

Undertakings for collective investment in transferable securities (UCITS): coordination of laws, regulations and administrative provisions. Recast

2008/0153(COD) - 13/07/2009 - Final act

PURPOSE: to update the regulatory framework applicable to European investment funds – undertakings for collective investment in transferable securities (UCITS).

LEGISLATIVE ACT: Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast).

CONTENT: following an agreement with the Parliament under the second reading of the codecision procedure, the Council adopted a directive on undertakings for collective investment in transferable securities (UCITS).

This directive seeks to **update the regulatory framework applicable to European investment funds** – undertakings for collective investment in transferable securities (UCITS) – which represent a market of around EUR 5 000 billion.

The aim of the directive is to modernise the regulatory framework applicable to these financial products in order to:

- offer investors a greater choice of product at lower cost through better integration of the internal market;
- provide investors with suitable protection through high-quality information and more efficient supervision;
- maintain the competitiveness of European industry by adjusting the regulatory framework to developments in the market.

Against this background, the text is aimed at fulfilling the following objectives:

- **improve investor information by creating a standardised summary information document: "key information for investors"**. This is an innovative approach aimed at making it easier for the consumer to understand the product: thus a fine balance has to be struck between the document's readability and the amount of information required (too often consumers are deluged with information); the document will be tried out with consumers before it is finalised;

- **create a genuine European passport for UCITS management companies** – this is the last piece missing from the internal market as regards UCITS management: a management company located in a Member State will be able to manage funds in other Member States in accordance with the principle of freedom to provide services in the Treaty. Thus, a management company located in one Member State can manage funds in other Member States. In accordance with the principle of supervision by the country of origin, only the competent authorities in the Member State of origin of the management company are considered to be entitled to supervise the organisation of the management company, which has to be governed by the law of its Member State of origin.

This measure should result in substantial economies of scale and improved transparency for consumers as to the location of the management company. It should make for greater diversity in the products offered to consumers, which is essential in view of increasing requirements concerning retirement saving.

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:

- the management company has an initial capital of at least EUR 125 000, taking into account certain provisions laid down in the directive;
- 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;
- the application for authorisation is accompanied by a programme of activity setting out, at least, the organisational structure of the management company; and
- the head office and the registered office of the management company are located in the same Member State.

- **facilitate crossborder marketing of UCITS by simplifying administrative procedures:** there will be immediate market access once the authorisation has been granted by the country of origin of the UCITS; the host country will be able to monitor the commercial documents but not to block access to the market;

- **facilitate crossborder mergers of UCITS**, which will make it possible to increase the average size of European funds; the information given to investors about the merger will be monitored by the supervisor, who will not authorise the merger unless it is satisfactory; authorisation will be assigned to a single supervisor, in conjunction with the other supervisor concerned, so as to make the procedures more efficient.

The Directive concerns those merger techniques which are most commonly used in Member States. It does not require all Member States to introduce all three techniques into their national law, but each Member State should recognise a transfer of assets resulting from those merger techniques. This Directive does not prevent UCITS from using other techniques on a purely national basis, in situations where none of the UCITS concerned by the merger has been notified for cross-border marketing of its units. Those mergers will remain subject to the relevant provisions of national law. National rules on quorum should neither discriminate between national and cross-border mergers, nor be more stringent than those laid down for mergers of corporate entities.

- **facilitate asset pooling by creating a framework for the system of "master-feeder" arrangements** whereby a fund invests more than 85% of its assets in another fund. Member States shall require that the master UCITS provide the feeder UCITS with all documents and information necessary for the latter to meet the requirements laid down in this Directive. For this purpose, the feeder UCITS shall enter into an agreement with the master UCITS. The master and the feeder UCITS shall take appropriate measures to coordinate the timing of their net asset value calculation and publication in order to avoid market timing in their units, preventing arbitrage opportunities.

- **strengthen the supervision of UCITS and of the companies that manage them**, by means of enhanced cooperation between supervisors: the Directive encourages the exchange of information between supervisors, harmonises the powers of supervisors, and allows for the possibility of on-the-spot investigation, consultation mechanisms and mutual-aid mechanisms for the imposition of penalties, in particular.

By 1 July 2013, the Commission shall submit to the European Parliament and to the Council a report on the application of this Directive.

ENTRY INTO FORCE: 07/12/2009.

APPLICATION: from 01/07/2011 for most of the provisions.

Member States shall ensure that UCITS replace their simplified prospectus drawn up in accordance with the provisions of Directive 85/611/EEC with key investor information as soon as possible and in any event no later than 12 months after the deadline for implementing in national law of all the implementing measures. During that period, the competent authorities of the UCITS host Member States shall continue to accept the simplified prospectus for UCITS marketed on the territory of those Member States.