

Council Directive of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (85/611/EEC) (repealed)

SECTION IX

**Provisions concerning the authorities responsible for authorization and supervision**

*Article 49*

1 The Member States shall designate the authorities which are to carry out the duties provided for in this Directive. They shall inform the Commission thereof, indicating any division of duties.

2 The authorities referred to in paragraph 1 must be public authorities or bodies appointed by public authorities.

3 The authorities of the State in which a UCITS is situated shall be competent to supervise that UCITS. However, the authorities of the State in which a UCITS markets its units in accordance with Article 44 shall be competent to supervise compliance with Section VIII.

4 The authorities concerned must be granted all the powers necessary to carry out their task.

*Article 50*

1 The authorities of the Member States referred to in Article 49 shall collaborate closely in order to carry out their task and must for that purpose alone communicate to each other all information required.

[<sup>F12</sup> Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy. Such secrecy implies that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that Ucits and management companies and depositaries (hereinafter referred to as undertakings contributing towards their business activity) cannot be individually identified, without prejudice to cases covered by criminal law.

Nevertheless, when an Ucits or an undertaking contributing towards its business activity has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in rescue attempts may be divulged in civil or commercial proceedings.

3 Paragraph 2 shall not prevent the competent authorities of the various Member States from exchanging information in accordance with this Directive or other Directives applicable to Ucits or to undertakings contributing towards their business activity. That information shall be subject to the conditions of professional secrecy imposed in paragraph 2.

[<sup>F24</sup> Member States may conclude cooperation agreements providing for exchange of information with the competent authorities of third countries or with authorities or bodies of third countries as defined in paragraphs 6 and 7 only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such

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exchange of information must be intended for the performance of the supervisory task of the authorities or bodies mentioned.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.]

5 Competent authorities receiving confidential information under paragraphs 2 or 3 may use it only in the course of their duties:

- to check that the conditions governing the taking-up of the business of Ucits or of undertakings contributing towards their business activity are met and to facilitate the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms,
- to impose sanctions,
- in administrative appeals against decisions by the competent authorities, or
- in court proceedings initiated under Article 51 (2).

6 Paragraphs 2 and 5 shall not preclude the exchange of information:

- a within a Member State, where there are two or more competent authorities; or
- b within a Member State or between Member States, between competent authorities; and
  - authorities with public responsibility for the supervision of credit institutions, investment undertakings, insurance undertakings and other financial organizations and the authorities responsible for the supervision of financial markets,
  - bodies involved in the liquidation or bankruptcy of Ucits and other similar procedures and of undertakings contributing towards their business activity,
  - persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment undertakings and other financial institutions,

in the performance of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions. Such information shall be subject to the conditions of professional secrecy imposed in paragraph 2.

7 Notwithstanding paragraphs 2 to 5, Member States may authorize exchanges of information between the competent authorities and:

- the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of undertakings for collective investment in transferable securities (Ucits) or undertakings contributing towards their business activity and other similar procedures, or
- the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task of overseeing referred to in the first subparagraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,

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- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.

8 Notwithstanding paragraphs 2 to 5, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorize the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task referred to in the first subparagraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph.

In order to implement the final indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of this paragraph.

9 This Article shall not prevent a competent authority from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their tasks, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 5. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

10 This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 2 to 5 to a clearing house or other similar body recognized under national law for the provision of clearing or settlement services for one of their Member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions

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of professional secrecy imposed in paragraph 2. Member States shall, however, ensure that information received under paragraph 3 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.

11 In addition, notwithstanding the provisions referred to in paragraphs 2 and 5, Member States may, by virtue of provisions laid down by law, authorize the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of Ucits and of undertakings contributing towards their business activity, credit institutions, financial institutions, investment undertakings and insurance undertakings and to inspectors instructed by those departments.

Such disclosures may, however, be made only where necessary for reasons of prudential control.

Member States shall, however, provide that information received under paragraphs 3 and 6 may never be disclosed in the circumstances referred to in this paragraph except with the express agreement of the competent authorities which disclosed the information.]

#### Textual Amendments

- F1** Substituted by [European Parliament and Council Directive 95/26/EC of 29 June 1995 amending Directives 77/780/EEC and 89/646/EEC in the field of credit institutions, Directives 73/239/EEC and 92/49/EEC in the field of non-life insurance, Directives 79/267/EEC and 92/96/EEC in the field of life assurance, Directive 93/22/EEC in the field of investment firms and Directive 85/611/EEC in the field of undertakings for collective investment in transferable securities \(Ucits\), with a view to reinforcing prudential supervision.](#)
- F2** Substituted by [Directive 2000/64/EC of the European Parliament and of the Council of 7 November 2000 amending Council Directives 85/611/EEC, 92/49/EEC, 92/96/EEC and 93/22/EEC as regards exchange of information with third countries.](#)

#### *<sup>F3</sup>Article 50a*

- 1 Member States shall provide at least that:
- a any person authorized within the meaning of Directive 84/253/EEC<sup>(1)</sup>, performing in an undertaking for collective investment in transferable securities (Ucits) or an undertaking contributing towards its business activity the task described in Article 51 of Directive 78/660/EEC<sup>(2)</sup>, Article 37 of Directive 83/349/EEC or Article 31 of Directive 85/611/EEC or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which he has become aware while carrying out that task which is liable to:
    - constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorization or which specifically govern pursuit of the activities of undertakings for collective investment in transferable securities (Ucits) or undertakings contributing towards their business activity, or
    - affect the continuous functioning of the undertaking for collective investment in transferable securities (Ucits) or an undertaking contributing towards its business activity, or
    - lead to refusal to certify the accounts or to the expression of reservations;
  - b that person shall likewise have a duty to report any facts and decisions of which he becomes aware in the course of carrying out a task as described in (a) in an undertaking having close links resulting from a control relationship with the undertaking for

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collective investment in transferable securities (Ucits) or an undertaking contributing towards its business activity within which he is carrying out the abovementioned task.

2 The disclosure in good faith to the competent authorities, by persons authorized within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract of by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.]

#### **Textual Amendments**

**F3** Inserted by European Parliament and Council Directive 95/26/EC of 29 June 1995 amending Directives 77/780/EEC and 89/646/EEC in the field of credit institutions, Directives 73/239/EEC and 92/49/EEC in the field of non-life insurance, Directives 79/267/EEC and 92/96/EEC in the field of life assurance, Directive 93/22/EEC in the field of investment firms and Directive 85/611/EEC in the field of undertakings for collective investment in transferable securities (Ucits), with a view to reinforcing prudential supervision.

#### *Article 51*

1 The authorities referred to in Article 49 must give reasons for any decision to refuse authorization, and any negative decision taken in implementation of the general measures adopted in application of this Directive, and communicate them to applicants.

2 The Member States shall provide that decisions taken in respect of a UCITS pursuant to laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right to apply to the courts; the same shall apply if no decision is taken within six months of its submission on an authorization application made by a UCITS which includes all the information required under the provisions in force.

#### *Article 52*

1 Only the authorities of the Member State in which a UCITS is situated shall have the power to take action against it if it infringes any law, regulation or administrative provision or any regulation laid down in the fund rules or in the investment company's instruments of incorporation.

2 Nevertheless, the authorities of the Member State in which the units of a UCITS are marketed may take action against it if it infringes the provisions referred to in Section VIII.

3 Any decision to withdraw authorization, or any other serious measure taken against a UCITS, or any suspension of re-purchase or redemption imposed upon it, must be communicated without delay by the authorities of the Member State in which the UCITS in question is situated to the authorities of the other Member States in which its units are marketed.

#### *f<sup>4</sup> Article 52a*

1 Where, through the provision of services or by the establishment of branches, a management company operates in one or more host Member States, the competent authorities of all the Member States concerned shall collaborate closely.

They shall supply one another on request with all the information concerning the management and ownership of such management companies that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such companies. In particular, the authorities of the home Member State shall cooperate to

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ensure that the authorities of the host Member State collect the particulars referred to in Article 6c(2).

2 Insofar as it is necessary for the purpose of exercising their powers of supervision, the competent authorities of the home Member State shall be informed by the competent authorities of the host Member State of any measures taken by the host Member State pursuant to Article 6c(6) which involve penalties imposed on a management company or restrictions on a management company's activities.

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**Textual Amendments**

**F4** Inserted by [Directive 2001/107/EC](#) of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses.

*Article 52b*

1 Each host Member State shall ensure that, where a management company authorised in another Member State carries on business within its territory through a branch, the competent authorities of the management company's home Member State may, after informing the competent authorities of the host Member State, themselves or through the intermediary of persons they instruct for the purpose, carry out on-the-spot verification of the information referred to in Article 52a.

2 The competent authorities of the management company's home Member State may also ask the competent authorities of the management company's host Member State to have such verification carried out. Authorities which receive such requests must, within the framework of their powers, act upon them by carrying out the verifications themselves, by allowing the authorities who have requested them to carry them out or by allowing auditors or experts to do so.

3 This Article shall not affect the right of the competent authorities of the host Member State, in discharging their responsibilities under this Directive, to carry out on-the-spot verifications of branches established within their territory.]

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**Textual Amendments**

**F4** Inserted by [Directive 2001/107/EC](#) of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses.

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- (1) [<sup>F3</sup>OJ No L 126, 12. 5. 1984, p. 20.
- (2) OJ No L 222, 14. 8. 1978, p. 11. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).]

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#### **Textual Amendments**

- F3** Inserted by European Parliament and Council Directive 95/26/EC of 29 June 1995 amending Directives 77/780/EEC and 89/646/EEC in the field of credit institutions, Directives 73/239/EEC and 92/49/EEC in the field of non-life insurance, Directives 79/267/EEC and 92/96/EEC in the field of life assurance, Directive 93/22/EEC in the field of investment firms and Directive 85/611/EEC in the field of undertakings for collective investment in transferable securities (Ucits), with a view to reinforcing prudential supervision.