

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 XII

**PROVISIONS CONCERNING THE AUTHORITIES
RESPONSIBLE FOR AUTHORISATION AND SUPERVISION**

Article 108

1 Only the authorities of the UCITS home Member State shall have the power to take action against that UCITS if it infringes any law, regulation or administrative provision or any regulation laid down in the fund rules or in the instruments of incorporation of the investment company.

However, the authorities of the UCITS host Member State may take action against that UCITS if it infringes the laws, regulations and administrative provisions in force in that Member State that fall outside the scope of this Directive or the requirements set out in Articles 92 and 94.

2 Any decision to withdraw authorisation, or any other serious measure taken against a UCITS, or any suspension of the issue, repurchase or redemption of its units imposed upon it, shall be communicated without delay by the authorities of the UCITS home Member State to the authorities of the UCITS host Member States and, if the management company of a UCITS is established in another Member State, to the competent authorities of the management company's home Member State.

3 The competent authorities of the management company's home Member State or those of the UCITS home Member State may take action against the management company if it infringes rules under their respective responsibility.

4 In the event that the competent authorities of the UCITS host Member State have clear and demonstrable grounds for believing that a UCITS, the units of which are marketed within the territory of that Member State is in breach of the obligations arising from the provisions adopted pursuant to this Directive which do not confer powers on the competent authorities of the UCITS host Member State, they shall refer those findings to the competent authorities of the UCITS home Member State, which shall take the appropriate measures.

5 If, despite the measures taken by the competent authorities of the UCITS home Member State or because such measures prove to be inadequate, or because the UCITS home Member State fails to act within a reasonable timeframe, the UCITS persists in acting in a manner that is clearly prejudicial to the interests of the UCITS host Member State's investors, the competent authorities of the UCITS host Member State, may, as a consequence, take either of the following actions:

- a after informing the competent authorities of the UCITS home Member State, take all the appropriate measures needed in order to protect investors, including the possibility of preventing the UCITS concerned from carrying out any further marketing of its units within the territory of the UCITS host Member State; or

[^{F1}b if necessary, 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.]

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.

[^{F1}The Commission and ESMA shall be informed without delay of any measure taken pursuant to point (a) of the first subparagraph.]

6 Member States shall ensure that within their territories it is legally possible to serve the legal documents necessary for the measures which may be taken by the UCITS host Member State in regard to UCITS pursuant to paragraphs 2 to 5.

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).