

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 XI

**SPECIAL PROVISIONS APPLICABLE TO UCITS WHICH
MARKET THEIR UNITS IN MEMBER STATES OTHER
THAN THOSE IN WHICH THEY ARE ESTABLISHED**

Article 91

1 UCITS host Member States shall ensure that UCITS are able to market their units within their territories upon notification in accordance with Article 93.

2 UCITS host Member States shall not impose any additional requirements or administrative procedures on UCITS as referred to in paragraph 1 in respect of the field governed by this Directive.

3 Member States shall ensure that complete information on the laws, regulations and administrative provisions which do not fall within the field governed by this Directive and which are specifically relevant to the arrangements made for the marketing of units of UCITS, established in another Member State within their territories, is easily accessible from a distance and by electronic means. Member States shall ensure that that information is available in a language customary in the sphere of international finance, is provided in a clear and unambiguous manner and is kept up to date.

4 For the purposes of this Chapter, a UCITS shall include investment compartments thereof.

Article 92

UCITS shall, in accordance with the laws, regulations and administrative provisions in force in the Member State where their units are marketed, take the measures necessary to ensure that facilities are available in that Member State for making payments to unit-holders, repurchasing or redeeming units and making available the information which UCITS are required to provide.

Article 93

1 If a UCITS proposes to market its units in a Member State other than its home Member State, it shall first submit a notification letter to the competent authorities of its home Member State.

The notification letter shall include information on arrangements made for marketing units of the UCITS in the host Member State, including, where relevant, in respect of share classes. In the context of Article 16(1), it shall include an indication that the UCITS is marketed by the management company that manages the UCITS.

2 A UCITS shall enclose with the notification letter, as referred to in paragraph 1, the latest version of the following:

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- a its fund rules or its instruments of incorporation, its prospectus and, where appropriate, its latest annual report and any subsequent half-yearly report translated in accordance with the provisions of Article 94(1)(c) and (d); and
- b its key investor information referred to in Article 78, translated in accordance with Article 94(1)(b) and (d).

3 The competent authorities of the UCITS home Member State shall verify whether the documentation submitted by the UCITS in accordance with paragraphs 1 and 2 is complete.

The competent authorities of the UCITS home Member State shall transmit the complete documentation referred to in paragraphs 1 and 2 to the competent authorities of the Member State in which the UCITS proposes to market its units, no later than 10 working days of the date of receipt of the notification letter accompanied by the complete documentation provided for in paragraph 2. They shall enclose with the documentation an attestation that the UCITS fulfils the conditions imposed by this Directive.

Upon the transmission of the documentation, the competent authorities of the UCITS home Member State shall immediately notify the UCITS about the transmission. The UCITS may access the market of the UCITS host Member State as from the date of that notification.

4 Member States shall ensure that the notification letter referred to in paragraph 1 and the attestation referred to in paragraph 3 are provided in a language customary in the sphere of international finance, unless the UCITS home and host Member States agree to that notification letter and that attestation being provided in an official language of both Member States.

5 Member States shall ensure that the electronic transmission and filing of the documents referred to in paragraph 3 is accepted by their competent authorities.

6 For the purpose of the notification procedure set out in this Article, the competent authorities of the Member State in which a UCITS proposes to market its units shall not request any additional documents, certificates or information other than those provided for in this Article.

7 The UCITS home Member State shall ensure that the competent authorities of the UCITS host Member State have access, by electronic means, to the documents referred to in paragraph 2 and, if applicable, to any translations thereof. It shall ensure that the UCITS keeps those documents and translations up to date. The UCITS shall notify any amendments to the documents referred to in paragraph 2 to the competent authorities of the UCITS host Member State and shall indicate where those documents can be obtained electronically.

8 In the event of a change in the information regarding the arrangements made for marketing communicated in the notification letter in accordance with paragraph 1, or a change regarding share classes to be marketed, the UCITS shall give written notice thereof to the competent authorities of the host Member State before implementing the change.

Article 94

1 Where a UCITS markets its units in a UCITS host Member State, it shall provide to investors within the territory of such Member State all information and documents which it is required pursuant to Chapter IX to provide to investors in its home Member State.

Such information and documents shall be provided to investors in compliance with the following provisions:

- a without prejudice to the provisions of Chapter IX, such information or documents shall be provided to investors in the way prescribed by the laws, regulations or administrative provisions of the UCITS host Member State;

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- b key investor information referred to in Article 78 shall be translated into the official language, or one of the official languages, of the UCITS host Member State or into a language approved by the competent authorities of that Member State;
- c information or documents other than key investor information referred to in Article 78 shall be translated, at the choice of the UCITS, into the official language, or one of the official languages, of the UCITS host Member State, into a language approved by the competent authorities of that Member State or into a language customary in the sphere of international finance; and
- d translations of information or documents under points (b) and (c) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

2 The requirements set out in paragraph 1 shall also be applicable to any changes to the information and documents referred therein.

3 The frequency of the publication of the issue, sale, repurchase or redemption price of units of UCITS according to Article 76 shall be subject to the laws, regulations and administrative provisions of the UCITS home Member State.

[^{F1}Article 95

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

- a the scope of the information referred to in Article 91(3);
- b the facilitation of access for the competent authorities of the UCITS host Member States to the information or documents referred to in Article 93(1), (2) and (3) in accordance with Article 93(7).

2 In order to ensure uniform conditions of application of Article 93, ESMA may develop draft implementing technical standards to determine:

- a the form and contents of a standard model notification letter to be used by a UCITS for the purpose of notification referred to in Article 93(1), including an indication as to which documents the translations refer to;
- b the form and contents of a standard model attestation to be used by competent authorities of Member States referred to in Article 93(3);
- c the procedure for the exchange of information and the use of electronic communication between competent authorities for the purpose of notification under Article 93.

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

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provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (Text with EEA relevance).

Article 96

For the purpose of pursuing its activities, a UCITS may use the same reference to its legal form (such as investment company or common fund) in its designation in a UCITS host Member State as it uses in its home Member State.