



STATUTORY INSTRUMENTS.

S.I. No. 413 of 2021

EUROPEAN UNION (UNDERTAKINGS FOR COLLECTIVE
INVESTMENT IN TRANSFERABLE SECURITIES) (AMENDMENT)
REGULATIONS 2021

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I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009¹, as amended by Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019², hereby make the following regulations:

Citation and Commencement

1. (1) These Regulations may be cited as the European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2021.

(2) These Regulations come into operation on 6 August 2021.

Definition

2. In these Regulations, “Principal Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011).

Amendment of Regulation 3 of Principal Regulations

3. Regulation 3 of the Principal Regulations is amended, in paragraph (1), by the substitution of the following definition for the definition of “Directive”:

“ ‘Directive’ means 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), including the associated implementing measures contained in Directive 2010/43 and Directive 2010/44/EU and as amended by—

- (a) Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010³,
- (b) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011⁴,

¹ OJ No. L. 302, 17.11.2009, p. 32.

² OJ No. L. 188, 12.7.2019, p. 106.

³ OJ No. L. 331, 15.12.2010, p. 120.

⁴ OJ No. L. 174, 1.7.2011, p. 1.

- (c) Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013⁵,
- (d) Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014⁶,
- (e) Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017⁷, and
- (f) Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019⁸.”.

Amendment of Regulation 27 of Principal Regulations

4. Regulation 27 of the Principal Regulations is amended by the insertion of the following paragraphs after paragraph (8):

“(8A) Where, pursuant to a change referred to in paragraph (8), the management company concerned would no longer comply with these Regulations, the Bank shall inform the management company within 15 working days of receipt of the information referred to in paragraph (8) that it is not to implement the change.

(8B) Where paragraph (8A) applies, the Bank shall inform the competent authorities of the management company’s host Member State accordingly.

(8C) Where—

- (a) a change referred to in paragraph (8) is implemented after the Bank has informed the management company under paragraph (8A) and the competent authorities of the management company's host Member State under paragraph (8B), and
- (b) as a result of the change referred to in paragraph (8), the management company no longer complies with these Regulations,

the Bank shall take all appropriate measures in accordance with Regulation 123 and shall notify the competent authorities of the management company’s host Member State without undue delay of the measures taken.”.

Deletion of Regulation 97 of Principal Regulations

5. Regulation 97 of the Principal Regulations is deleted.

Amendment of Regulation 115 of Principal Regulations

6. Regulation 115 of the Principal Regulations is amended by the deletion of paragraph (2).

⁵ OJ No. L. 145, 31.5.2013, p. 1.

⁶ OJ No. L. 257, 28.8.2014, p. 186.

⁷ OJ No. L. 347, 28.12.2017, p. 35.

⁸ OJ No. L. 188, 12.7.2019, p. 106.

Amendment of Regulation 116 of Principal Regulations

7. The Principal Regulations are amended by the substitution of the following Regulation for Regulation 116:

“116. (1) A UCITS which intends to market its units in the State shall make available, in the State, facilities to perform the following tasks:

- (a) process subscription, repurchase and redemption orders and make other payments to unit-holders relating to the units of the UCITS, in accordance with the conditions set out in the documents required pursuant to Part 10;
- (b) provide investors with information on how orders referred to in subparagraph (a) can be made and how repurchase and redemption proceeds are paid;
- (c) facilitate the handling of information and access to procedures and arrangements referred to in Regulation 25 relating to the investors’ exercise of their rights, in the State, arising from their investment in the UCITS;
- (d) make the information and documents required pursuant to Part 10 available to investors in accordance with Regulation 118, for the purposes of inspection and obtaining copies thereof;
- (e) provide investors with information relevant to the tasks that the facilities perform in a durable medium;
- (f) act as a contact point for communicating with the competent authorities.

(2) A UCITS shall not be required to have a physical presence in the State or to appoint a third party for the purposes of complying with its obligations under paragraph (1).

(3) A UCITS shall ensure that the facilities to perform the tasks referred to in paragraph (1), including electronically, are provided—

- (a) in one of the official languages of the State or in a language approved by the Bank, and
- (b) by the UCITS itself, by a third party which is subject to regulation and supervision governing the tasks to be performed, or by both.

(4) For the purposes of paragraph (3)(b), where the tasks are to be performed by a third party, the appointment of that third party shall be evidenced by a written contract, which shall—

- (a) specify which of the tasks referred to in paragraph (1) are not to be performed by the UCITS, and
- (b) provide that the third party will receive all the relevant information and documents from the UCITS.”.

Amendment of Regulation 117 of Principal Regulations

8. Regulation 117 of the Principal Regulations is amended—

- (a) in paragraph (1), by the insertion of the following subparagraph after subparagraph (b):

“(c) The notification letter shall also include—

- (i) the details necessary, including the address, for the invoicing or for the communication of any applicable regulatory fees or charges by the competent authorities of the host Member State, and
- (ii) information on the facilities for performing the tasks referred to in Regulation 116(1).”

- (b) by the substitution of the following paragraph for paragraph (8):

“(8) Where there is a change to the information in the notification letter submitted in accordance with paragraph (1), or a change regarding share classes to be marketed, the UCITS shall give written notice thereof to the Bank and the competent authority of the UCITS host Member State at least one month before implementing that change.”,

and

- (c) by the insertion of the following paragraphs after paragraph (8):

“(8A) Where, pursuant to a change referred to in paragraph (8), the UCITS would no longer comply with these Regulations, the Bank shall inform the UCITS, within 15 working days of receipt of the information referred to in paragraph (8), that it is not to implement that change.

(8B) Where paragraph (8A) applies, the Bank shall notify the competent authorities of the UCITS host Member State accordingly.

(8C) Where—

- (a) a change referred to in paragraph (8) is implemented after the Bank has informed the UCITS in accordance with paragraph (8A), and
- (b) as a result of that change, the UCITS no longer complies with these Regulations,

the Bank shall take all appropriate measures in accordance with Regulation 123, including, where necessary, the express prohibition of marketing of the UCITS and shall notify the competent authorities of the UCITS host Member State without undue delay of the measures taken.”.

Insertion of new Regulation 117A in Principal Regulations

9. The Principal Regulations are amended by the insertion of the following Regulation after Regulation 117:

“117A. (1) A UCITS may de-notify arrangements made for marketing as regards units, including, where relevant, in respect of share classes, in the

Member State in respect of which it has made a notification in accordance with Regulation 117, where all of the following conditions are fulfilled:

- (a) a blanket offer is—
 - (i) made to repurchase or redeem, free of any charges or deductions, all such units held by investors in the Member State concerned,
 - (ii) publicly available for at least 30 working days, and
 - (iii) addressed, directly or through financial intermediaries, individually to all investors in the Member State concerned whose identity is known;
- (b) the intention to terminate arrangements made for marketing such units in the Member State concerned is made public by means of a publicly available medium, including by electronic means, which is customary for marketing UCITS and suitable for a typical UCITS investor;
- (c) any contractual arrangements with financial intermediaries or delegates are modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the units identified in the notification referred to in paragraph (5).

(2) The information referred to in subparagraphs (a) and (b) of paragraph (1) shall clearly describe the consequences for investors if they do not accept the offer to redeem or repurchase their units.

(3) The information referred to in subparagraphs (a) and (b) of paragraph (1) shall be provided in one of the official languages of the Member State concerned in respect of which the UCITS has made a notification in accordance with Regulation 117 or, where applicable, in a language approved by the Bank.

(4) As of the date referred to in subparagraph (c) of paragraph (1), the UCITS shall cease any new or further, direct or indirect, offering or placement of its units which were the subject of de-notification in the Member State concerned.

(5) The UCITS shall submit a notification to the Bank containing the information referred to in subparagraphs (a), (b) and (c) of paragraph (1).

(6) The Bank shall verify whether the notification submitted by the UCITS under paragraph (5) is complete.

(7) The Bank shall, no later than 15 working days from the receipt of a complete notification under paragraph (5), transmit that notification to—

- (a) the competent authorities of the Member State identified in the notification, and
- (b) ESMA.

(8) Upon transmission of the notification under paragraph (7), the Bank shall promptly notify the UCITS of that transmission.

(9) The UCITS shall provide—

- (a) investors who remain invested in the UCITS, and

(b) the Bank,

with the information required under Regulations 88 to 102 and 118.

(10) The Bank shall transmit to the competent authorities of the Member State identified in the notification referred to in paragraph (5) information on any changes to the documents referred to in Regulation 117(2).

(11) Where the Bank is identified in a notification submitted in accordance with Article 93a(2) of the Directive, Regulations 32(2), 123(1) and (2) (in so far as they relate to supervision of compliance with the provisions falling outside the field governed by the Directive and the requirements set out in Regulations 116 and 118) and 136 shall apply to the Bank as if it were the competent authority of the host Member State.

(12) Without prejudice to other monitoring activities and supervisory powers as referred to in Regulations 32(2) and 123, as from the date of transmission under paragraph (10), where the Bank is identified in a notification submitted in accordance with Article 93a(2) of the Directive, the Bank shall not require the UCITS concerned to demonstrate compliance with national laws, regulations and administrative provisions governing marketing requirements referred to in Article 5 of Regulation (EU) 2019/1156 of the European Parliament and of the Council.

(13) A UCITS may, for the purpose of providing information under paragraph (9), use any electronic or other distance communication means, subject to the information and communication means being available for investors in the official language or one of the official languages of the Member State where the investor is located or in a language approved by the competent authorities of that Member State.”.



GIVEN under my Official Seal,
4 August, 2021.

PASCHAL DONOHOE,
Minister for Finance.

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