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Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities (Text with EEA relevance)

COMMISSION REGULATION (EU) No 584/2010

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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)[(1)], and in particular Article 95(2)(a), (b) and (c), Article 101(9) and Article 105 thereof,

Whereas:

(1) Directive 2009/65/EC provides the Commission with implementing powers to specify and harmonise certain aspects of the new procedure for notification of marketing of units of UCITS in a host Member State. Such harmonisation should provide competent authorities with the necessary certainty as to how the new requirements will work and help to ensure that the new procedure functions smoothly.

(2) In order to facilitate the notification procedure it is necessary to specify the form and content of the standard model notification letter to be used by a UCITS and the form and content of the attestation to be used by the competent authorities of Member States to confirm that the UCITS fulfils the conditions set out in Directive 2009/65/EC. Member States should be able to communicate both the notification letter and the attestation electronically.

(3) Given the objective of Directive 2009/65/EC to ensure that a UCITS is able to market its units in other Member States subject to a notification procedure based on improved communication between the competent authorities of the Member States, it is necessary to set out a detailed procedure for the electronic transmission of the notification file between competent authorities.

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(4) Directive 2009/65/EC requires the competent authorities of the UCITS home Member State to verify if the notification file is complete before they transmit the complete file to the competent authorities of the Member State in which the UCITS proposes to market its units. It also provides a UCITS with the right to access the market of a host Member State immediately after the complete notification file has been transmitted by the competent authorities of the UCITS home Member State to the competent authorities of a Member State where the UCITS proposes to market its units. In order to ensure legal certainty it is necessary to establish when the transmission of the complete notification file is considered to have taken place. Moreover, the procedure for the use of electronic communication shall require competent authorities of the UCITS home Member State to make sure that transmission of the complete documentation has taken place, before they notify a UCITS about the transmission pursuant to Article 93(3) of Directive 2009/65/EC. It is also necessary to set out procedures for dealing with technical problems that occur in the process of the transmission of the notification file between competent authorities of the UCITS home and host Member State.

(5) In order to simplify the transmission of the notification file as well as take into account technical innovations and the feasibility of developing more sophisticated systems for electronic communication, competent authorities may implement cooperative arrangements to improve the electronic communication of the notification file in particular in relation to system security and the use of encryptions mechanisms. Competent authorities should also coordinate arrangements for electronic communication within the Committee of European Securities Regulators.

(6) Directive 2009/65/EC requires that Member States take the necessary administrative and organisational measures to facilitate cooperation. Enhanced cooperation between competent authorities is necessary to ensure that UCITS and management companies managing UCITS comply with Directive 2009/65/EC and to ensure the smooth functioning of the internal market and a high level of investor protection.

(7) Directive 2009/65/EC provides that the competent authorities of one Member State may request the cooperation of the competent authorities of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation on the territory of the latter. In particular, where a UCITS is managed by a management company situated in another Member State, it is essential to establish mechanisms for cooperation between competent authorities and detailed procedures to be applied when a competent authority needs to carry out an investigation or on-the-spot verification of an entity or person situated in another Member State.

(8) A competent authority should have a right to request the cooperation of other competent authorities with respect to matters falling within the scope of its supervisory responsibilities. The requested authority should provide assistance even where the conduct under investigation is not considered an infringement in its own jurisdiction. The requested authority may refuse assistance in the cases listed in Article 101(6) of Directive 2009/65/EC.

(9) Directive 2009/65/EC requires the competent authorities of Member States to immediately provide each other with the information required for the purpose of

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carrying out their duties. It is therefore appropriate to set out detailed rules on the routine exchange of information and the exchange of information without prior request.

(10) In order to ensure that the obligations set out in Directive 2009/65/EC and in this Regulation apply from the same date, this Regulation should apply from the same date as the national measures transposing Directive 2009/65/EC.

(11) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC[(2)] has been consulted for technical advice.

(12) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

CHAPTER I

NOTIFICATION PROCEDURE

Article 1

Form and content of the notification letter

An undertaking for collective investment in transferable securities (UCITS) shall produce the notification letter as referred to in Article 93(1) of Directive 2009/65/EC in accordance with the model set out in Annex I to this Regulation.

Article 2

Form and content of the UCITS attestation

The competent authorities of the UCITS home Member State shall produce the attestation that the UCITS fulfils the conditions imposed by Directive 2009/65/EC as referred to in Article 93(3) of that Directive in accordance with the model set out in Annex II to this Regulation.

Article 3

Designated e-mail address

1 Competent authorities shall designate an e-mail address for the purpose of transmitting the documentation referred to in Article 93(3) of Directive 2009/65/EC and for the purpose of the exchange of information related to the notification procedure set out in that Article.

2 Competent authorities shall inform the competent authorities of other Member States of the designated e-mail address and shall ensure that any modification of that e-mail address is immediately brought to their attention.

3 The competent authorities of the UCITS home Member State shall transmit all documents referred to in the second subparagraph of Article 93(3) of Directive 2009/65/EC to

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only the designated e-mail address of the competent authorities of the Member State in which the UCITS proposes to market its units.

4 Competent authorities shall establish a procedure to ensure that their designated e-mail address for receiving notifications is checked each working day.

Article 4

Transmission of the notification file

1 Competent authorities of the UCITS home Member State shall transmit the complete documentation referred to in the first and the second subparagraph of Article 93(3) of Directive 2009/65/EC to the competent authorities of a Member State in which the UCITS proposes to market its units, by e-mail.

Any attachment to the notification letter as specified in Annex I shall be listed in the e-mail and shall be provided in a format in common use that is capable of being viewed and printed.

2 The transmission of the complete documentation as referred to in the second subparagraph of Article 93(3) of Directive 2009/65/EC shall not be considered as having taken place only in any of the following cases:

a a document that has to be transmitted is missing, incomplete or is in a format other than that specified in paragraph 1;

b the competent authorities of the UCITS home Member State do not use the e-mail address designated by the competent authorities of the Member State in which the UCITS proposes to market its units pursuant to Article 3(1);

c the competent authorities of the UCITS home Member State have failed to transmit the complete documentation as a result of a technical failure in their electronic system.

3 Competent authorities of the UCITS home Member State shall ensure that the transmission of the complete documentation as referred to in Article 93(3) of Directive 2009/65/EC has taken place before they notify the UCITS about the transmission.

4 If the competent authorities of the UCITS home Member State are informed or become aware that the transmission of the complete documentation has not taken place, they shall immediately take steps to transmit the complete documentation.

5 Competent authorities may agree to replace the means by which the complete documentation referred to in the second subparagraph of Article 93(3) of Directive 2009/65/EC is transmitted by a more sophisticated method of electronic communication than e-mail, or to establish additional procedures to enhance the security of e-mails transmitted.

Any alternative method or enhanced procedure shall comply with the notification time limits set out in Chapter XI of Directive 2009/65/EC and shall not impair the ability of the UCITS to access the market of a Member State other than its home Member State.

Article 5

Receipt of the notification file

1 When the competent authorities of a Member State in which a UCITS proposes to market its units receive the documentation to be transmitted to them pursuant to Article 93(3) of Directive 2009/65/EC, they shall confirm to the competent authorities of the UCITS home

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Member State as soon as possible, but no later than five working days from the date of the receipt of such documentation whether or not:

a all attachments which have to be listed in accordance with Article 4(1) of this Regulation have been received; and

b the documentation which have to be transmitted to them can be viewed or printed.

The confirmation may be sent by e-mail to the competent authorities of the UCITS home Member State, using the address designated pursuant to Article 3(1) unless the relevant competent authorities have agreed on a more sophisticated method for the acknowledgement of receipt.

2 Where the competent authorities of the UCITS home Member State have not received confirmation from the competent authorities of a Member State in which the UCITS proposes to market its units within the time limits specified in paragraph 1, they shall contact the competent authorities of the Member State in which the UCITS proposes to market its units and verify that the transmission of the complete documentation has taken place.

CHAPTER II

SUPERVISORY COOPERATION

SECTION 1

Procedure for on-the-spot verifications and investigations

Article 6

Request for assistance for on-the-spot verifications and investigations

1 A competent authority intending to carry out an on-the-spot verification or investigation on the territory of another Member State ('the requesting authority') shall submit a written request to the competent authority of that other Member State ('the requested authority'). The request shall contain the following:

a the reasons for the request, including the legal provisions applicable in the jurisdiction of the requesting authority on which the request is based;

b the scope of the on-the-spot verification or the investigation;

c the actions already undertaken by the requesting authority;

d any actions to be taken by the requested authority;

e the proposed methodology of the on-the-spot verification or investigation and the requesting authority's reasons for choosing it.

2 The request shall be submitted sufficiently in advance of the on-the-spot verification or investigation.

3 Where a request for assistance for an on-the-spot verification or investigation is urgent, it may be transmitted by e-mail and subsequently confirmed in writing.

4 The requested authority shall acknowledge receipt of the request without undue delay.

5 The requesting authority shall make available any information that has been requested by the requested authority in order to enable the requested authority to provide the necessary assistance.