

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 XII

**PROVISIONS CONCERNING THE AUTHORITIES
RESPONSIBLE FOR AUTHORISATION AND SUPERVISION**

Article 102

1 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, be bound by the obligation of professional secrecy. Such obligation implies that no confidential information which those persons receive in the course of their duties shall be divulged to any person or authority whatsoever, save in summary or aggregate form such that UCITS, management companies and depositaries (undertakings contributing towards UCITS' business activity) cannot be individually identified, without prejudice to cases covered by criminal law.

However, when a 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 the course of civil or commercial proceedings.

[^{F12} Paragraph 1 shall not prevent the competent authorities of the Member States from exchanging information in accordance with this Directive or other Union legislation applicable to UCITS or to undertakings contributing towards their business activity or from transmitting it to ESMA in accordance with Regulation (EU) No 1095/2010 or the ESRB. That information shall be subject to the conditions of professional secrecy laid down in paragraph 1.]

The competent authorities exchanging information with other competent authorities under this Directive may indicate at the time of communication that such information must not be disclosed without their express consent, in which case such information may be exchanged solely for the purposes for which those authorities gave their consent.

3 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 determined in paragraph 5 of this Article and Article 103(1) only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information shall be intended for the performance of the supervisory task of those authorities or bodies.

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

4 The competent authorities receiving confidential information under paragraphs 1 or 2 may use the information only in the course of their duties for the purposes of:

- a checking that the conditions governing the taking-up of business of UCITS or of undertakings contributing towards their business activity are met and facilitating the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms;

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- b imposing penalties;
- c conducting administrative appeals against decisions by the competent authorities; and
- d pursuing court proceedings initiated under Article 107(2).

5 Paragraphs 1 and 4 shall not preclude the exchange of information within a Member State or between Member States, where that exchange is to take place between a competent authority and:

- a authorities with public responsibility for the supervision of credit institutions, investment undertakings, insurance undertakings or other financial organisations, or authorities responsible for the supervision of financial markets;
- b bodies involved in the liquidation or bankruptcy of UCITS or undertakings contributing towards their business activity, or bodies involved in similar procedures; or
- c persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment undertakings or other financial institutions^{[F1];}
- ^[F2]d ESMA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽¹⁾, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁽²⁾ and the ESRB.]

In particular, paragraphs 1 and 4 shall not preclude the performance by the competent authorities listed above of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions.

Information exchanged pursuant to the first subparagraph shall be subject to the conditions of professional secrecy imposed in paragraph 1.

Textual Amendments

- F1** Substituted 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).
- F2** 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) [^{F2}OJ L 331, 15.12.2010, p. 12.]
(2) [^{F2}OJ L 331, 15.12.2010, p. 48.]

Textual Amendments

- F2** 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).