

**Amendments made to**  
**Level 1 text of the [UCITS Directive \(2009/65/EC\)](#)**  
**Articles 14, 20, 30, 90, 98, 99 and 112**  
**by Commission's [Retail Investment Strategy](#) published 24 May 2023**

**Article 14**  
**Operating conditions**

1. Each Member State shall draw up rules of conduct which management companies authorised in that Member State shall observe at all times. Such rules shall implement at least the principles set out in this paragraph. Those principles shall ensure that a management company:
  - (a) acts honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market;
  - (b) acts with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market;
  - (c) has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities;
  - (d) tries to avoid conflicts of interests and, when they cannot be avoided, ensures that the UCITS it manages are fairly treated; and
  - (e) complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.
- 1a. For the purpose of paragraph 1, Member States shall require management companies to act in such a way as to prevent undue costs from being charged to the UCITS and its unit-holders. The costs which comply with the following conditions shall be regarded as due:**
  - (a) The costs are in line with disclosures in the prospectus referred to in Article 69 and the key investor information referred to in Article 78;**
  - (b) The costs are necessary for the UCITS to operate in line with its investment strategy and objective or to fulfil regulatory requirements;**
  - (c) The costs are borne by investors in a way that ensures fair treatment of investors.**
- 1b. Member States shall require management companies to maintain, operate and review an effective pricing process that allows for the identification and quantification of all costs borne by the UCITS or its unit-holders. Before the authorisation of the UCITS and throughout its life, that pricing process shall ensure that the following conditions are fulfilled:**
  - (a) the costs are not undue;**
  - (b) the costs borne by retail investors are justified and proportionate, having regard to the characteristics of the UCITS, including its investment objective, strategy, expected returns, level of risks and other relevant characteristics.**
- 1c. Member States shall ensure that management companies are responsible for the effectiveness and quality of their pricing process. The pricing process shall be clearly documented, shall clearly set out the responsibilities of the management bodies of the management company in determining and reviewing the costs borne by investors, and shall be subject to periodic review. The assessment of costs shall be based on objective criteria and methodology, including a comparison to market standards**
- 1d. Member States shall require management companies to assess at least annually whether undue costs have been charged to the UCITS or its unit-holders.**

Member States shall require management companies to reimburse investors where undue costs have been charged to the UCITS or its unit-holders.

Member States shall require management companies to report to the competent authorities of their home Member State and to the competent authorities of the home Member State of the UCITS, to the depositary and to the financial auditors of the UCITS, situations where undue costs have been charged to the UCITS or its unit-holders.

- 1e. Member States shall require management companies to assess at least annually the conditions mentioned in paragraph 1b, point (b). The assessment shall take into account the criteria set out in the pricing process and include a comparison with the relevant benchmark on costs and performance published by ESMA in accordance with paragraph 1f.

When a UCITS or its share classes, when they have different cost structures, deviate from the relevant benchmark referred to in paragraph 1f, the management company shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated or if the UCITS or its share classes do not comply with other criteria set out by the management company in the pricing process that UCITS or its share classes shall not be marketed to retail investors by the management company.

- 1f. After consulting EIOPA and competent authorities, ESMA shall, where appropriate, develop and make publicly available benchmarks to enable the comparative assessment of costs and performance of UCITS, or their share classes where they have different cost structures, to be used for the assessment set out in paragraph 1e.

Common benchmarks shall be developed, where it is feasible to do so, for UCITS, or their share classes where they have different cost structures, marketed to retail investors that present similar levels of performance, risk, strategy, objectives, or other characteristics.

These benchmarks shall display a range of costs and performance, especially cases where costs and performance depart significantly from the average. These benchmarks shall be updated on a regular basis.

2. Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures ~~with a view~~ to ensure ~~ing~~ that the management company complies with the duties set out in paragraph 1 to 1e in particular to:

- (a) establish appropriate criteria for acting honestly and fairly and with due skill, care and diligence in the best interests of the UCITS;
- (b) specify the principles required to ensure that management companies employ effectively the resources and procedures that are necessary for the proper performance of their business activities; ~~and~~
- (c) define the steps that management companies might reasonably be expected to take to identify, prevent, manage or disclose conflicts of interest as well as to establish appropriate criteria for determining the types of conflicts of interest whose existence may damage the interests of the UCITS;
- (d) specify the minimum requirements for the pricing process to prevent undue costs from being charged to the UCITS and its unit-holders, in particular, by:
  - i. ensuring that costs are correctly identified and quantified, and comply with the requirements set out in paragraph 1a, point (a);
  - ii. identifying which costs can be charged to the UCITS and its unit-holders taking into account the level of the costs and the nature of the costs by reference to a list of eligible costs that meet the conditions set out in paragraph 1a, points (b) and (c), and the conditions under which competent authorities may authorise on a case-by-case basis costs which are not included in the list of eligible costs but that meet the conditions set out in paragraph 1a, points (b) and (c);

- iii. identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;
- iv. establishing a procedure to determine the level of compensation where undue costs have been charged to investors.
- (e) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b), and for taking corrective measures mentioned in paragraph 1e and specify the methodology used by ESMA to develop its benchmarks.

2 In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the delegated acts adopted by the Commission regarding the criteria, principles and steps referred to in paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

3 In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the delegated acts adopted by the Commission regarding the criteria, principles and steps referred to in paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

4 By ...[OP: please insert the date = five years from the date referred to in Article 7(2) of this Directive], after consulting ESMA, the Commission shall submit a report to Council and Parliament on the implementation of this Article. The report shall evaluate at least the following:

- (a) whether this Article has had a positive impact on the costs and performance of UCITS offered to retail investors and to which extent;
- (b) whether the assessment set out in paragraph 1e is proportionate in terms of complexity and costs incurred by management companies.

## Article 20

### Freedom of establishment and freedom to provide services

1 Without prejudice to Article 5, a management company which applies to manage a UCITS established in another Member State shall provide the competent authorities of the UCITS home Member State with the following documentation:

- (a) the written contract with the depositary referred to in Article 22(2);
- (b) information on delegation arrangements regarding functions of investment management and administration referred to in Annex II.

If a management company already manages other UCITS of the same type in the UCITS home Member State, reference to the documentation already provided shall be sufficient.

2 In so far as it is necessary to ensure compliance with the rules for which they are responsible, the competent authorities of the UCITS home Member State may ask the competent authorities of the management company's home Member State for clarification and information regarding the documentation referred to in paragraph 1 and, based on the attestation referred to in Articles 17 and 18, as to whether the type of UCITS for which authorisation is requested falls within the scope of the management company's authorisation. Where applicable, the competent authorities of the management company's home Member State shall provide their opinion within 10 working days of the initial request.

3 The competent authorities of the UCITS home Member State may refuse the application of the management company only if:

- (a) the management company does not comply with the rules falling under their responsibility pursuant to Article 19;
- (b) the management company is not authorised by the competent authorities of its home Member State to manage the type of UCITS for which authorisation is requested; or
- (c) the management company has not provided the documentation referred to in paragraph 1.

Before refusing an application, the competent authorities of the UCITS home Member State shall consult the competent authorities of the management company's home Member State.

4 Any subsequent material modifications of the documentation referred to in paragraph 1 shall be notified by the management company to the competent authorities of the UCITS home Member State.

5 In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to determine the information to be provided to the competent authorities in the application for managing a UCITS established in another Member State.

The Commission may adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for such provision of information.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

### **Article 20a**

**In respect of each UCITS it manages, a management company shall provide to the competent authority of its home Member State information on the costs borne by investors and performance of the UCITS, at the level of each fund, or at the level of the UCITS share classes where those share classes have different cost structures.**

## **Article 30**

### **Operating conditions**

Articles 13 to 14b shall apply *mutatis mutandis* to investment companies that have not designated a management company authorised pursuant to this Directive.

For the purpose of the Articles referred to in the first paragraph, 'management company' means 'investment company', **with the exception of the second paragraph of Article 14(1d).**

Investment companies shall manage only assets of their own portfolio and shall not, under any circumstances, receive any mandate to manage assets on behalf of a third party.

## **Article 90**

### **General Obligations of UCITS**

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.

**This Article applies without prejudice to the application of Article 14.**

## **Article 98**

### **Provisions Concerning the Authorities Responsible for Authorisation and Supervision**

1. The competent authorities shall be given all supervisory and investigatory powers that are necessary for the exercise of their functions. Such powers shall be exercised:
  - (a) directly;
  - (b) in collaboration with other authorities;
  - (c) under the responsibility of the competent authorities, by delegation to entities to which tasks have been delegated; or
  - (d) by application to the competent judicial authorities.
2. Under paragraph 1, competent authorities shall have the power, at least, to:
  - (a) access any document in any form and receive a copy thereof;
  - (b) require any person to provide information and, if necessary, to summon and question a person with a view to obtaining information;
  - (c) carry out on-site inspections;
  - (d) require:
    - i) in so far as permitted by national law, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to an investigation into infringements of this Directive;
    - ii) existing recordings of telephone conversations or electronic communications or other data traffic records held by UCITS, management companies, investment companies, depositaries or any other entities regulated by this Directive;
  - (e) require the cessation of any practice that is contrary to the provisions adopted in the implementation of this Directive;
  - (f) request the freezing or the sequestration of assets;
  - (g) request the temporary prohibition of professional activity;
  - (h) require authorised investment companies, management companies or depositaries to provide information;
  - (i) adopt any type of measure to ensure that investment companies, management companies or depositaries continue to comply with the requirements of this Directive;
  - (j) require the suspension of the issue, repurchase or redemption of units in the interest of the unit-holders or of the public;
  - (k) withdraw the authorisation granted to a UCITS, a management company or a depositary;
  - (l) refer matters for criminal prosecution;
  - (m) allow auditors or experts to carry out verifications or investigations; and
  - (n) **require compensation to investors where undue costs have been charged to UCITS or its unit-holders.**

## Article 99

1. Without prejudice to the supervisory powers of competent authorities referred to in Article 98 and the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on administrative sanctions and other administrative measures to be imposed on companies and persons in respect of infringements of national provisions transposing this Directive and shall take all measures necessary to ensure that they are implemented.

Where Member States decide not to lay down rules for administrative sanctions for infringements which are subject to national criminal law, they shall communicate to the Commission the relevant criminal law provisions.

Administrative sanctions and other administrative measures shall be effective, proportionate and dissuasive.

By 18 March 2016, Member States shall notify the laws, regulations and administrative provisions transposing this Article, including any relevant criminal law provisions, to the Commission and ESMA. Member States shall notify the Commission and ESMA without undue delay of any subsequent amendments thereto.

2. Where Member States have chosen, in accordance with paragraph 1, to lay down criminal sanctions for infringements of the provisions referred to in that paragraph, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information relating to criminal investigations or proceedings commenced for possible infringements of this Directive and provide the same to other competent authorities and ESMA in order to fulfil their obligation to cooperate with each other and ESMA for the purposes of this Directive.

Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the recovery of pecuniary sanctions.

3. As part of its overall review of the functioning of this Directive, the Commission shall review, not later than 18 September 2017, the application of the administrative and criminal sanctions, and in particular the need to further harmonise the administrative sanctions laid down for infringements of the requirements laid down in this Directive.
4. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in the following exceptional circumstances, namely where
  - (a) communication of relevant information might adversely affect the security of the Member State addressed, in particular the fight against terrorism and other serious crimes;
  - (b) compliance with the request is likely to affect adversely its own investigation, enforcement activities or, where applicable, a criminal investigation;
  - (c) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or
  - (d) a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.
5. Member States shall ensure that where obligations apply to UCITS, management companies, investment companies or depositaries, in the event of an infringement of national provisions transposing this Directive, administrative penalties or other administrative measures may be applied, in accordance with national law, to the members of the management body and to other natural persons who are responsible, under national law, for the infringement.
6. In accordance with national law, Member States shall ensure that, in all cases referred to in paragraph 1, the administrative penalties and other administrative measures that may be applied include at least the following:
  - (a) a public statement which identifies the person responsible and the nature of the infringement;
  - (b) an order requiring the person responsible to cease the conduct and to desist from a repetition of that conduct;
  - (c) in the case of a UCITS or a management company, suspension or withdrawal of the authorisation of the UCITS or the management company;
  - (d) a temporary or, for repeated serious infringements, a permanent ban against a member of the management body of the management company or investment company or against any other natural person who is held responsible, from exercising management functions in those or in other such companies;
  - (e) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 September 2014, or 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of

accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

- (f) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 September 2014;
- (g) as an alternative to points (e) and (f), maximum administrative pecuniary sanctions of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in points (e) and (f); and

**(h) requirement to compensate investors where undue costs have been charged to UCITS or its unit-holders.**

- 7. Member States may empower competent authorities, under national law, to impose types of penalty in addition to those referred to in paragraph 6 or to impose pecuniary penalties exceeding the amounts referred to in points (e), (f) and (g) of paragraph 6.

## Article 112

### Delegated Acts and Powers of Execution

The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC.

#### Article 112a

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article,
- 2. The power to adopt the delegated acts referred to in Articles 12, 14, 43, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall be conferred on the Commission for a period of four years from 4 January 2011. The power to adopt the delegated acts referred to in Article 26b shall be conferred on the Commission for a period of four years from 17 September 2014.

The power to adopt the delegated acts referred to in Article 50a shall be conferred on the Commission for a period of four years from 21 July 2011.

The power to adopt the delegated acts referred to in Article 51 is conferred on the Commission for a period of four years from 20 June 2013.

The Commission shall draw up a report in respect of delegated power not later than six months before the end of the four-year periods. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

- 3. The delegation of power referred to in Articles 12, 14, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
- 4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

**The power to adopt the delegated acts referred to in Article 14 shall be conferred on the Commission for a period of four years from [OJ: insert date of entry into force of this amending Directive].**

- 5. A delegated act adopted pursuant to Articles 12, 14, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the

Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.