

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 VII

**OBLIGATIONS CONCERNING THE INVESTMENT POLICIES OF UCITS**

*Article 49*

Where UCITS comprise more than one investment compartment, each compartment shall be regarded as a separate UCITS for the purposes of this Chapter.

*Article 50*

- 1 The investments of a UCITS shall comprise only one or more of the following:
  - a transferable securities and money market instruments admitted to or dealt in on a regulated market as defined in Article 4(1)(14) of Directive 2004/39/EC;
  - b transferable securities and money market instruments dealt in on another regulated market in a Member State, which operates regularly and is recognised and open to the public;
  - c transferable securities and money market instruments admitted to official listing on a stock exchange in a third country or dealt in on another regulated market in a third country which operates regularly and is recognised and open to the public provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or the instruments of incorporation of the investment company;
  - d recently issued transferable securities, provided that:
    - (i) the terms of issue include an undertaking that an application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognised and open to the public, provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or the instruments of incorporation of the investment company; and
    - (ii) the admission referred to in point (i) is secured within a year of issue;
  - e units of UCITS authorised according to this Directive or other collective investment undertakings within the meaning of Article 1(2)(a) and (b), whether or not established in a Member State, provided that:
    - (i) such other collective investment undertakings are authorised under laws which provide that they are subject to supervision considered by the competent authorities of the UCITS home Member State to be equivalent to that laid down in Community law, and that cooperation between authorities is sufficiently ensured;
    - (ii) the level of protection for unit-holders in the other collective investment undertakings is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on asset segregation, borrowing, lending, and

- uncovered sales of transferable securities and money market instruments are equivalent to the requirements of this Directive;
- (iii) the business of the other collective investment undertakings is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period; and
  - (iv) no more than 10 % of the assets of the UCITS or of the other collective investment undertakings, whose acquisition is contemplated, can, according to their fund rules or instruments of incorporation, be invested in aggregate in units of other UCITS or other collective investment undertakings;
- f deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that the credit institution has its registered office in a Member State or, if the credit institution has its registered office in a third country, provided that it is subject to prudential rules considered by the competent authorities of the UCITS home Member State as equivalent to those laid down in Community law;
- g financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in points (a), (b) and (c) or financial derivative instruments dealt in over-the-counter (OTC) derivatives, provided that:
- (i) the underlying of the derivative consists of instruments covered by this paragraph, financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in its fund rules or instruments of incorporation;
  - (ii) the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the competent authorities of the UCITS home Member State; and
  - (iii) the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS' initiative; or
- h money market instruments other than those dealt in on a regulated market, which fall under Article 2(1)(o), if the issuer or issuer of such instruments is itself regulated for the purpose of protecting investors and savings, provided that they are:
- (i) issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the Community or the European Investment Bank, a third country or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong;
  - (ii) issued by an undertaking any securities of which are dealt in on regulated markets referred to in points (a), (b) or (c);
  - (iii) issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by Community law, or by an establishment which is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down by Community law; or
  - (iv) issued by other bodies belonging to the categories approved by the competent authorities of the UCITS home Member State provided that investments in such instruments are subject to investor protection equivalent to that laid down

in points (i), (ii) or (iii) and provided that the issuer is a company whose capital and reserves amount to at least EUR 10 000 000 and which presents and publishes its annual accounts in accordance with Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies<sup>(1)</sup>, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

- 2 A UCITS shall not, however:
- a invest more than 10 % of its assets in transferable securities or money market instruments other than those referred to in paragraph 1; or
  - b acquire either precious metals or certificates representing them.

UCITS may hold ancillary liquid assets.

- 3 An investment company may acquire movable or immovable property which is essential for the direct pursuit of its business.

#### *Article 51*

- 1 A management or investment company shall employ a risk-management process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio.

It shall employ a process for accurate and independent assessment of the value of OTC derivatives.

It shall communicate to the competent authorities of its home Member State regularly in regard to the types of derivative instruments, the underlying risks, the quantitative limits and the methods which are chosen in order to estimate the risks associated with transactions in derivative instruments regarding each managed UCITS.

- 2 Member States may authorise UCITS to employ techniques and instruments relating to transferable securities and money market instruments under the conditions and within the limits which they lay down provided that such techniques and instruments are used for the purpose of efficient portfolio management.

When those operations concern the use of derivative instruments, the conditions and limits shall conform to the provisions laid down in this Directive.

Under no circumstances shall those operations cause the UCITS to diverge from its investment objectives as laid down in the UCITS' fund rules, instruments of incorporation or prospectus.

- 3 A UCITS shall ensure that its global exposure relating to derivative instruments does not exceed the total net value of its portfolio.

The exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions. This shall also apply to the third and fourth subparagraphs.

A UCITS may invest, as a part of its investment policy and within the limit laid down in Article 52(5), in financial derivative instruments provided that the exposure to the underlying assets does not exceed in aggregate the investment limits laid down in Article 52. Member States may provide that, when a UCITS invests in index-based

financial derivative instruments, those investments are not required to be combined for the purposes of the limits laid down in Article 52.

When transferable securities or money market instruments embed a derivative, the derivative shall be taken into account when complying with the requirements of this Article.

4 Without prejudice to Article 116, the Commission shall adopt, by 1 July 2010, implementing measures specifying the following:

- a criteria for assessing the adequacy of the risk management process employed by the management company in accordance with the first subparagraph of paragraph 1;
- b detailed rules regarding the accurate and independent assessment of the value of OTC derivatives; and
- c detailed rules regarding the content of and procedure to be followed for communicating the information referred to in the third subparagraph of paragraph 1 to the competent authorities of the management company's home Member State.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 112(2).

#### *Article 52*

1 A UCITS shall invest no more than:

- a 5 % of its assets in transferable securities or money market instruments issued by the same body; or
- b 20 % of its assets in deposits made with the same body.

The risk exposure to a counterparty of the UCITS in an OTC derivative transaction shall not exceed either:

- a 10 % of its assets when the counterparty is a credit institution referred to in Article 50(1) (f); or
- b 5 % of its assets, in other cases.

2 Member States may raise the 5 % limit laid down in the first subparagraph of paragraph 1 to a maximum of 10 %. If they do so, however, the total value of the transferable securities and the money market instruments held by the UCITS in the issuing bodies in each of which it invests more than 5 % of its assets shall not exceed 40 % of the value of its assets. That limitation shall not apply to deposits or OTC derivative transactions made with financial institutions subject to prudential supervision.

Notwithstanding the individual limits laid down in paragraph 1, a UCITS shall not combine, where this would lead to investment of more than 20 % of its assets in a single body, any of the following:

- a investments in transferable securities or money market instruments issued by that body;
- b deposits made with that body; or
- c exposures arising from OTC derivative transactions undertaken with that body.

3 Member States may raise the 5 % limit laid down in the first subparagraph of paragraph 1 to a maximum of 35 % if the transferable securities or money market instruments are issued or guaranteed by a Member State, by its local authorities, by a third country or by a public international body to which one or more Member States belong.

4 Member States may raise the 5 % limit laid down in the first subparagraph of paragraph 1 to a maximum of 25 % where bonds are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed

to protect bond-holders. In particular, sums deriving from the issue of those bonds shall be invested in accordance with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

Where a UCITS invests more than 5 % of its assets in the bonds referred to in the first subparagraph which are issued by a single issuer, the total value of these investments shall not exceed 80 % of the value of the assets of the UCITS.

Member States shall send to the Commission a list of the categories of bonds referred to in the first subparagraph together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in that subparagraph, to issue bonds complying with the criteria set out in this Article. A notice specifying the status of the guarantees offered shall be attached to those lists. The Commission shall immediately forward that information to the other Member States together with any comments which it considers appropriate and shall make the information available to the public. Such communications may be the subject of exchanges of views within the European Securities Committee referred to in Article 112(1).

5 The transferable securities and money market instruments referred to in paragraphs 3 and 4 shall not be taken into account for the purpose of applying the limit of 40 % referred to in paragraph 2.

The limits provided for in paragraphs 1 to 4 shall not be combined, and thus investments in transferable securities or money market instruments issued by the same body or in deposits or derivative instruments made with this body carried out in accordance with paragraphs 1 to 4 shall not exceed in total 35 % of the assets of the UCITS.

Companies which are included in the same group for the purposes of consolidated accounts, as defined in Directive 83/349/EEC or in accordance with recognised international accounting rules, shall be regarded as a single body for the purpose of calculating the limits contained in this Article.

Member States may allow cumulative investment in transferable securities and money market instruments within the same group up to a limit of 20 %.

### *Article 53*

1 Without prejudice to the limits laid down in Article 56, Member States may raise the limits laid down in Article 52 to a maximum of 20 % for investment in shares or debt securities issued by the same body when, according to the fund rules or instruments of incorporation, the aim of the UCITS' investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the competent authorities, on the following basis:

- a its composition is sufficiently diversified;
- b the index represents an adequate benchmark for the market to which it refers; and
- c it is published in an appropriate manner.

2 Member States may raise the limit laid down in paragraph 1 to a maximum of 35 % where that proves to be justified by exceptional market conditions in particular in regulated markets where certain transferable securities or money market instruments are highly dominant. The investment up to that limit shall be permitted only for a single issuer.

#### Article 54

1 By way of derogation from Article 52, Member States may authorise UCITS to invest in accordance with the principle of risk-spreading up to 100 % of their assets in different transferable securities and money market instruments issued or guaranteed by a Member State, one or more of its local authorities, a third country, or a public international body to which one or more Member States belong.

The competent authorities of the UCITS home Member State shall grant such a derogation only if they consider that unit-holders in the UCITS have protection equivalent to that of unit-holders in UCITS complying with the limits laid down in Article 52.

Such a UCITS shall hold securities from at least six different issues, but securities from any single issue shall not account for more than 30 % of its total assets.

2 The UCITS referred to in paragraph 1 shall make express mention in the fund rules or in the instruments of incorporation of the investment company of the Member States, local authorities, or public international bodies issuing or guaranteeing securities in which they intend to invest more than 35 % of their assets.

Such fund rules or instruments of incorporation shall be approved by the competent authorities.

3 Each UCITS referred to in paragraph 1 shall include a prominent statement in its prospectus and marketing communications drawing attention to such authorisation and indicating the Member States, local authorities, or public international bodies in the securities of which it intends to invest or has invested more than 35 % of its assets.

#### Article 55

1 A UCITS may acquire the units of UCITS or other collective investment undertakings referred to in Article 50(1)(e), provided that no more than 10 % of its assets are invested in units of a single UCITS or other collective investment undertaking. Member States may raise that limit to a maximum of 20 %.

2 Investments made in units of collective investment undertakings other than UCITS shall not exceed, in aggregate, 30 % of the assets of the UCITS.

Member States may, where a UCITS has acquired units of another UCITS or collective investment undertakings, provide that the assets of the respective UCITS or other collective investment undertakings are not required to be combined for the purposes of the limits laid down in Article 52.

3 Where a UCITS invests in the units of other UCITS or collective investment undertakings that are managed, directly or by delegation, by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding, that management company or other company shall not charge subscription or redemption fees on account of the UCITS' investment in the units of such other UCITS or collective investment undertakings.

A UCITS that invests a substantial proportion of its assets in other UCITS or collective investment undertakings shall disclose in its prospectus the maximum level of the management fees that may be charged both to the UCITS itself and to the other UCITS or collective investment undertakings in which it intends to invest. It shall indicate in its annual report the maximum proportion of management fees charged both to the UCITS itself and to the other UCITS or collective investment undertaking in which it invests.

### Article 56

1 An investment company or a management company acting in connection with all of the common funds which it manages and which fall within the scope of this Directive shall not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.

Pending further coordination, Member States shall take account of existing rules defining the principle stated in the first subparagraph in the law of other Member States.

- 2 A UCITS may acquire no more than:
- a 10 % of the non-voting shares of a single issuing body;
  - b 10 % of the debt securities of a single issuing body;
  - c 25 % of the units of a single UCITS or other collective investment undertaking within the meaning of Article 1(2)(a) and (b); or
  - d 10 % of the money market instruments of a single issuing body.

The limits laid down in points (b), (c) and (d) may be disregarded at the time of acquisition if at that time the gross amount of the debt securities or of the money market instruments, or the net amount of the securities in issue, cannot be calculated.

- 3 A Member State may waive the application of paragraphs 1 and 2 as regards:
- a transferable securities and money market instruments issued or guaranteed by a Member State or its local authorities;
  - b transferable securities and money market instruments issued or guaranteed by a third country;
  - c transferable securities and money market instruments issued by a public international body to which one or more Member States belong;
  - d shares held by a UCITS in the capital of a company incorporated in a third country investing its assets mainly in the securities of issuing bodies having their registered offices in that country, where under the legislation of that country such a holding represents the only way in which the UCITS can invest in the securities of issuing bodies of that country; or
  - e shares held by an investment company or investment companies in the capital of subsidiary companies pursuing only the business of management, advice or marketing in the country where the subsidiary is established, in regard to the repurchase of units at unit-holders' request exclusively on its or their behalf.

The derogation referred to in point (d) of the first subparagraph of this paragraph shall apply only if in its investment policy the company from the third country complies with the limits laid down in Articles 52 and 55 and in paragraphs 1 and 2 of this Article. Where the limits set in Articles 52 and 55 are exceeded, Article 57 shall apply *mutatis mutandis*.

### Article 57

1 UCITS are not required to comply with the limits laid down in this Chapter when exercising subscription rights attaching to transferable securities or money market instruments which form part of their assets.

While ensuring observance of the principle of risk spreading, Member States may allow recently authorised UCITS to derogate from Articles 52 to 55 for six months following the date of their authorisation.

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*Status: This is the original version (as it was originally adopted).*

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2        If the limits referred to in paragraph 1 are exceeded for reasons beyond the control of a UCITS or as a result of the exercise of subscription rights, that UCITS shall adopt as a priority objective for its sales transactions the remedying of that situation, taking due account of the interests of its unit-holders.

(1) OJ L 222, 14.8.1978, p. 11.