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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of 15.12.2023

**laying down implementing technical standards for the application of
Directive 2009/65/EC of the European Parliament and of the Council with regard to the
form and content of the information to be notified in respect of the cross-border
activities of undertakings for collective investment in transferable securities (UCITS),
UCITS management companies, the exchange of information between competent
authorities on cross-border notification letters, and amending Regulation (EU)
No 584/2010**

(Text with EEA relevance)

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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 17(10), fourth subparagraph, Article 18(5), fourth subparagraph, Article 20(5), fourth subparagraph, and Article 95(2), second subparagraph thereof,

Whereas:

- (1) The exchange of information between competent authorities is part of the administrative procedures in relation to the notifications of management companies and UCITS wishing to conduct marketing or management activities, to provide services or to establish a branch in host Member States. To close those administrative procedures in a smooth, fast, unbureaucratic, and reliable way, it is necessary to specify and harmonise the exchange of information between competent authorities by the development of harmonised forms, templates, cooperation procedures and the implementation of communication by electronic means.
- (2) To transmit the huge amount of information, sent and received in regard of the notifications between the Member States, without loss of time and in a dependable, cost-efficient and unbureaucratic manner, it is essential that the information concerned is provided by electronic means. While such information might be provided by email, it should be possible to provide that information also by other, potentially more advanced electronic technology. It is therefore necessary to set out a detailed procedure for those electronic transmissions and for dealing with technical problems that might occur in the process of the transmission of the information between the competent authorities.

¹ OJ L 302, 17.11.2009, p. 32.

- (3) Commission Regulation (EU) No 584/2010² has harmonised certain aspects of the procedure for the notification of marketing of UCITS in a host Member State. In particular, the Regulation sets out a standard notification letter and UCITS attestation. Directive (EU) 2019/1160 of the European Parliament and of the Council³ amended Directive 2009/65/EC to introduce new requirements as regards the content of the notification letter to be submitted by management companies for the marketing of their units or shares in a host Member State. Those amendments should be reflected in Commission Regulation (EU) No 584/2010, which should therefore be amended accordingly.
- (4) The provisions in this Regulation are closely linked since they deal with the form and content of the information to be exchanged between management companies and the national competent authorities of home and host Member States where the management companies intend to provide cross-border services. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and efficient access for management companies and national competent authorities, it is appropriate to include them in a single regulation.
- (5) This Regulation is based on the draft implementing technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA). ESMA took into account existing market practices and the rules as currently laid down in Chapter I of Commission Regulation (EU) No 584/2010.
- (6) ESMA has conducted open public consultations on the provisions of the draft implementing technical standards on which this Regulation is based relating to the template notification letters for the marketing and the management of UCITS in host Member States, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁴.
- (7) To enable management companies and competent authorities to adapt to the new requirements laid down in this Regulation, it is appropriate to defer its application,

² 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 (OJ L 176, 10.7.2010, p. 16).

³ Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings (OJ L 188, 12.7.2019, p. 106).

⁴ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

HAS ADOPTED THIS REGULATION:

Article 1

Form and content of standard model notification letters

1. When submitting the notification letter referred to in Article 93(1) of Directive 2009/65/EC, a UCITS shall use the model set out in Annex I to this Regulation.
2. When providing the documentation referred to in Article 20(1) of Directive 2009/65/EC, a management company shall use the model set out in Annex II to this Regulation.

Article 2

Transmission of the notifications made in accordance with Article 20(1) and Article 17(2) letter (d) of Directive 2009/65/EC

1. Competent authorities shall publish on their websites the email address or other communication channel that is to be used to send the notifications made by management companies in accordance with Article 20(1) of Directive 2009/65/EC.
2. Management companies shall send the notifications referred to in paragraph 1 either in a machine-readable format to the email address published in accordance with paragraph 1 or by any other communication channels put in place by competent authorities.

Article 3

Templates to be used for the exchange of information between competent authorities

1. The competent authorities of a management company's home Member State shall communicate to the competent authorities of the management company's host Member State the information received in accordance with Article 17(2) and Article 18(1) of Directive 2009/65/EC using the templates set out in Annex III and, where the management company intends to establish a branch, in addition communicate the information under Art. 17(2) letter (d) of Directive 2009/65/EC using the template set out in Annex VII to this Regulation.
2. The competent authorities of a UCITS home Member State shall communicate the details of any compensation scheme as referred to in Article 17(3), first subparagraph, and Article 18(2), second subparagraph, of Directive 2009/65/EC using the template set out in Annex IV to this Regulation.
3. The competent authorities of a management company's home Member State shall use the template set out in Annex V to this Regulation for the attestation referred to in Article 17(3), third subparagraph, and Article 18(2), third subparagraph, of Directive 2009/65/EC.
4. The competent authorities of a management company's home Member State shall use the template set out in Annex VI to this Regulation for the attestation referred to in Article 93(3), second subparagraph, of Directive 2009/65/EC.

Article 4

Transmission of notifications between competent authorities

1. Competent authorities shall designate a single contact point for the communication and transmission of the information and documents referred to in Article 3. Competent authorities shall notify the details of that contact point, and any modification of that contact point, to every other competent authority.
2. Competent authorities shall ensure that their designated email address or other communication channel for receiving notifications is monitored each working day.
3. Competent authorities shall send the information and documents referred to in Article 3 by email or, if other communication channels are chosen, in a machine-readable format to the contact point referred to in paragraph 1.
4. The communication and transmission of the information and documentation referred to in Article 17(3), first subparagraph, Article 18(2), first, second and third subparagraphs, and Article 93(3), second subparagraph, of Directive 2009/65/EC shall not be considered to have taken place in any of the following cases:
 - (a) an information or documentation that had to be communicated or transmitted is missing, is incomplete, or is in a format other than that specified in paragraph 3;
 - (b) the competent authorities of a management company's or of a UCITS home Member State did not use the contact point designated in accordance with paragraph 1 by the competent authority of the UCITS or management company's host member state;
 - (c) the competent authorities of a management company's or of a UCITS home Member State have failed to transmit the complete information and documentation as a result of a technical failure in their electronic system.
5. Competent authorities of the management company's or of the UCITS home Member State shall notify the management company about the transmission of the complete information or documentation referred to in Article 17(3), first subparagraph, Article 18(2), first, second and third subparagraphs, and Article 93(3), second subparagraph, of Directive 2009/65/EC only after having ensured that that information or documentation has been transmitted to the receiving competent authority.
6. Competent authorities of the management company's or the UCITS home Member State that have been informed or have become aware that the complete information or documentation referred to in Article 17(3), first subparagraph, Article 18(2), first, second and third subparagraphs, and Article 93(3), second subparagraph, of Directive 2009/65/EC has not been transmitted shall immediately take steps to transmit that complete information and documentation.

Article 5

Receipt of notifications between competent authorities

1. Competent authorities that receive the information or documentation referred to in Article 17(3), first subparagraph, Article 18(2), first, second and third subparagraphs,

and Article 93(3), second subparagraph, of Directive 2009/65/EC shall notify the competent authorities of the management company's or of the UCITS home Member State as soon as possible, but no later than 5 working days from the date of the receipt of that information or documentation, and using the contact point referred to in Article 4(1), of whether:

- (a) the information and documentation are complete;
 - (b) the information and documentation can be viewed and printed.
2. The competent authorities of the management company's or of the UCITS home Member State that have not received the notification referred to in paragraph 1 or have not received such notification within the time limit set out in paragraph 1 shall contact the competent authorities of the Member State in which the management company wishes to carry out the activities for which it has been authorised or in which the UCITS proposes to market its units or shares, and ascertain whether or not the transmission of the complete information and documentation has taken place.

Article 6

Amendments to Regulation (EU) No 584/2010

Regulation (EU) No 584/2010 is amended as follows:

- 1. Chapter I is deleted;
- 2. Annexes I and II are deleted.

Article 7

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from ...[PO please insert the date = 3 months after the date of entry into force of this Regulation].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15.12.2023

For the Commission
The President
Ursula VON DER LEYEN