

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 VI

**MERGERS OF UCITS**

SECTION 1

**Principle, authorisation and approval**

*Article 39*

1 Mergers shall be subject to prior authorisation by the competent authorities of the merging UCITS home Member State.

2 The merging UCITS shall provide the following information to the competent authorities of its home Member State:

- a the common draft terms of the proposed merger duly approved by the merging UCITS and the receiving UCITS;
- b an up-to-date version of the prospectus and the key investor information, referred to in Article 78, of the receiving UCITS, if established in another Member State;
- c a statement by each of the depositaries of the merging and the receiving UCITS confirming that, in accordance with Article 41, they have verified compliance of the particulars set out in points (a), (f) and (g) of Article 40(1) with the requirements of this Directive and the fund rules or instruments of incorporation of their respective UCITS; and
- d the information on the proposed merger that the merging and the receiving UCITS intend to provide to their respective unit-holders.

That information shall be provided in such a manner as to enable the competent authorities of both the merging and the receiving UCITS home Member State to read them in the official language or one of the official languages of that Member State or those Member States, or in a language approved by those competent authorities.

3 Once the file is complete, the competent authorities of the merging UCITS home Member State shall immediately transmit copies of the information referred to in paragraph 2 to the competent authorities of the receiving UCITS home Member State. The competent authorities of the merging and the receiving UCITS home Member State shall, respectively, consider the potential impact of the proposed merger on unit-holders of the merging and the receiving UCITS to assess whether appropriate information is being provided to unit-holders.

If the competent authorities of the merging UCITS home Member State consider it necessary, they may require, in writing, that the information to unit-holders of the merging UCITS be clarified.

If the competent authorities of the receiving UCITS home Member State consider it necessary, they may require, in writing, and no later than 15 working days of receipt

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of the copies of the complete information referred to in paragraph 2, that the receiving UCITS modify the information to be provided to its unit-holders.

In such a case, the competent authorities of the receiving UCITS home Member State shall send an indication of their dissatisfaction to the competent authorities of the merging UCITS home Member State. They shall inform the competent authorities of the merging UCITS home Member State whether they are satisfied with the modified information to be provided to the unit-holders of the receiving UCITS within 20 working days of being notified thereof.

4 The competent authorities of the merging UCITS home Member State shall authorise the proposed merger if the following conditions are met:

- a the proposed merger complies with all of the requirements of Articles 39 to 42;
- b the receiving UCITS has been notified, in accordance with Article 93, to market its units in all Member States where the merging UCITS is either authorised or has been notified to market its units in accordance with Article 93; and
- c the competent authorities of the merging and the receiving UCITS home Member State are satisfied with the proposed information to be provided to unit-holders, or no indication of dissatisfaction from the competent authorities of the receiving UCITS home Member State has been received under the fourth subparagraph of paragraph 3.

5 If the competent authorities of the merging UCITS home Member State consider that the file is not complete, they shall request additional information within 10 working days of receiving the information referred to in paragraph 2.

The competent authorities of the merging UCITS home Member State shall inform the merging UCITS, within 20 working days of submission of the complete information, in accordance with paragraph 2, whether or not the merger has been authorised.

The competent authorities of the merging UCITS home Member State shall also inform the competent authorities of the receiving UCITS home Member State of their decision.

6 Member States may, in accordance with the second subparagraph of Article 57(1), provide for a derogation from Articles 52 to 55 for receiving UCITS.