

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 III

**OBLIGATIONS REGARDING MANAGEMENT COMPANIES**

SECTION 1

**Conditions for taking up business**

*Article 6*

1 Access to the business of management companies shall be subject to prior authorisation to be granted by the competent authorities of the management company's home Member State. Authorisation granted under this Directive to a management company shall be valid for all Member States.

[<sup>F1</sup>ESMA shall be notified of every authorisation granted and shall publish and keep up-to-date a list of authorised management companies on its website.]

2 No management company shall engage in activities other than the management of UCITS authorised under this Directive, with the exception of the additional management of other collective investment undertakings which are not covered by this Directive and for which the management company is subject to prudential supervision but the units of which cannot be marketed in other Member States under this Directive.

The activity of management of UCITS shall include, for the purpose of this Directive, the functions referred to in Annex II.

3 By way of derogation from paragraph 2, Member States may authorise management companies to provide, in addition to the management of UCITS, the following services:

- a management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC; and
- b as non-core services:
  - (i) investment advice concerning one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC;
  - (ii) safekeeping and administration in relation to units of collective investment undertakings.

Management companies shall not be authorised under this Directive to provide only the services referred to in this paragraph, or to provide non-core services without being authorised for the services referred to in point (a) of the first subparagraph.

4 Article 2(2) and Articles 12, 13 and 19 of Directive 2004/39/EC shall apply to the provision of the services referred to in paragraph 3 of this Article by management companies.

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### 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 \(European Securities and Markets Authority\) \(Text with EEA relevance\).](#)

### Article 7

1 Without prejudice to other conditions of general application laid down by national law, the competent authorities shall not grant authorisation to a management company unless the following conditions are met:

- a the management company has an initial capital of at least EUR 125 000, taking into account the following:
  - (i) when the value of the portfolios of the management company exceeds EUR 250 000 000, the management company must be required to provide an additional amount of own funds which is equal to 0,02 % of the amount by which the value of the portfolios of the management company exceeds EUR 250 000 000 but the required total of the initial capital and the additional amount must not, however, exceed EUR 10 000 000;
  - (ii) for the purposes of this paragraph, the following portfolios must be deemed to be the portfolios of the management company:
    - common funds managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation,
    - investment companies for which the management company is the designated management company,
    - other collective investment undertakings managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;
  - (iii) irrespective of the amount of those requirements, the own funds of the management company must at no time be less than the amount prescribed in Article 21 of Directive 2006/49/EC;
- b the persons who effectively conduct the business of a management company are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company, the names of those persons and of every person succeeding them in office being communicated forthwith to the competent authorities and the conduct of the business of a management company being decided by at least two persons meeting such conditions;
- c the application for authorisation is accompanied by a programme of activity setting out, at least, the organisational structure of the management company; and
- d the head office and the registered office of the management company are located in the same Member State.

For the purposes of point (a) of the first subparagraph, Member States may authorise management companies not to provide up to 50 % of the additional amount of own funds referred to in point (i) of point (a) if they benefit from a guarantee of the same amount

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given by a credit institution or an insurance undertaking which has its registered office in a Member State, or in a third country where it is subject to prudential rules considered by the competent authorities as equivalent to those laid down in Community law.

2 Where close links exist between the management company and other natural or legal persons, the competent authorities shall grant authorisation only if those close links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the management company has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities shall require management companies to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

3 The competent authorities shall inform the applicant within six months of the submission of a complete application whether or not authorisation has been granted. Reasons shall be given where an authorisation is refused.

4 A management company may start business as soon as authorisation has been granted.

5 The competent authorities may withdraw the authorisation issued to a management company subject to this Directive only where that company:

- a does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by this Directive more than six months previously, unless the Member State concerned has provided for authorisation to lapse in such cases;
- b has obtained the authorisation by making false statements or by any other irregular means;
- c no longer fulfils the conditions under which authorisation was granted;
- d no longer complies with Directive 2006/49/EC if its authorisation also covers the discretionary portfolio management service referred to in Article 6(3)(a) of this Directive;
- e has seriously or systematically infringed the provisions adopted pursuant to this Directive; or
- f falls within any of the cases where national law provides for withdrawal.

[<sup>F16</sup> In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify:

- a the information to be provided to the competent authorities in the application for the authorisation of the management company, including the programme of activity;
- b the requirements applicable to the management company under paragraph 2 and the information for the notification provided for in paragraph 3;
- c the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as provided for in Article 8(1) of this Directive and in Article 10(1) and (2) of Directive 2004/39/EC, in accordance with Article 11 of this Directive.

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

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In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in points (a) and (b) of the first subparagraph.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 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 \(European Securities and Markets Authority\) \(Text with EEA relevance\).](#)

#### *Article 8*

1 The competent authorities shall not grant authorisation to take up the business of management companies until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of a management company, they are not satisfied as to the suitability of the shareholders or members referred to in the first subparagraph.

2 In the case of branches of management companies that have registered offices outside the Community and are taking up or pursuing business, the Member States shall not apply provisions that result in treatment more favourable than that accorded to branches of management companies that have registered offices in Member States.

3 The competent authorities of the other Member State involved shall be consulted beforehand in relation to the authorisation of any management company which is one of the following:

- a a subsidiary of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State;
- b a subsidiary of the parent undertaking of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State; or
- c a company controlled by the same natural or legal persons as control another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

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## SECTION 2

### Relations with third countries

#### Article 9

1 Relations with third countries shall be regulated in accordance with the relevant rules laid down in Article 15 of Directive 2004/39/EC.

For the purposes of this Directive, the terms ‘investment firm’ and ‘investment firms’ referred to in Article 15 of Directive 2004/39/EC shall mean, respectively, ‘management company’ and ‘management companies’; the term ‘providing investment services’ referred to in Article 15(1) of Directive 2004/39/EC shall mean ‘providing services’.

[<sup>F2</sup> Member States shall inform ESMA and the Commission of any general difficulties which UCITS encounter in marketing their units in any third country.

The Commission shall examine such difficulties as quickly as possible in order to find an appropriate solution. ESMA shall assist it in discharging that task.]

#### Textual Amendments

**F2** 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).

## SECTION 3

### Operating conditions

#### Article 10

1 The competent authorities of the management company’s home Member State shall require that the management company which they have authorised complies at all times with the conditions laid down in Article 6 and Article 7(1) and (2).

The own funds of a management company shall not fall below the level specified in Article 7(1)(a). If they do, however, the competent authorities may, where the circumstances so justify, allow such firms a limited period in which to rectify their situations or cease their activities.

2 The prudential supervision of a management company shall be the responsibility of the competent authorities of the management company’s home Member State, whether the management company establishes a branch or provides services in another Member State or not, without prejudice to those provisions of this Directive which confer responsibility to the competent authorities of a management company’s host Member State.

#### Article 11

1 Qualifying holdings in management companies shall be subject to the same rules as those laid down in Articles 10, 10a and 10b of Directive 2004/39/EC.

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2 For the purposes of this Directive, the terms ‘investment firm’ and ‘investment firms’ referred to in Article 10 of Directive 2004/39/EC, mean, respectively, ‘management company’ and ‘management companies’.

[<sup>F13</sup> In order to ensure consistent harmonisation of this Directive, ESMA may develop draft regulatory technical standards to establish an exhaustive list of information, as provided for in this Article, with reference to Article 10b(4) of Directive 2004/39/EC, to be included by proposed acquirers in their notification, without prejudice to Article 10a(2) of that Directive.

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

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities, as provided for in this Article, with reference to Article 10(4) of Directive 2004/39/EC.

Power is conferred to the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 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 \(European Securities and Markets Authority\) \(Text with EEA relevance\).](#)

#### Article 12

1 Each Member State shall draw up prudential rules which management companies authorised in that Member State, with regard to the activity of management of UCITS authorised according to this Directive, shall observe at all times.

In particular, the competent authorities of the management company’s home Member State, having regard also to the nature of the UCITS managed by a management company, shall require that each such company:

- a has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest on its own account and ensuring, at least, that each transaction involving the UCITS may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the UCITS managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force;
- b is structured and organised in such a way as to minimise the risk of UCITS’ or clients’ interests being prejudiced by conflicts of interest between the company and its clients, between two of its clients, between one of its clients and a UCITS, or between two UCITS.

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2 Each management company the authorisation of which also covers the discretionary portfolio management service referred to in Article 6(3)(a) shall:

- a not be permitted to invest all or a part of the investor's portfolio in units of collective investment undertakings it manages, unless it receives prior general approval from the client;
- b be subject with regard to the services referred to in Article 6(3) to the provisions laid down in Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes<sup>(1)</sup>.

[<sup>F23</sup> Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts [<sup>F3</sup>in accordance with Article 112a], measures specifying the procedures and arrangements as referred to under point (a) of the second subparagraph of paragraph 1 and the structures and organisational requirements to minimise conflicts of interests as referred to under point (b) of the second subparagraph of paragraph 1.]

[<sup>F4</sup> . . . . .]

[<sup>F14</sup> In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of applications of the delegated acts adopted by the Commission regarding the procedures, arrangements, structures and organisational requirements referred to in paragraph 3.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 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).
- F2** 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).
- F3** Substituted by [Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities \(UCITS\) as regards depositary functions, remuneration policies and sanctions](#) (Text with EEA relevance).
- F4** Deleted 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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### Article 13

1 If the law of the management company's home Member State allows management companies to delegate to third parties for the purpose of a more efficient conduct of the companies' business, to carry out on their behalf one or more of their own functions, all of the following preconditions shall be complied with:

- a the management company must inform the competent authorities of its home Member State in an appropriate manner; the competent authorities of the management company's home Member State must, without delay, transmit the information to the competent authorities of the UCITS home Member State;
- b the mandate must not prevent the effectiveness of supervision over the management company, and, in particular, must not prevent the management company from acting, or the UCITS from being managed, in the best interests of its investors;
- c when the delegation concerns the investment management, the mandate must be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision; the delegation must be in accordance with investment-allocation criteria periodically laid down by the management companies;
- d where the mandate concerns the investment management and is given to a third-country undertaking, cooperation between the supervisory authorities concerned must be ensured;
- e a mandate with regard to the core function of investment management must not be given to the depositary or to any other undertaking whose interests may conflict with those of the management company or the unit-holders;
- f measures must exist which enable the persons who conduct the business of the management company to monitor effectively at any time the activity of the undertaking to which the mandate is given;
- g the mandate must not prevent the persons who conduct the business of the management company from giving further instructions to the undertaking to which functions are delegated at any time or from withdrawing the mandate with immediate effect when this is in the interest of investors;
- h having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated must be qualified and capable of undertaking the functions in question; and
- i the UCITS' prospectuses must list the functions which the management company has been allowed to delegate in accordance with this Article.

2 The liability of the management company or the depositary shall not be affected by delegation by the management company of any functions to third parties. The management company shall not delegate its functions to the extent that it becomes a letter-box entity.

### Article 14

1 Each Member State shall draw up rules of conduct which management companies authorised in that Member State shall observe at all times. Such rules shall implement at least the principles set out in this paragraph. Those principles shall ensure that a management company:

- a acts honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market;
- b acts with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market;
- c has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities;



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- d tries to avoid conflicts of interests and, when they cannot be avoided, ensures that the UCITS it manages are fairly treated; and
- e complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

[<sup>F2</sup> Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts [<sup>F3</sup> in accordance with Article 112a], measures with a view to ensuring that the management company complies with the duties set out in paragraph 1, in particular to:]

- a establish appropriate criteria for acting honestly and fairly and with due skill, care and diligence in the best interests of the UCITS;
- b specify the principles required to ensure that management companies employ effectively the resources and procedures that are necessary for the proper performance of their business activities; and
- c define the steps that management companies might reasonably be expected to take to identify, prevent, manage or disclose conflicts of interest as well as to establish appropriate criteria for determining the types of conflicts of interest whose existence may damage the interests of the UCITS.

[<sup>F4</sup> Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 112(2).]

[<sup>F13</sup> In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the delegated acts adopted by the Commission regarding the criteria, principles and steps referred to in paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 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).
- F2** 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).
- F3** Substituted by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (Text with EEA relevance).
- F4** Deleted 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

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(European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

### *f<sup>5</sup> Article 14a*

1 Member States shall require management companies to establish and apply remuneration policies and practices that are consistent with, and promote, sound and effective risk management and that neither encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that they manage nor impair compliance with the management company's duty to act in the best interest of the UCITS.

2 The remuneration policies and practices shall include fixed and variable components of salaries and discretionary pension benefits.

3 The remuneration policies and practices shall apply to those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers whose professional activities have a material impact on the risk profiles of the management companies or of the UCITS that they manage.

4 In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall issue guidelines addressed to competent authorities or to financial market participants concerning the persons referred to in paragraph 3 of this Article and the application of the principles referred to in Article 14b. Those guidelines shall take into account the principles on sound remuneration policies set out in Commission Recommendation 2009/384/EC<sup>(2)</sup>, the size of the management company and the size of the UCITS that they manage, their internal organisation, and the nature, scope and complexity of their activities. In the process of the development of those guidelines, ESMA shall cooperate closely with the European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>(3)</sup>, in order to ensure consistency with requirements developed for other financial services sectors, in particular credit institutions and investment firms.

#### **Textual Amendments**

**F5** Inserted by [Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities \(UCITS\) as regards depositary functions, remuneration policies and sanctions \(Text with EEA relevance\).](#)

### *Article 14b*

1 When establishing and applying the remuneration policies referred to in Article 14a, management companies shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

- a the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that the management company manages;
- b the remuneration policy is in line with the business strategy, objectives, values and interests of the management company and the UCITS that it manages and of the investors in such UCITS, and includes measures to avoid conflicts of interest;

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- c the remuneration policy is adopted by the management body of the management company in its supervisory function, and that body adopts, and reviews at least annually, the general principles of the remuneration policy and is responsible for, and oversees, their implementation; the tasks referred to in this point shall be undertaken only by members of the management body who do not perform any executive functions in the management company concerned and who have expertise in risk management and remuneration;
- d the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;
- e staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independently of the performance of the business areas that they control;
- f the remuneration of the senior officers in the risk management and compliance functions is overseen directly by the remuneration committee, where such a committee exists;
- g where remuneration is performance-related, the total amount of remuneration is based on a combination of the assessment as to the performance of the individual and of the business unit or UCITS concerned and as to their risks and of the overall results of the management company when assessing individual performance, taking into account financial and non-financial criteria;
- h the assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the management company in order to ensure that the assessment process is based on the longer-term performance of the UCITS and its investment risks and that the actual payment of performance-based components of remuneration is spread over the same period;
- i guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement;
- j fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;
- k payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;
- l the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;
- [<sup>X1</sup>m subject to the legal structure of the UCITS and its fund rules or instruments of incorporation, a substantial portion, and in any event at least 50 %, of any variable remuneration component consists of units of the UCITS concerned, equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this point, unless the management of UCITS accounts for less than 50 % of the total portfolio managed by the management company, in which case the minimum of 50 % does not apply.]

The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the management company and the UCITS that it manages and the investors of such UCITS. Member States or their competent authorities may place restrictions on the types and designs of those instruments or ban certain instruments as appropriate. This point shall apply to both the

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portion of the variable remuneration component deferred in line with point (n) and the portion of the variable remuneration component not deferred;

- n a substantial portion, and in any event at least 40 %, of the variable remuneration component, is deferred over a period which is appropriate in view of the holding period recommended to the investors of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in question.

The period referred to in this point shall be at least three years; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount shall be deferred;

- o the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the management company as a whole, and justified according to the performance of the business unit, the UCITS and the individual concerned.

The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

- p the pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and the UCITS that it manages.

If the employee leaves the management company before retirement, discretionary pension benefits shall be held by the management company for a period of five years in the form of instruments referred to in point (m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (m), subject to a five-year retention period;

- q staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;
- r variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements laid down in this Directive.

2 In accordance with Article 35 of Regulation (EU) No 1095/2010, ESMA may request information from competent authorities on the remuneration policies and practices referred to in Article 14a of this Directive.

ESMA shall, in close cooperation with EBA, include in its guidelines on remuneration policies provisions on how different sectoral remuneration principles, such as those set out in Directive 2011/61/EU of the European Parliament and of the Council<sup>(4)</sup> and in Directive 2013/36/EU of the European Parliament and of the Council<sup>(5)</sup>, are to be applied where employees or other categories of personnel perform services subject to different sectoral remuneration principles.

3 The principles set out in paragraph 1 shall apply to any benefit of any type paid by the management company, to any amount paid directly by the UCITS itself, including performance fees, and to any transfer of units or shares of the UCITS, made for the benefit of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket of senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profile of the UCITS that they manage.

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4 Management companies that are significant in terms of their size or of the size of the UCITS that they manage, their internal organisation and the nature, scope and complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

The remuneration committee that is, where appropriate, set up in accordance with the ESMA guidelines referred to in Article 14a(4) shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the management company or the UCITS concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the management company concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the management company concerned.

If employee representation on the management body is provided for by national law, the remuneration committee shall include one or more employee representatives. When preparing its decisions, the remuneration committee shall take into account the long-term interest of investors and other stakeholders and the public interest.]

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**Editorial Information**

- X1** Substituted by [Corrigendum to Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities \(UCITS\) as regards depositary functions, remuneration policies and sanctions \(Official Journal of the European Union L 257 of 28 August 2014\)](#).

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**Textual Amendments**

- F5** Inserted by [Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities \(UCITS\) as regards depositary functions, remuneration policies and sanctions \(Text with EEA relevance\)](#).

*Article 15*

Management companies or, where relevant, investment companies shall take measures in accordance with Article 92 and establish appropriate procedures and arrangements to ensure that they deal properly with investor complaints and that there are no restrictions on investors exercising their rights in the event that the management company is authorised in a Member State other than the UCITS home Member State. Those measures shall allow investors to file complaints in the official language or one of the official languages of their Member State.

Management companies shall also establish appropriate procedures and arrangements to make information available at the request of the public or the competent authorities of the UCITS home Member State.

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## SECTION 4

### **Freedom of establishment and freedom to provide services**

#### *Article 16*

1 Member States shall ensure that a management company, authorised by its home Member State, may pursue within their territories the activity for which it has been authorised, either by the establishment of a branch or under the freedom to provide services.

Where a management company so authorised proposes, without establishing a branch, only to market the units of the UCITS it manages as provided for in Annex II in a Member State other than the UCITS home Member State, without proposing to pursue any other activities or services, such marketing shall be subject only to the requirements of Chapter XI.

2 Member States shall not make the establishment of a branch or the provision of the services subject to any authorisation requirement, to any requirement to provide endowment capital or to any other measure having equivalent effect.

3 Subject to the conditions set out in this Article, a UCITS shall be free to designate, or to be managed by a management company authorised in a Member State other than the UCITS home Member State in accordance with the relevant provisions of this Directive, provided that such a management company complies with the provisions of:

- a Article 17 or Article 18; and
- b Articles 19 and 20.

#### *Article 17*

1 In addition to meeting the conditions imposed in Articles 6 and 7, a management company wishing to establish a branch within the territory of another Member State to pursue the activities for which it has been authorised shall notify the competent authorities of its home Member State accordingly.

2 Member States shall require every management company wishing to establish a branch within the territory of another Member State to provide the following information and documents, when effecting the notification provided for in paragraph 1:

- a the Member State within the territory of which the management company plans to establish a branch;
- b a programme of operations setting out the activities and services according to Article 6(2) and (3) envisaged and the organisational structure of the branch, which shall include a description of the risk management process put in place by the management company. It shall also include a description of the procedures and arrangements taken in accordance with Article 15;
- c the address in the management company's host Member State from which documents may be obtained; and
- d the names of those responsible for the management of the branch.

3 Unless the competent authorities of the management company's home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of a management company, taking into account the activities envisaged, they shall, within two months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the management company's host Member State and shall inform the management company accordingly. They shall also communicate details of any compensation scheme intended to protect investors.

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Where the competent authorities of the management company's home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the management company's host Member State, they shall give reasons for such refusal to the management company concerned within two months of receiving all the information. The refusal or any failure to reply shall be subject to the right to apply to the courts in the management company's home Member State.

Where a management company wishes to pursue the activity of collective portfolio management referred to in Annex II, the competent authorities of the management company's home Member State shall enclose with the documentation sent to the competent authorities of the management company's host Member State an attestation that the management company has been authorised pursuant to the provisions of this Directive, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

4 A management company which pursues activities by a branch within the territory of the host Member State shall comply with the rules drawn up by the management company's host Member State pursuant to Article 14.

5 The competent authorities of the management company's host Member State shall be responsible for supervising compliance with paragraph 4.

6 Before the branch of a management company starts business, the competent authorities of the management company's host Member State shall, within two months of receiving the information referred to in paragraph 2, prepare for supervising the compliance of the management company with the rules under their responsibility.

7 On receipt of a communication from the competent authorities of the management company's host Member State or on the expiry of the period provided for in paragraph 6 without receipt of any communication from those authorities, the branch may be established and start business.

8 In the event of change of any particulars communicated in accordance with paragraph 2(b), (c) or (d), a management company shall give written notice of that change to the competent authorities of the management company's home Member State and of the management company's host Member State at least one month before implementing the change so that the competent authorities of the management company's home Member State may take a decision on the change under paragraph 3 and the competent authorities of the management company's host Member State may do so under paragraph 6.

9 In the event of a change in the particulars communicated in accordance with the first subparagraph of paragraph 3, the competent authorities of the management company's home Member State shall inform the competent authorities of the management company's host Member State accordingly.

The competent authorities of the management company's home Member State shall update the information contained in the attestation referred to in the third subparagraph of paragraph 3 and inform the competent authorities of the management company's host Member State whenever there is a change in the scope of the management company's authorisation or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

[<sup>F1</sup>10 In order to ensure consistent harmonisation of this Article ESMA may develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 1, 2, 3, 8 and 9.

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

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3 and 9.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 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 \(European Securities and Markets Authority\) \(Text with EEA relevance\).](#)

#### *Article 18*

1 Any management company wishing to pursue the activities for which it has been authorised within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the competent authorities of the management company's home Member State:

- a the Member State within the territory of which the management company intends to operate; and
- b a programme of operations stating the activities and services referred to in Article 6(2) and (3) envisaged which shall include a description of the risk management process put in place by the management company. It shall also include a description of the procedures and arrangements taken in accordance with Article 15.

2 The competent authorities of the management company's home Member State shall, within one month of receiving the information referred to in paragraph 1, forward it to the competent authorities of the management company's host Member State.

The competent authorities of the management company's home Member State shall also communicate details of any applicable compensation scheme intended to protect investors.

Where a management company wishes to pursue the activity of collective portfolio management as referred to in Annex II, the competent authorities of the management company's home Member State shall enclose with the documentation sent to the competent authorities of the management company's host Member State an attestation that the management company has been authorised pursuant to the provisions of this Directive, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

Notwithstanding Articles 20 and 93, the management company may then start business in the management company's host Member State.



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3 A management company which pursues activities under the freedom to provide services shall comply with the rules drawn up by the management company's home Member State pursuant to Article 14.

4 Where the content of the information communicated in accordance with paragraph 1(b) is amended, the management company shall give notice of the amendment in writing to the competent authorities of the management company's home Member State and of the management company's host Member State before implementing the change. The competent authorities of the management company's home Member State shall update the information contained in the attestation referred to in paragraph 2 and inform the competent authorities of the management company's host Member State whenever there is a change in the scope of the management company's authorisation or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

[<sup>F15</sup> In order to ensure consistent harmonisation of this Article ESMA may develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 1, 2 and 4.

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

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 2 and 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 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).

#### *Article 19*

1 A management company which pursues the activity of collective portfolio management on a cross-border basis by establishing a branch or under the freedom to provide services shall comply with the rules of the management company's home Member State which relate to the organisation of the management company, including delegation arrangements, risk-management procedures, prudential rules and supervision, procedures referred to in Article 12 and the management company's reporting requirements. Those rules shall be no stricter than those applicable to management companies conducting their activities only in their home Member State.

2 The competent authorities of the management company's home Member State shall be responsible for supervising compliance with paragraph 1.

3 A management company which pursues the activity of collective portfolio management on a cross-border basis by establishing a branch or in accordance with the freedom

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to provide services shall comply with the rules of the UCITS home Member State which relate to the constitution and functioning of the UCITS, namely the rules applicable to:

- a the setting up and authorisation of the UCITS;
- b the issuance and redemption of units and shares;
- c investment policies and limits, including the calculation of total exposure and leverage;
- d restrictions on borrowing, lending and uncovered sales;
- e the valuation of assets and the accounting of the UCITS;
- f the calculation of the issue or redemption price, and errors in the calculation of the net asset value and related investor compensation;
- g the distribution or reinvestment of the income;
- h the disclosure and reporting requirements of the UCITS, including the prospectus, key investor information and periodic reports;
- i the arrangements made for marketing;
- j the relationship with unit-holders;
- k the merging and restructuring of the UCITS;
- l the winding-up and liquidation of the UCITS;
- m where applicable, the content of the unit-holder register;
- n the licensing and supervision fees regarding the UCITS; and
- o the exercise of unit-holders' voting rights and other unit-holders' rights in relation to points (a) to (m).

4 The management company shall comply with the obligations set out in the fund rules or in the instruments of incorporation, and the obligations set out in the prospectus, which shall be consistent with the applicable law as referred to in paragraphs 1 and 3.

5 The competent authorities of the UCITS home Member State shall be responsible for supervising compliance with paragraphs 3 and 4.

6 The management company shall decide and be responsible for adopting and implementing all the arrangements and organisational decisions which are necessary to ensure compliance with the rules which relate to the constitution and functioning of the UCITS and with the obligations set out in the fund rules or in the instruments of incorporation, and with the obligations set out in the prospectus.

7 The competent authorities of the management company's home Member State shall be responsible for supervising the adequacy of the arrangements and organisation of the management company so that the management company is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the UCITS it manages.

8 Member States shall ensure that any management company authorised in a Member State is not subject to any additional requirement established in the UCITS home Member State in respect of the subject matter of this Directive, except in the cases expressly referred to in this Directive.

#### *Article 20*

1 Without prejudice to Article 5, a management company which applies to manage a UCITS established in another Member State shall provide the competent authorities of the UCITS home Member State with the following documentation:

- [<sup>F3</sup>a the written contract with the depositary referred to in Article 22(2);]

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- b information on delegation arrangements regarding functions of investment management and administration referred to in Annex II.

If a management company already manages other UCITS of the same type in the UCITS home Member State, reference to the documentation already provided shall be sufficient.

2 In so far as it is necessary to ensure compliance with the rules for which they are responsible, the competent authorities of the UCITS home Member State may ask the competent authorities of the management company's home Member State for clarification and information regarding the documentation referred to in paragraph 1 and, based on the attestation referred to in Articles 17 and 18, as to whether the type of UCITS for which authorisation is requested falls within the scope of the management company's authorisation. Where applicable, the competent authorities of the management company's home Member State shall provide their opinion within 10 working days of the initial request.

3 The competent authorities of the UCITS home Member State may refuse the application of the management company only if:

- a the management company does not comply with the rules falling under their responsibility pursuant to Article 19;
- b the management company is not authorised by the competent authorities of its home Member State to manage the type of UCITS for which authorisation is requested; or
- c the management company has not provided the documentation referred to in paragraph 1.

Before refusing an application, the competent authorities of the UCITS home Member State shall consult the competent authorities of the management company's home Member State.

4 Any subsequent material modifications of the documentation referred to in paragraph 1 shall be notified by the management company to the competent authorities of the UCITS home Member State.

[<sup>F15</sup> In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to determine the information to be provided to the competent authorities in the application for managing a UCITS established in another Member State.

The Commission may 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.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for such provision of information.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 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](#)

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(European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

- F3** Substituted by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (Text with EEA relevance).

### Article 21

1 A management company's host Member State may, for statistical purposes, require all management companies with branches within its territory to report periodically on their activities pursued in that host Member State to the competent authorities of that host Member State.

2 A management company's host Member State may require management companies pursuing business within its territory through the establishment of a branch or under the freedom to provide services, to provide the information necessary for the monitoring of their compliance with the rules under the responsibility of the management company's host Member State that apply to them.

Those requirements shall not be more stringent than those which the same Member State imposes on management companies authorised in that Member State for the monitoring of their compliance with the same standards.

Management companies shall ensure that the procedures and arrangements referred to in Article 15 enable the competent authorities of the UCITS home Member State to obtain directly from the management company the information referred to in this paragraph.

3 Where the competent authorities of a management company's host Member State ascertain that a management company that has a branch or provides services within its territory is in breach of one of the rules under their responsibility, those authorities shall require the management company concerned to put an end to that breach and inform the competent authorities of the management company's home Member State thereof.

4 If the management company concerned refuses to provide the management company's host Member State with information falling under its responsibility, or fails to take the necessary steps to put an end to the breach referred to in paragraph 3, the competent authorities of the management company's host Member State shall inform the competent authorities of the management company's home Member State accordingly. The competent authorities of the management company's home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned provides the information requested by the management company's host Member State pursuant to paragraph 2 or puts an end to the breach. The nature of those measures shall be communicated to the competent authorities of the management company's host Member State.

[<sup>F25</sup> If, despite the measures taken by the competent authorities of the management company's home Member State or because such measures prove to be inadequate or are not available in the Member State in question, the management company continues to refuse to provide the information requested by the management company's host Member State pursuant to paragraph 2, or persists in breaching the legal or regulatory provisions, referred to in the same paragraph, in force in the management company's host Member State, the competent authorities of the management company's host Member State may take either of the following actions:

- a after informing the competent authorities of the management company's home Member State, take appropriate measures, including under Articles 98 and 99, to prevent or penalise further irregularities and, in so far as necessary, to prevent that management

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company from initiating any further transaction within its territory. Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on management companies. Where the service provided within the management company's host Member State is the management of a UCITS, the management company's host Member State may require the management company to cease managing that UCITS; or

- b where they consider that the competent authority of the management company's home Member State has not acted adequately, refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.]

6 Any measure adopted pursuant to paragraphs 4 or 5 involving measures or penalties shall be properly justified and communicated to the management company concerned. Every such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

[<sup>F27</sup> Before following the procedure laid down in paragraphs 3, 4 or 5, the competent authorities of the management company's host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission, ESMA, and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.

After consulting the competent authorities of the Member States concerned, the Commission may decide that the Member State in question must amend or abolish those measures, without prejudice to power of ESMA under Article 17 of Regulation (EU) No 1095/2010.]

8 The competent authorities of the management company's home Member State shall consult the competent authorities of the UCITS home Member State before withdrawing the authorisation of the management company. In such cases, the competent authorities of the UCITS home Member State shall take appropriate measures to safeguard investors' interests. Those measures may include decisions preventing the management company concerned from initiating any further transactions within its territory.

Every two years the Commission shall issue a report on such cases.

[<sup>F29</sup> Member States shall inform ESMA and the Commission of the number and type of cases in which they refuse authorisation under Article 17 or an application under Article 20 and of any measures taken in accordance with paragraph 5 of this Article.]

Every two years the Commission shall issue a report on such cases.

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#### **Textual Amendments**

- F2** 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 \(European Securities and Markets Authority\) \(Text with EEA relevance\).](#)

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- (1) [OJ L 84, 26.3.1997, p. 22.](#)
- (2) [<sup>F5</sup>Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector ([OJ L 120, 15.5.2009, p. 22.](#))]
- (3) [<sup>F5</sup>Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC ([OJ L 331, 15.12.2010, p. 12.](#))]
- (4) [<sup>F5</sup>Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 ([OJ L 174, 1.7.2011, p. 1.](#))]
- (5) [<sup>F5</sup>Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ([OJ L 176, 27.6.2013, p. 338.](#))]

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#### **Textual Amendments**

- F5** Inserted by [Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014](#) amending [Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities \(UCITS\)](#) as regards depositary functions, remuneration policies and sanctions (Text with EEA relevance).