

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 X

GENERAL OBLIGATIONS OF UCITS

Article 83

1 The following shall not borrow:

- a an investment company;
- b a management company or depositary acting on behalf of a common fund.

A UCITS may, however, acquire foreign currency by means of a ‘back-to-back’ loan.

2 By way of derogation from paragraph 1, a Member State may authorise a UCITS to borrow provided that such borrowing is:

- a on a temporary basis and represents:
 - in the case of an investment company, no more than 10 % of its assets, or
 - in the case of a common fund, no more than 10 % of the value of the fund; or
- b to enable the acquisition of immovable property essential for the direct pursuit of its business and represents, in the case of an investment company, no more than 10 % of its assets.

Where a UCITS is authorised to borrow under points (a) and (b), such borrowing shall not exceed 15 % of its assets in total.

[^{F13} In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the requirements of this Article relating to borrowing.

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 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 84

1 A UCITS shall repurchase or redeem its units at the request of any unit-holder.

2 By way of derogation from paragraph 1:

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- a a UCITS may, in accordance with the applicable national law, the fund rules or the instruments of incorporation of the investment company, temporarily suspend the repurchase or redemption of its units;
- b a UCITS home Member State may allow its competent authorities to require the suspension of the repurchase or redemption of units in the interest of the unit-holders or of the public.

The temporary suspension referred to in point (a) of the first subparagraph shall be provided for only in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the unit-holders.

3 In the event of a temporary suspension under paragraph 2(a), a UCITS shall, without delay, communicate its decision to its home Member State competent authorities and to the competent authorities of all Member States in which it markets its units.

[^{F14} In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the conditions which need to be met by the UCITS after the adoption of the temporary suspension of the re-purchase or redemption of the units of the UCITS as referred to in paragraph 2(a), once the suspension has been decided.

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 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 85

The rules for the valuation of assets and the rules for calculating the sale or issue price and the repurchase or redemption price of the units of a UCITS shall be laid down in the applicable national law, in the fund rules or in the instruments of incorporation of the investment company.

Article 86

The distribution or reinvestment of the income of a UCITS shall be effected in accordance with the law and with the fund rules or the instruments of incorporation of the investment company.

Article 87

A UCITS unit shall not be issued unless the equivalent of the net issue price is paid into the assets of the UCITS within the usual time limits. This shall not preclude the distribution of bonus units.

Article 88

1 Without prejudice to the application of Articles 50 and 51, the following shall not grant loans or act as a guarantor on behalf of third parties:

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- a an investment company;
- b a management company or depositary acting on behalf of a common fund.

2 Paragraph 1 shall not prevent the undertakings referred to therein from acquiring transferable securities, money market instruments or other financial instruments referred to in points (e), (g) and (h) of Article 50(1) which are not fully paid.

Article 89

The following shall not carry out uncovered sales of transferable securities, money market instruments or other financial instruments referred to in points (e), (g) and (h) of Article 50(1):

- (a) an investment company;
- (b) a management company or depositary acting on behalf of a common fund.

Article 90

The law of the UCITS home Member State or the fund rules shall prescribe the remuneration and the expenditure which a management company is empowered to charge to a common fund and the method of calculation of such remuneration.

The law or the instruments of incorporation of an investment company shall prescribe the nature of the cost to be borne by the company.