

Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company (Text with EEA relevance)

CHAPTER III

CONFLICT OF INTERESTS

(Article 12(1)(b) and Article 14(1)(d) and (2)(c) of Directive 2009/65/EC)

Article 17

Criteria for the identification of conflicts of interest

1 Member States shall ensure that, for the purposes of identifying the types of conflict of interest that arise in the course of providing services and activities and whose existence may damage the interests of a UCITS, management companies take into account, by way of minimum criteria, the question of whether the management company or a relevant person, or a person directly or indirectly linked by way of control to the management company, is in any of the following situations, whether as a result of providing collective portfolio management activities or otherwise:

- a the management company or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the UCITS;
- b the management company or that person has an interest in the outcome of a service or an activity provided to the UCITS or another client or of a transaction carried out on behalf of the UCITS or another client, which is distinct from the UCITS interest in that outcome;
- c the management company or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the UCITS;
- d the management company or that person carries on the same activities for the UCITS and for another client or clients which are not UCITS;
- e the management company or that person receives or will receive from a person other than the UCITS an inducement in relation to collective portfolio management activities provided to the UCITS, in the form of monies, goods or services, other than the standard commission or fee for that service.

2 Member States shall require management companies, when identifying the types of conflict of interests, to take into account:

- a the interests of the management company, including those deriving from its belonging to a group or from the performance of services and activities, the interests of the clients and the duty of the management company towards the UCITS;
- b the interests of two or more managed UCITS.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

Article 18

Conflicts of interest policy

1 Member States shall require management companies to establish, implement and maintain an effective conflicts of interest policy. That policy shall be set out in writing and shall be appropriate to the size and organisation of the management company and the nature, scale and complexity of its business.

Where the management company is a member of a group, the policy shall also take into account any circumstances of which the company is or should be aware which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

2 The conflicts of interest policy established in accordance with paragraph 1 shall include the following:

- a the identification of, with reference to the collective portfolio management activities carried out by or on behalf of the management company, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the UCITS or one or more other clients;
- b procedures to be followed and measures to be adopted in order to manage such conflicts.

Article 19

Independence in conflicts management

1 Member States shall ensure that the procedures and measures provided for in Article 18(2)(b) are designed to ensure that relevant persons engaged in different business activities involving a conflict of interest carry on those activities at a level of independence appropriate to the size and activities of the management company and of the group to which it belongs and to the materiality of the risk of damage to the interests of clients.

2 The procedures to be followed and measures to be adopted in accordance with Article 18(2)(b) shall include the following where necessary and appropriate for the management company to ensure the requisite degree of independence:

- a effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;
- b the separate supervision of relevant persons whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or to investors whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the management company;
- c the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- d measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;

- e measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities where such involvement may impair the proper management of conflicts of interest.

Where the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, Member States shall require management companies to adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

Article 20

Management of activities giving rise to detrimental conflict of interest

1 Member States shall require management companies to keep and regularly update a record of the types of collective portfolio management activities undertaken by or on behalf of the management company in which a conflict of interest entailing a material risk of damage to the interests of one or more UCITS or other clients has arisen or, in the case of an ongoing collective portfolio management activity, may arise.

2 Member States shall require that, where the organisational or administrative arrangements made by the management company for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of UCITS or of its unit-holders will be prevented, the senior management or other competent internal body of the management company is promptly informed in order for them to take any necessary decision to ensure that in any case the management company acts in the best interests of the UCITS and of its unit-holders.

3 The management company shall report situations referred to in paragraph 2 to investors by any appropriate durable medium and give reasons for its decision.

Article 21

Strategies for the exercise of voting rights

1 Member States shall require management companies to develop adequate and effective strategies for determining when and how voting rights attached to instruments held in the managed portfolios are to be exercised, to the exclusive benefit of the UCITS concerned.

2 The strategy referred to in paragraph 1 shall determine measures and procedures for:

- a monitoring relevant corporate events;
- b ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant UCITS;
- c preventing or managing any conflicts of interest arising from the exercise of voting rights.

3 A summary description of the strategies referred to in paragraph 1 shall be made available to investors.

Details of the actions taken on the basis of those strategies shall be made available to the unit-holders free of charge and on their request.