

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 IX

**OBLIGATIONS CONCERNING INFORMATION
TO BE PROVIDED TO INVESTORS**

SECTION 1

Publication of a prospectus and periodical reports

Article 68

1 An investment company and, for each of the common funds it manages, a management company, shall publish the following:

- a a prospectus;
- b an annual report for each financial year; and
- c a half-yearly report covering the first six months of the financial year.

2 The annual and half-yearly reports shall be published within the following time limits, with effect from the end of the period to which they relate:

- a four months in the case of the annual report; or
- b two months in the case of the half-yearly report.

Article 69

1 The prospectus shall include the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto.

The prospectus shall include, independent of the instruments invested in, a clear and easily understandable explanation of the fund's risk profile.

[^{F1}The prospectus shall include either:

- a the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identities of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists; or
- b a summary of the remuneration policy and a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.]

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2 The prospectus shall contain at least the information provided for in Schedule A of Annex I, in so far as that information does not already appear in the fund rules or instruments of incorporation annexed to the prospectus in accordance with Article 71(1).

3 The annual report shall include a balance-sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the financial year and the other information provided for in Schedule B of Annex I as well as any significant information which will enable investors to make an informed judgement on the development of the activities of the UCITS and its results.

[^{F1}The annual report shall also include:

- a the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the management company and by the investment company to its staff, and the number of beneficiaries, and where relevant, any amount paid directly by the UCITS itself, including any performance fee;
- b the aggregate amount of remuneration broken down by categories of employees or other members of staff as referred to in Article 14a(3);
- c a description of how the remuneration and the benefits have been calculated;
- d the outcome of the reviews referred to in points (c) and (d) of Article 14b(1) including any irregularities that have occurred;
- e material changes to the adopted remuneration policy.]

4 The half-yearly report shall include at least the information provided for in Sections I to IV of Schedule B of Annex I. Where a UCITS has paid or proposes to pay an interim dividend, the figures must indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.

[^{F25} In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the provisions concerning the content of the prospectus, the annual report and the half-yearly report as laid down in Annex I, and the format of those documents.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.]

Textual Amendments

- F1** Inserted 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** Inserted 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).

Article 70

1 The prospectus shall indicate in which categories of assets a UCITS is authorised to invest. It shall mention if transactions in financial derivative instruments are authorised, in which

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case it shall include a prominent statement indicating whether those operations may be carried out for the purpose of hedging or with the aim of meeting investment goals, and the possible outcome of the use of financial derivative instruments on the risk profile.

2 Where a UCITS invests principally in any category of assets defined in Article 50 other than transferable securities or money market instruments, or where a UCITS replicates a stock or debt securities index in accordance with Article 53, its prospectus and, where necessary, marketing communications shall include a prominent statement drawing attention to the investment policy.

3 Where the net asset value of a UCITS is likely to have a high volatility due to its portfolio composition or the portfolio management techniques that may be used, its prospectus and, where necessary, marketing communications shall include a prominent statement drawing attention to that characteristic.

4 Upon request of an investor, the management company shall also provide supplementary information relating to the quantitative limits that apply in the risk management of the UCITS, to the methods chosen to this end and to the recent evolution of the main risks and yields of the instrument categories.

Article 71

1 The fund rules or instruments of incorporation of an investment company shall form an integral part of the prospectus and shall be annexed thereto.

2 The documents referred to in paragraph 1 are not, however, required to be annexed to the prospectus provided that the investor is informed that, on request, he or she will be sent those documents or be apprised of the place where, in each Member State in which the units are marketed, he or she may consult them.

Article 72

The essential elements of the prospectus shall be kept up to date.

Article 73

The accounting information given in the annual report shall be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC. The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

Article 74

UCITS shall send their prospectus and any amendments thereto, as well as their annual and half-yearly reports, to the competent authorities of the UCITS home Member State. UCITS shall provide that documentation to the competent authorities of the management company's home Member State on request.

Article 75

1 The prospectus and the latest published annual and half-yearly reports shall be provided to investors on request and free of charge.

2 The prospectus may be provided in a durable medium or by means of a website. A paper copy shall be delivered to the investors on request and free of charge.

3 The annual and half-yearly reports shall be available to investors in the manner specified in the prospectus and in the key investor information referred to in Article 78. A paper

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copy of the annual and half-yearly reports shall be delivered to the investors on request and free of charge.

[^{F3}4 The Commission may adopt, by means of delegated acts [^{F4}in accordance with Article 112a], measures which define the specific conditions which need to be met when providing the prospectus in a durable medium other than paper or by means of a website which does not constitute a durable medium.]

Textual Amendments

- F3** 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).
- F4** 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).

SECTION 2

Publication of other information

Article 76

A UCITS shall make public in an appropriate manner the issue, sale, repurchase or redemption price of its units each time it issues, sells, repurchases or redeems them, and at least twice a month.

The competent authorities may, however, permit a UCITS to reduce the frequency to once a month on condition that such derogation does not prejudice the interests of the unit-holders.

Article 77

All marketing communications to investors shall be clearly identifiable as such. They shall be fair, clear and not misleading. In particular, any marketing communication comprising an invitation to purchase units of UCITS that contains specific information about a UCITS shall make no statement that contradicts or diminishes the significance of the information contained in the prospectus and the key investor information referred to in Article 78. It shall indicate that a prospectus exists and that the key investor information referred to in Article 78 is available. It shall specify where and in which language such information or documents may be obtained by investors or potential investors or how they may obtain access to them.

SECTION 3

Key investor information

Article 78

1 Member States shall require that an investment company and, for each of the common funds it manages, a management company draw up a short document containing key information for investors. That document shall be referred to as ‘key investor information’ in this Directive. The words ‘key investor information’ shall be clearly stated in that document, in one of the languages referred to in Article 94(1)(b).

2 Key investor information shall include appropriate information about the essential characteristics of the UCITS concerned, which is to be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.

3 Key investor information shall provide information on the following essential elements in respect of the UCITS concerned:

- [^{F4}a identification of the UCITS and of the competent authority of the UCITS;]
- b a short description of its investment objectives and investment policy;
- c past-performance presentation or, where relevant, performance scenarios;
- d costs and associated charges; and
- e risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant UCITS.

Those essential elements shall be comprehensible to the investor without any reference to other documents.

4 Key investor information shall clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly report can be obtained on request and free of charge at any time, and the language in which such information is available to investors.

[^{F1}Key investor information shall also include a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.]

5 Key investor information shall be written in a concise manner and in non-technical language. It shall be drawn up in a common format, allowing for comparison, and shall be presented in a way that is likely to be understood by retail investors.

6 Key investor information shall be used without alterations or supplements, except translation, in all Member States where the UCITS is notified to market its units in accordance with Article 93.

[^{F37} The Commission shall adopt, by means of delegated acts [^{F4}in accordance with Article 112a], measures which define the following:

- a the detailed and exhaustive content of the key investor information to be provided to investors as referred to in paragraphs 2, 3 and 4;

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- b the detailed and exhaustive content of the key investor information to be provided to investors in the following specific cases:
 - (i) for UCITS having different investment compartments, the key investor information to be provided to investors subscribing to a specific investment compartment, including how to pass from one investment compartment into another and the costs related thereto,
 - (ii) for UCITS offering different share classes, the key investor information to be provided to investors subscribing to a specific share class,
 - (iii) for fund of funds structures, the key investor information to be provided to investors subscribing to a UCITS, which invests itself in other UCITS or other collective investment undertakings referred to in Article 50(1)(e),
 - (iv) for master-feeder structures, the key investor information to be provided to investors subscribing to a feeder UCITS,
 - (v) for structured, capital protected and other comparable UCITS, the key investor information to be provided to investors in relation to the special characteristics of such UCITS; and
- c the specific details of the format and presentation of the key investor information to be provided to investors as referred to in paragraph 5.]

[^{F28} In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission in accordance with paragraph 7 regarding the information referred to in paragraph 3.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.]

Textual Amendments

- F1** Inserted 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** Inserted 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).
- F3** 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).
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provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (Text with EEA relevance).

Article 79

1 Key investor information shall constitute pre-contractual information. It shall be fair, clear and not misleading. It shall be consistent with the relevant parts of the prospectus.

2 Member States shall ensure that a person does not incur civil liability solely on the basis of the key investor information, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. Key investor information shall contain a clear warning in this respect.

Article 80

1 Member States shall require that an investment company and, for each of the common funds it manages, a management company, which sells UCITS directly or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility provides investors with key investor information on such UCITS in good time before their proposed subscription of units in such UCITS.

2 Member States shall require that an investment company and, for each of the common funds it manages, a management company, which does not sell UCITS directly or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility to investors provides key investor information to product manufacturers and intermediaries selling or advising investors on potential investments in such UCITS or in products offering exposure to such UCITS upon their request. Member States shall require that the intermediaries selling or advising investors on potential investments in UCITS, provide key investor information to their clients or potential clients.

3 Key investor information shall be provided to investors free of charge.

Article 81

1 Member States shall allow investment companies and, for each of the common funds they manage, management companies, to provide key investor information in a durable medium or by means of a website. A paper copy shall be delivered to the investor on request and free of charge.

In addition, an up-to-date version of the key investor information shall be made available on the website of the investment company or management company.

[^{F32} The Commission may adopt, by means of delegated acts [^{F4}in accordance with Article 112a], measures which define the specific conditions which need to be met when providing key investor information in a durable medium other than on paper or by means of a website which does not constitute a durable medium.]

Textual Amendments

F3 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).

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Article 82

- 1 UCITS shall send their key investor information and any amendments thereto, to the competent authorities of their home Member State.
- 2 The essential elements of key investor information shall be kept up to date.