

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 I

**SUBJECT MATTER, SCOPE AND DEFINITIONS**

*Article 1*

1 This Directive applies to undertakings for collective investment in transferable securities (UCITS) established within the territories of the Member States.

2 For the purposes of this Directive, and subject to Article 3, UCITS means an undertaking:

- a with the sole object of collective investment in transferable securities or in other liquid financial assets referred to in Article 50(1) of capital raised from the public and which operate on the principle of risk-spreading; and
- b with units which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.

Member States may allow UCITS to consist of several investment compartments.

3 The undertakings referred to in paragraph 2 may be constituted in accordance with contract law (as common funds managed by management companies), trust law (as unit trusts), or statute (as investment companies).

For the purposes of this Directive:

- a 'common funds' shall also include unit trusts;
- b 'units' of UCITS shall also include shares of UCITS.

4 Investment companies, the assets of which are invested through the intermediary of subsidiary companies, mainly other than in transferable securities, shall not be subject to this Directive.

5 The Member States shall prohibit UCITS which are subject to this Directive from transforming themselves into collective investment undertakings which are not covered by this Directive.

6 Subject to the provisions in Community law governing capital movements and subject to Articles 91 and 92 and the second subparagraph of Article 108(1), no Member State shall apply any other provisions in the field covered by this Directive to UCITS established in another Member State or to the units issued by such UCITS, where those UCITS market their units within the territory of that Member State.

7 Without prejudice to this Chapter, a Member State may apply to UCITS established within its territory requirements which are stricter than or additional to those laid down in this Directive, provided that they are of general application and do not conflict with the provisions of this Directive.

## Article 2

- 1 For the purposes of this Directive the following definitions apply:
- a ‘depository’ means an institution entrusted with the duties set out in Articles 22 and 32 and subject to the other provisions laid down in Chapter IV and Section 3 of Chapter V;
  - b ‘management company’ means a company, the regular business of which is the management of UCITS in the form of common funds or of investment companies (collective portfolio management of UCITS);
  - c ‘management company’s home Member State’ means the Member State in which the management company has its registered office;
  - d ‘management company’s host Member State’ means a Member State, other than the home Member State, within the territory of which a management company has a branch or provides services;
  - e ‘UCITS home Member State’ means the Member State in which the UCITS is authorised pursuant to Article 5;
  - f ‘UCITS host Member State’ means a Member State, other than the UCITS home Member State, in which the units of the UCITS are marketed;
  - g ‘branch’ means a place of business which is a part of the management company, which has no legal personality and which provides the services for which the management company has been authorised;
  - h ‘competent authorities’ means the authorities which each Member State designates under Article 97;
  - i ‘close links’ means a situation in which two or more natural or legal persons are linked by either:
    - (i) ‘participation’, which means the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking; or
    - (ii) ‘control’, which means the relationship between a ‘parent undertaking’ and a ‘subsidiary’, as defined in Articles 1 and 2 of Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts<sup>(1)</sup> and in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;
  - j ‘qualifying holding’ means a direct or indirect holding in a management company which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the management company in which that holding subsists;
  - k ‘initial capital’ means the funds as referred to in Article 57(a) and (b) of Directive 2006/48/EC;
  - l ‘own funds’ means own funds as referred to in Title V, Chapter 2, Section 1 of Directive 2006/48/EC;
  - m ‘durable medium’ means an instrument which enables an investor to store information addressed personally to that investor in a way that is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
  - n ‘transferable securities’ means:
    - (i) shares in companies and other securities equivalent to shares in companies (shares);
    - (ii) bonds and other forms of securitised debt (debt securities);

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- (iii) any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange;
- o 'money market instruments' means instruments normally dealt in on the money market which are liquid and have a value which can be accurately determined at any time;
- p 'mergers' means an operation whereby:
  - (i) one or more UCITS or investment compartments thereof, the 'merging UCITS', on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing UCITS or an investment compartment thereof, the 'receiving UCITS', in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10 % of the net asset value of those units;
  - (ii) two or more UCITS or investment compartments thereof, the 'merging UCITS', on being dissolved without going into liquidation, transfer all of their assets and liabilities to a UCITS which they form or an investment compartment thereof, the 'receiving UCITS', in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10 % of the net asset value of those units;
  - (iii) one or more UCITS or investment compartments thereof, the 'merging UCITS', which continue to exist until the liabilities have been discharged, transfer their net assets to another investment compartment of the same UCITS, to a UCITS which they form or to another existing UCITS or an investment compartment thereof, the 'receiving UCITS';
- q 'cross-border merger' means a merger of UCITS:
  - (i) at least two of which are established in different Member States; or
  - (ii) established in the same Member State into a newly constituted UCITS established in another Member State;
- r 'domestic merger' means a merger between UCITS established in the same Member State where at least one of the involved UCITS has been notified pursuant to Article 93.

2 For the purposes of paragraph 1(b), the regular business of a management company shall include the functions referred to in Annex II.

3 For the purposes of paragraph 1(g), all the places of business established in the same Member State by a management company with its head office in another Member State shall be regarded as a single branch.

4 For the purposes of point (i)(ii) of paragraph 1, the following shall apply:

- a a subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking which is at the head of those undertakings;
- b situations in which two or more natural or legal persons are permanently linked to the same person by a control relationship shall also be regarded as constituting a close links between such persons.

5 For the purposes of paragraph 1(j), the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market<sup>(2)</sup> shall be taken into account.

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6 For the purposes of paragraph 1(l), Articles 13 to 16 of Directive 2006/49/EC shall apply *mutatis mutandis*.

7 For the purposes of paragraph 1(n), transferable securities shall exclude the techniques and instruments referred to in Article 51.

#### *Article 3*

The following undertakings are not subject to this Directive:

- (a) collective investment undertakings of the closed-ended type;
- (b) collective investment undertakings which raise capital without promoting the sale of their units to the public within the Community or any part of it;
- (c) collective investment undertakings the units of which, under the fund rules or the instruments of incorporation of the investment company, may be sold only to the public in third countries;
- (d) categories of collective investment undertakings prescribed by the regulations of the Member States in which such collective investment undertakings are established, for which the rules laid down in Chapter VII and Article 83 are inappropriate in view of their investment and borrowing policies.

#### *Article 4*

For the purposes of this Directive, a UCITS shall be deemed to be established in its home Member State.

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- (1) OJ L 193, 18.7.1983, p. 1.
- (2) OJ L 390, 31.12.2004, p. 38.