



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Sir William Cash MP
Chair
European Scrutiny Committee
House of Commons
London
SW1A 0AA

Dear Sir Bill,

3rd July 2018

Proposal for a Directive 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 and;

Proposal for a Regulation on facilitating cross-border distribution of collective investment funds and amending Regulations (EU) No 345/2013 and (EU) No 346/2013.

Thank you for your report of 8 May 2018 considering the European Commission's proposals on the cross-border distribution of investment funds. You explained the Committee's decision not to clear the proposals from scrutiny, and requested further information. I have addressed this request and have provided an update of the progress of the proposals in this letter.

An update on the Council negotiations

In the explanatory memorandum submitted to Parliament on 23 April 2018, I made clear the Government's support for measures that removed barriers for fund managers marketing funds across borders and providing greater consumer choice of fund products. The explanatory memorandum also set out the government's objectives for this file, namely that it should seek to genuinely facilitate market access, accommodate the diverse range of fund structures and distribution models that exist within the EU, and not inadvertently result in limitations on the distribution of funds.

Working with other Member States, my officials have sought to secure changes to the proposal that meet these objectives. Negotiations have progressed unusually swiftly, and Member States agreed to a compromise text at COREPER on 20th June. Having secured our negotiating objectives, I was content to agree to this compromise. It is expected that the Council General Approach proposal will be agreed as an 'A' point at ECOFIN on 13 July.

The most concerning aspect of the proposal related to the provisions to harmonise the rules around pre-marketing. The original proposal would have restricted existing and

legitimate market practices, by preventing firms circulating draft documents referring to existing funds. Working with other Member States, my officials were successful in removing these provisions from the final compromise.

Of secondary concern were requirements placed on fund managers who wish to withdraw from marketing in a particular Member State. My officials successfully argued that requirements to offer to buy back units from existing investors would be unworkable for closed end funds such as private equity, and secured concessions to exclude such funds from this requirement. The compromise also improves on the original proposal in several other ways. For example, it increases certain thresholds making it easier for firms to take advantage of the positive provisions in the proposal, and allows host regulators to consider alternative factors when deciding whether it is appropriate to allow a fund to withdraw from marketing, creating a more permissive regime.

Points raised in the Committee's report

Your letter also raises several other issues, which I will address in turn. As regards to the legal form of the future UK-EU financial services agreement, you will understand that this is subject to negotiation. The Chancellor has proposed a new partnership that will focus on developing a mutually agreed and objective framework which maximises the provision of the most important international financial services offerings between the UK and the EU, in a way that is enduring, reliable and ensures financial stability risks can properly be managed.

The UK will engage constructively to negotiate an approach to dispute resolution which meets the key objectives of the UK and the EU, underpinning the deep and special partnership we seek. In financial services, the Chancellor has been clear that we are seeking a process for maintaining compatible cross-border regulatory requirements as legislation evolves, including a system to resolve disagreements at regulatory and supervisory levels.

As regards to your concerns about the prospect of changes to the portfolio delegation model, I would agree that it is not in the EU's interest to pursue changes that would restrict the EU's access to asset management expertise. The UK continues to actively participate in negotiations on the ESA Review, and the UK's position remains that it should not undermine the portfolio delegation model, which supports open, capital markets, as set out to you in my letter of 31st January.

With the expectation that a General Approach is to be agreed at ECOFIN on 13 July, I would be grateful if the Committee find themselves able to grant clearance or a scrutiny waiver to enable us to support an agreement that meets UK objectives. I am copying this letter to Lynn Gardner, Clerk to the Commons Committee; Les Saunders, Department for Exiting the EU; and Frances Milsom and Barbara Armstrong, HM Treasury.

with very best regards

John

JOHN GLEN