

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 VIII

MASTER-FEEDER STRUCTURES

SECTION 3

Depositories and auditors

Article 61

1 Member States shall require that, if the master and the feeder UCITS have different depositaries, those depositaries enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both depositaries.

The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

Where they comply with the requirements laid down in this Chapter, neither the depositary of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability on the part of such depositary or any person acting on its behalf.

Member States shall require that the feeder UCITS or, when applicable, the management company of the feeder UCITS be in charge of communicating to the depositary of the feeder UCITS any information about the master UCITS which is required for the completion of the duties of the depositary of the feeder UCITS.

2 The depositary of the master UCITS shall immediately inform the competent authorities of the master UCITS home Member State, the feeder UCITS or, where applicable, the management company and the depositary of the feeder UCITS about any irregularities it detects with regard to the master UCITS which are deemed to have a negative impact on the feeder UCITS.

[^{F13} The Commission may adopt, by means of delegated acts [^{F2}in accordance with Article 112a], measures further specifying the following:

- a the particulars that need to be included in the agreement referred to in paragraph 1; and
- b the types of irregularities referred to in paragraph 2 which are deemed to have a negative impact on the feeder UCITS.]

[^{F34} In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the agreement, measures and types of irregularities referred to in paragraph 3.

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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** 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** 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).
- F3** 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 62

1 Member States shall require that if the master and the feeder UCITS have different auditors, those auditors enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both auditors, including the arrangements taken to comply with the requirements of paragraph 2.

The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

2 In its audit report, the auditor of the feeder UCITS shall take into account the audit report of the master UCITS. If the feeder and the master UCITS have different accounting years, the auditor of the master UCITS shall make an ad hoc report on the closing date of the feeder UCITS.

The auditor of the feeder UCITS shall, in particular, report on any irregularities revealed in the audit report of the master UCITS and on their impact on the feeder UCITS.

3 Where they comply with the requirements laid down in this Chapter, neither the auditor of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability on the part of such auditor or any person acting on its behalf.

[^{F14} The Commission may adopt, by means of delegated acts [^{F2}in accordance with Article 112a], measures specifying the content of the agreement referred to in the first subparagraph of paragraph 1.]

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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** 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).