

UCITS V DIRECTIVE

Reference document: Directive 2014/91/EU of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions.

Link: http://ec.europa.eu/finance/investment/ucits-directive/index_en.htm

Introduction

On 3 July 2012, the European Commission published a legislative package aimed at improving consumer protection in financial services. This package consists of three legislative proposals: a proposal for a key information regulation concerning packaged retail investment products (PRIIPs), a revision of the Insurance Mediation Directive (IMD) and a proposal for a Directive revising the UCITS IV Directive by integrating provisions on depositaries, manager remuneration and sanctions (UCITS V)

Concerning the provisions relating to depositaries in UCITS V, the following is to be noted: except for a few divergences (listed below), this proposal is a word-for -word copy of level 1 of the AIFM Directive. This practically identical reproduction of the alternative funds Directive confirms the European Commission's wish to harmonize, in a broad and precise way, the functions of depositaries in Europe.

Alignment with the AIFM Directive:

- Appointment of the depositary
- Depositary's duties functions: cash monitoring, custody/Recordkeeping, oversight duties
- Delegation rules (see divergences below)
- Liability regime (see divergences below)

Divergence with the AIFM Directive:

- Liability of the depositary for improper performance of its oversight duties in case of loss (or loss of value) if for example the depositary fails to act on investments that are not compliant with fund rules
- Delegation of custody to entities acting as CSDs
- Reuse: Ban of reuse of assets held in custody by the depositary or by any third party to whom custody has been delegated for their own account
- European harmonization of insolvency law effects on assets held in custody: each Member State must ensure that its insolvency law protects assets under custody in the event of bankruptcy of the depositary by whom the assets are in custody or its sub-custodian located in the EU
- Delegation conditions (level 2): the depositary has to ensure that its sub-custodian has taken all necessary steps to ensure that in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among or realisation for the benefit of creditors of the third party
- Liability regime: no contractual transfer of liability to a sub-custodian
- Eligible entities to act as depositary + addition 24 month-period granted to existing managers to appoint a depositary complying with the eligibility's criteria

- Conditions for fulfilling the independence requirement (level 2)
- Information related to the list of our sub-custodians and their delegates

Past steps:

- 13/11/2012: Publication of Sven Giegold draft report
- 28/08/2014: Publication in the OJ of the EU
- 26/09/2014: ESMA consultation on Level 2 measures (answer sent on 24.10.2014)
- 28/11/2014: Publication of ESMA technical advice
- 18/12/2016: Publication by the EC of the project of Delegated Regulation
- 18/03/2016: Transposition and implementation of Level 1
- 24/03/2016: Publication of the Delegated Regulation 2016/438 supplementing directive 2009/65/EC. This regulation shall enter into force on the twentieth day following that of its publication in the OJ of the EU.
- 31/03/2016: ESMA publishes UCITS remuneration guidelines
- 13/10/2016: The Delegated Regulation applies from 13/10/2016
- 14/10/2016: ESMA published the guidelines on Sound Remuneration under UCITS. They are translated in the languages of the Member States. The Guidelines apply from 1 January 2017. The new remuneration policy framework makes provision to ensure sound risk management and in particular imposes transparency with regard to investors.
- 20/07/2017 : ESMA published an opinion for the European Commission related to the best approach according to ESMA for segregation of assets and application to CSDs of delegation rules as UCIT depositary.

https://www.esma.europa.eu/sites/default/files/library/esma34-45-277_opinion_34_on_asset_segregation_and_custody_services.pdf

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