

Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) (Text with EEA relevance)

CHAPTER II

AUTHORISATION OF UCITS

Article 5

1 No UCITS shall pursue activities as such unless it has been authorised in accordance with this Directive.

Such authorisation shall be valid for all Member States.

2 A common fund shall be authorised only if the competent authorities of its home Member State have approved the application of the management company to manage that common fund, the fund rules and the choice of depositary. An investment company shall be authorised only if the competent authorities of its home Member State have approved both its instruments of incorporation and the choice of depositary, and, where relevant, the application of the designated management company to manage that investment company.

3 Without prejudice to paragraph 2, if the UCITS is not established in the management company's home Member State, the competent authorities of the UCITS home Member State shall decide, on the application of the management company, to manage the UCITS pursuant to Article 20. Authorisation shall not be subject either to a requirement that the UCITS be managed by a management company having its registered office in the UCITS home Member State or that the management company pursue or delegate any activities in the UCITS home Member State.

4 The competent authorities of the UCITS home Member State shall not authorise a UCITS if:

- a they establish that the investment company does not comply with the preconditions laid down in Chapter V; or
- b the management company is not authorised for the management of UCITS in its home Member State.

Without prejudice to Article 29(2), the management company or, where applicable, the investment company, shall be informed, within two months of the submission of a complete application, whether or not authorisation of the UCITS has been granted.

The competent authorities of the UCITS home Member State shall not authorise a UCITS if the directors of the depositary are not of sufficiently good repute or are not sufficiently experienced also in relation to the type of UCITS to be managed. To that end, the names of the directors of the depositary and of every person succeeding them in office shall be communicated forthwith to the competent authorities.

Directors shall mean those persons who, under the law or the instruments of incorporation, represent the depositary, or who effectively determine the policy of the depositary.

5 The competent authorities of the UCITS home Member State shall not grant authorisation if the UCITS is legally prevented (for example, through a provision in the fund rules or instruments of incorporation) from marketing its units in its home Member State.

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6 Neither the management company nor the depositary shall be replaced, nor shall the fund rules or the instruments of incorporation of the investment company be amended, without the approval of the competent authorities of the UCITS home Member State.

7 The Member States shall ensure that complete information on the laws, regulations and administrative provisions implementing this Directive which relate to the constitution and functioning of the UCITS are easily accessible at a distance or by electronic means. Member States shall ensure that such information is available at least in a language customary in the sphere of international finance, provided in a clear and unambiguous manner, and kept up to date.

[^{F18} In order to ensure consistent harmonisation of this Article the European Supervisory Authority (European Securities and Markets Authority) (hereinafter ‘ESMA’), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁽¹⁾ may develop draft regulatory technical standards to specify the information to be provided to the competent authorities in the application for authorisation of a UCITS.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.]

Textual Amendments

- F1** Inserted by [Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority \(European Banking Authority\), the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\)](#) (Text with EEA relevance).

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(1) [^{F1}OJ L 331, 15.12.2010, p. 84.]

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