

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 IV

OBLIGATIONS REGARDING THE DEPOSITARY

Article 23

1 A depositary shall either have its registered office or be established in the UCITS home Member State.

[^{F12} The depositary shall be:

- a a national central bank;
- b a credit institution authorised in accordance with Directive 2013/36/EU; or
- c another legal entity, authorised by the competent authority under the law of the Member State to carry out depositary activities under this Directive, which is subject to capital adequacy requirements not less than the requirements calculated depending on the selected approach in accordance with Article 315 or 317 of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁽¹⁾ and which has own funds not less than the amount of initial capital under Article 28(2) of Directive 2013/36/EU.

A legal entity as referred to in point (c) of the first subparagraph shall be subject to prudential regulation and ongoing supervision and shall satisfy the following minimum requirements:

- a it shall have the infrastructure necessary to keep in custody financial instruments that can be registered in a financial instruments account opened in the depositary's books;
- b it shall establish adequate policies and procedures sufficient to ensure compliance of the entity, including its managers and employees, with its obligations under this Directive;
- c it shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment and effective control and safeguard arrangements for information processing systems;
- d it shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest;
- e it shall arrange for records to be kept of all services, activities and transactions that it undertakes, which shall be sufficient to enable the competent authority to fulfil its supervisory tasks and to perform the enforcement actions provided for in this Directive;
- f it shall take reasonable steps to ensure continuity and regularity in the performance of its depositary functions by employing appropriate and proportionate systems, resources and procedures including to perform its depositary activities;
- g all members of its management body and senior management, shall, at all times, be of sufficiently good repute, possess sufficient knowledge, skills and experience;
- h its management body shall possess adequate collective knowledge, skills and experience to be able to understand the depositary's activities, including the main risks;
- i each member of its management body and senior management shall act with honesty and integrity.

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3 Member States shall determine which of the categories of institutions referred to in the first subparagraph of paragraph 2 shall be eligible to be depositaries.

4 Investment companies or management companies acting on behalf of the UCITS that they manage, which, before 18 March 2016, appointed as a depositary an institution that does not meet the requirements laid down in paragraph 2, shall appoint a depositary that meets those requirements before 18 March 2018.]

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Textual Amendments

F1 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 \(Text with EEA relevance\).](#)

F2 Deleted 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 \(Text with EEA relevance\).](#)

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- (1) [^{F1}Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No648/2012 (OJ L 176, 27.6.2013, p. 1).]

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Textual Amendments

- F1** 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).