for compiling all national information templates into one extensive EU standard of adding up additional application requirements without clear references in Level 1.

(5) Authorisation of cross-border activities by depositaries (EU passport)

While today funds are required to appoint a depositary based in their home Member State, a depositary passport would mean that UCITS and AIFs can appoint a depositary anywhere in the Union. However, the current regulation already provides for threshold-related exceptions. The proximity of the NCA responsible for fund supervision to the depository, and thus close and holistic supervision of the fund and its actors, i.e., capital management company and depository, would be weakened if passporting made cross-border interagency coordination between two NCAs necessary. Under no circumstances should the introduction of a depositary passport serve to shift supervisory authority away from the Member States’ NCAs to centralised supervision in the medium term.

(6) Harmonisation and partial adjustment of investment limits for UCITS

We support an amendment to Article 53(1) of the UCITS Directive to extend the 20 percent issuer limit currently applicable to index-tracking UCITS also to UCITS that are managed by reference to an index. This proposal leads to a genuine simplification for actively managed UCITS, where indices, inter alia, play a role in portfolio composition or performance measurement. However, we do not see a need for an index to be recognised by ESMA, as this would create a significant bureaucratic burden given the large number of indices used in the market.

(7) Abolition of key investor information for UCITS

We support the repeal of Chapter IX section 3 of the UCITS Directive with provisions on the key investor information document for UCITS. Since the application of the PRIIPs Regulation to UCITS, the KIID regime has been effectively overridden and discontinued in practice. The remaining provisions on the KIID in the UCITS framework have been the source of confusion and uncertainty ever since.

Hence, in the interest of legal clarity, it is necessary that any references to the UCITS KIID in the UCITS framework and in other EU regulations be replaced by the references to PRIIPs KIDs. Moreover, all implementing provisions, including in particular Commission Regulation (EU) 583/2010, and supporting interpretative guidance by CESR/ESMA should be withdrawn.

(8) Revision of Annex II to the UCITS Directive (list of UCITS management functions)

In principle, we welcome the alignment of Annex II of the UCITS Directive with Annex I of the AIFMD, insofar as comparable permitted activities are carried out. However, the mere inclusion of risk management in the investment management function under the UCITS Directive as part of Annex II also has material legal consequences, which unfortunately are not yet sufficiently considered in the legal text of Article 13 UCITS Directive. Here, too, consistency with the AIFMD should be ensured.

Unlike Article 20(1)(c) of the AIFMD, Article 13(1)(c) of the UCITS Directive does not provide for the possibility of delegation of portfolio management or risk management to a non-supervised entity with the approval of the supervisory authority. According to the draft Amending Directive, a UCITS management company could therefore only delegate risk management to a company that is authorised or registered for the purposes of asset management and is subject to supervision. To align the delegation requirements, Article 13(1)(c) of the UCITS Directive should be attuned to the wording of the AIFMD as follows:

> ‘(c) when the delegation concerns the ~~*investment management*~~ ***portfolio management or risk management***, the mandate must be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision ***or, where that condition cannot be met, only subject to prior approval by the competent authorities of the home Member State of the management company***; the delegation ***of portfolio management*** must be in accordance with investment-allocation criteria periodically laid down by the management companies;

II. Amending Regulations (EU) No 1095/2010, No 648/2012, No 600/2014, No 909/2014, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, No 1060/2009, 2016/1011, 2017/2402, 2023/2631 and 2024/3005 as regards the further development of capital market integration and supervision within the Union

(1) Competitiveness mandate for ESMA (Art. 1(5) of the ESMA Founding Regulation)

We support broadening of the ESMA’s mandate by adding market integration and innovation in the financial sector to the objectives of ESMA’s activities. However, this can only be considered a first step towards an effective and efficient supervisory architecture contributing to the “vision of the Union as an economic powerhouse”. In line with the Draghi and Letta reports, **ESMA’s objectives should be further extended to an explicit competitiveness mandate that enables ESMA to pay due regard**

to proportionality issues or administrative burden concerns and facilitate developing a supervisory agenda that truly aims at promoting retail investors' participation in capital markets.

Adding the competitiveness dimension to ESMA's objectives and tasks would strengthen the authority's ability to safeguard financial stability and investor protection while also promoting a regulatory environment that supports efficient capital-market based financing, enables innovation and economic growth across the EU. It would also align the prerogatives for ESMA's work with the mandates of other leading securities supervisors around the globe, namely the U.S. SEC, UK FCA or the Monetary Authority of Singapore.

A competitiveness mandate should translate into new regulatory practices within ESMA. A shift of mindset is necessary to ensure that ESMA truly embraces the new task, and its activities effectively enable efficient and competitive solutions. In particular, the competitiveness mandate should ensure that ESMA pursues specific regulatory outcomes by adhering more closely to best regulatory practices (e.g., proportionality, evidence-based decision-making, including through robust impact assessments, and stakeholder engagement) and thus, strikes a proper balance between encouraging competition and innovation and advancing other objectives.

In this context, we fundamentally oppose ESMA reviews over large cross-border groups of asset managers and have concerns regarding the possibility of ESMA taking corrective measures against national supervisors and/or market participants (cf. Parts I.2 and I.3 above). Any additional task to be conferred upon ESMA should demonstrably contribute to the legislative objectives and avoid imposing additional work or costs on market participants without clear added value.

Moreover, there might be merit in exploring a competition mandate for ESMA that would require it to foster effective competition in the financial markets and in particular, to investigate monopolistic structures and other anti-competitive behaviour under the EU competition rules, especially in the market data area.

(2) Introduction of 'automatic' product passports in combination with an EU-wide data platform at ESMA (Art. 12 and 17a-i CBFDR)

We agree that the use of a common ESMA data platform will help to facilitate the (de-)notification procedure in future, as it will no longer be necessary to rely on individual systems to submit the relevant documents to the competent supervisory authority. The use of a uniform data platform will also standardise and simplify procedures and document exchange between European authorities, which in turn will be beneficial to the management company. In this context, we further welcome that the data platform allows the authorisation procedure of a fund itself and the distribution of that fund to be combined into a single procedural step (Art. 17c-g CBDFR), which will replace the current, often two-stage authorisation procedure. Harmonising these submission requirements can significantly simplify operational procedures for management companies.

However, we would like to point out that, in order to use the ESMA platform, the regulation must expressly stipulate that neither ESMA nor the competent national authority may charge fees for the same service. Rather, the use of the ESMA platform should lead to a significant reduction in the total fees payable.

Therefore, Article 17i CBFDR must take a clear stance on the issue of costs and the text of the regulation must be amended accordingly. While we welcome the proposed provisions in Articles 9 and 10 CBFDR providing for regular reviews of national fees by ESMA, we consider them insufficient to prevent the levying of double fees.

(3) Scope of power conferred on ESMA as regards corrective actions (Art. 14c CBFDR)

We strictly oppose allowing ESMA to make far-reaching decisions as foreseen in Article 14c CBDFR that would allow to bypass the competent supervisory authority, which is in regular contact with the management company and provides it with ongoing support.

Although we recognise that the use of a data platform provided by ESMA may generally also entail more powers for ESMA, we are of the view that, given the scope of potential corrective actions (including suspension), such far-reaching powers as those provided for in Article 14c(4) CBDFR would undermine the strategic approach of the respective competent supervisory authority in regular ongoing matters. In general, decisions by the competent supervisory authority are made in the overall context of previous decisions that have been made in recent years. While ESMA may generally gather information to identify existing or potential cross-border issues, the basis for its decision is still unlikely to be comparable to that of the competent supervisory authority. Apart from the fact that ESMA will not be particularly familiar with the ongoing matters of the respective management company, it is also not familiar with the market characteristics and the different investor behaviour in the various Member States. Having said this and as outlined above, supervisory tools that do not bypass the regular process and involve the competent supervisory authority should be deemed more than sufficient to address issues that may hinder the functioning of EU passporting.

Thus, in line with our requests for adaptations of Articles 110c UCITS Directive and 47b AIFMD, Article 14c(4)-(6) CBFDR setting out the procedure for corrective actions by ESMA, bypassing the NCAs, should be deleted.

(4) Pre-marketing (Articles 17e(2), (4) and 17f(2), (3) CBFDR)

We strongly welcome the abolition of the additional authorisation procedure for pre-marketing of AIFs, which is further safeguarded by a prohibition on gold-plating. In Germany, the deletion will have a beneficial impact on the acquisition of fund units of so-called *Spezialfonds*. This is even more important given that, contrary to its actual legal purpose, the requirements for pre-marketing also apply to purely domestic cases, resulting in a high administrative burden without added value for the competent supervisory authority, supervised parties or the end investor. Although the proposed provisions continue to require authorisation to market *Spezialfonds* units, such authorisation will take place once the marketing notification has been received by the competent supervisory authority and verified for completeness, without any additional time limit applying, which represents a significant improvement in practice.

(5) EU-harmonisation of marketing (Articles 4(5a), (6) CBFDR)

In general, we welcome the decision to further harmonise marketing documents and practices relating to marketing communications across the board, as differing national marketing provisions can exacerbate the difficulties of cross-border fund distribution. In contrast to ESMA's current mandate for the established guidelines on marketing communications and as now proposed by the European Commission, such harmonisation can be achieved more seamlessly through a delegated act with a

detailed mandate (Article 4(6) CBFDR), accompanied by a prohibition on gold plating (Article 4(5a) CBFDR). Striving for greater harmonisation in this field provides the potential to streamline parts of the authorisation procedure and reduce the associated procedural costs, as it will no longer be necessary to assess and prepare documents and formalities for each Member State individually.

However, when adopting the delegated acts to determine the content and format of the marketing documents, it should be borne in mind that the requirements must not contradict the European objective of reducing bureaucracy and promoting simplification throughout the entire value chain for both potential investors and management companies.