

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

In case of discrepancies between the French and the English text, the French text shall prevail

Luxembourg, 10 January 2011

To all Luxembourg undertakings for collective investment and to those involved in the operation and control of these undertakings

CIRCULAR CSSF 11/498

- Re:**
- **Entry into force of the law of 17 December 2010 relating to undertakings for collective investment and CSSF Regulations No. 10-4 and No. 10-5 laying down the implementing measures in relation thereto**
 - **Commission Regulations (EU) No 583/2010 and No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC**
 - **Guidelines and other documents drawn up by the Committee of European Securities Regulators (CESR)**

Ladies and Gentlemen,

We are pleased to draw your attention to the adoption of the law of 17 December 2010 relating to undertakings for collective investment, as well as CSSF Regulations No. 10-4 and No. 10-5 laying down the implementing measures in relation thereto (all of which were published in the *Mémorial* A – No. 239 of 24 December 2010).

The law of 17 December 2010 transposes into Luxembourg law Directive 2009/65/EC of the European Parliament and 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). This new law provides a series of changes to the Luxembourg legal framework of undertakings for collective investment ("UCI") and it incidentally amends the law of 13 February 2007 relating to specialised investment funds, as well as the law of 4 December 1967 on income tax.

CSSF Regulations No. 10-4 and No. 10-5 transpose into Luxembourg law (i) Commission Directive 2010/43/EU of 1 July 2010 implementing Directive

2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company, and (ii) Commission Directive 2010/44/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure. These regulations apply to management companies and UCITS respectively, which are subject to the Law of 17 December 2010 (the "new Law").

The new Law repeals the law of 20 December 2002 relating to undertakings for collective investment (the "2002 Law") with effect from 1 July 2012, except for the tax provisions contained in Articles 127 and 129 which are repealed with effect from 1 January 2011.

The purpose of this circular is to summarise (I) the structure of the new Law, (II) the principal innovations introduced by Directive 2009/65/EC and the new Law, as well as (III) the transitional provisions of the new Law.

In addition, this Circular also aims to draw your attention to other implementing measures of Directive 2009/65/EC (the so-called levels 2 and 3) i.e. (IV) to Commission Regulations (EU) No 583/2010 and No 584/2010 of 1 July 2010 and (V) to the guidelines of the Committee of European Securities Regulators (CESR) concerning Directive 2009/65/EC.

I. Structure of the new Law

For the majority of the provisions, the new Law retains the text and wording of Directive 2009/65/EC as well as those provisions of the 2002 Law which are not affected by the Directive.

Generally, the new Law has the same structure as the 2002 Law:

1. Part I sets out the provisions applicable to UCITS. The new provisions introduced by Directive 2009/65/EC on the cross-border notification procedure of UCITS, UCITS mergers and master-feeder structures are integrated into this Part.
2. The rules applicable to other UCIs and to UCIs established and operating under a foreign law, Parts II and III of the new Law are to a large extent the textual reproduction of Parts II and III of the 2002 Law.
3. Part IV comprises all the rules applicable to management companies distinguishing, by analogy with the 2002 Law, management companies that manage UCITS and management companies whose business is limited to the

management of other UCIs. The provisions applicable to management companies which manage UCITS take into account the substantial amendments introduced by Directive 2009/65/EC which give these management companies an EU passport allowing them to exercise in other Member States, through the free provision of services or by establishing a branch, the activities for which they have been authorised in their country of origin.

4. All common provisions applicable to UCITS and to other UCIs relating, in particular, to the authorisation, organisation of supervision and information from unitholders are in Part V of the new Law. Part V retains the provisions of Part V of the 2002 Law, subject to amendments and adaptations made in order to implement the new provisions introduced by Directive 2009/65/EC concerning key investor information, as well as cooperation between the supervisory authorities. Part V also comprises changes to the powers of supervision and sanction vested in the Commission de Surveillance du Secteur Financier to perform its supervisory functions of UCIs. These changes reflect the provisions envisaged by Directive 2009/65/EC whose objective is to harmonise the powers available to the competent supervisory authorities to ensure a uniform application of the Directive in all the Member States. Provisions relating to tax, criminal law, and regarding the liquidation of UCIs, as well as provisions in relation to UCIs with multiple compartments, which are included in Part V of the new Law, are for the most part taken from the 2002 Law.

II. Main innovations

1. European passport for management companies

The passport for management companies constitutes the main innovation introduced by Directive 2009/65/EC. This passport shall allow the direct management of Luxembourg UCITS by a management company established and supervised in another Member State of the European Union and *vice versa*.

2. New notification procedure

The notification procedure required for the marketing of units of a UCITS established in a Member State in another Member State has been simplified and accelerated. In future, the initial notification shall take the form of an electronic notification from one authority to another. Thus, the UCITS will have to submit a file to its home authority which will ensure that the file is complete and which will then send it to the competent authority of the host Member State not later than ten business days after receipt. However, any subsequent changes to relevant documents must be notified directly by the UCITS to the authority of the host Member State.

3. Cooperation between supervisory authorities

The new Law implements those elements of Directive 2009/65/EC which aim to align the rules by improving the existing mechanisms for exchanging information and by imposing deadlines for communication and requests between supervisory authorities.

4. Mergers of UCITS

The new Law introduces a procedure which aims to facilitate mergers of UCITS, whether domestic or EU cross-border. The conditions for obtaining authorisation for the merger of UCITS and the information to be made available to investors will from now on be subject to uniform rules across the European Union. It is expected, in particular, that when the merger implies a vote of investors, the threshold for approving the merger shall not exceed 75% of the votes of those investors, both present and represented.

5. Master-feeder structures

Under the new Law, it will be possible for a (feeder) UCITS to invest 85% or more of its assets in another (master) UCITS, thereby creating a master-feeder structure. Both master-feeder structures, where the master and feeder UCITS are established in the same Member State, and those in which they are established in different Member States, will be possible.

6. Key information for investors

The simplified prospectus will be replaced by the concept of "key information for investors" which, it has been agreed, will be known as "Key Investor Information" ("KII"). It is a core document that provides investors with essential information about the UCITS in terms of investment objectives, risk profile, performance and costs. This document, to be written in a concise manner and in a non-technical language, shall be translated and used, without modification, in all the Member States where the UCITS is marketed.

7. Other changes (unrelated to the transposition of Directive 2009/65/EC)

The new Law also introduces certain specific changes to the existing legislation on UCIs, which are unrelated to the transposition of Directive 2009/65/EC. Other than some changes to the tax provisions, the most important modifications are the following:

- UCIs in the corporate form are exempt from the obligation to send their annual report to registered unitholders at the same time as the notice convening the annual general meeting;
- given the large number of subscriptions and redemptions and therefore changes in the register of unitholders to which a UCI in the corporate form may be subject, the notices convening general meetings may provide that the quorum and the majority at the general meeting are determined in relation to the units issued and outstanding on the fifth day preceding the general meeting;
- if the articles of incorporation of a UCI in the corporate form have been written in English, that UCI is exempt from the obligation of providing a French or German translation for the purpose of registering its articles of incorporation;
- in the interests of the protection of investors of a UCI subject to Part II of the 2002 Law, it is important that, when delegating functions to third parties, they benefit from protection similar to that given to investors of a UCITS subject to Part I. Thus, from now on, the manager of a UCI subject to Part II of the 2002 Law shall be subject to the authorisation of and supervision by a supervisory authority empowered to exchange information with the CSSF.

III. Transitional provisions

The new Law came into force on 1 January 2011.

Given that the new Law came into force prior to the deadline of 1 July 2011 for the transposition of Directive 2009/65/EC, the text of the new Law contains some transitional provisions of which the following are the most important:

- UCITS and management companies subject to Chapter 13 of the 2002 Law and established before the entry into force of the new Law (i.e. before 1 January 2011) have the option, until 1 July 2011, of remaining subject to the 2002 Law or to be subject to the new Law; from and including 1 July 2011 they shall *ipso jure* be governed by the new Law.
- UCITS and management companies subject to Chapter 13 of the 2002 Law and established between 1 January and 1 July 2011 have the option, until 1 July 2011, to be governed by the 2002 Law or the new Law; from 1 July 2011 they shall *ipso jure* be governed by the new Law;
- until 1 July 2011, UCITS subject to the 2002 Law shall benefit from a grandfathering clause for the preparation of key information for those investors referred to in Article 159 of the new Law; thus, the current simplified

prospectuses drawn up under the 2002 Law shall not be replaced by the Key Investor Information document until 1 July 2012;

- UCIs under Part II of the 2002 Law and management companies subject to Chapter 14 of the 2002 Law are *ipso jure* governed by the new Law as from 1 January 2011; however, they will have until 1 July 2012 to comply with the conditions of delegation of one or more of their functions to third parties as stated in Articles 95(2), 99(6), paragraph 2 and Article 125(1), paragraph 6, respectively, of the new Law;
- between 1 January and 1 July 2011, UCITS and management companies authorised in other Member States may rely on the provisions of the new Law in a cross-border situation only if the provisions of Directive 2009/65/EC have been implemented in their home State.

For UCIs and management companies incorporated under Luxembourg law existing on 1 July 2011 and which have until that date been subject to the 2002 Law, all references to the 2002 Law in the instruments of incorporation or management regulations, respectively, shall be deemed to be replaced by references to the new Law from this date.

IV. Commission Regulations (EU) No 583/2010 and No 584/2010

Commission Regulations (EU) No 583/2010 and No 584/2010 of 1 July 2010 shall apply from 1 July 2011 and shall be directly applicable in the Member States of the European Union. These Regulations implement Directive 2009/65/EC as regards respectively, (i) key investor information and the conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website, and (ii) the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between the competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities. UCITS and management companies which choose to be subject to the new Law before 1 July 2011 shall already comply with these Regulations (EU) from the date on which they are subject to this Law.

The Regulations (EU) have been published in the official Journal of the European Union at the following address:

<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2010:176:SOM:EN:HTML>

V. Guidelines of the Committee of European Securities Regulators (CESR)

Finally in this context, we wish to draw your attention to guidelines and other CESR documents concerning Directive 2009/65/EC:

- CESR Guidelines on a common definition of European money market funds (CESR/10-049 of 19 May 2010);
- CESR Guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document (CESR/10-673 of 1 July 2010);
- CESR Guidelines on the methodology for calculation of the ongoing charges figure in the Key Investor Information Document (CESR/10-674 of 1 July 2010);
- CESR Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (CESR/10-788 of 28 July 2010);
- CESR Guidelines on the Selection and presentation of performance scenarios in the Key Investor Information document (KII) for structured UCITS (CESR/10-1318 of 20 December 2010);
- CESR Guidelines on the Transition from the Simplified Prospectus to the Key Investor Information document (CESR/10-1319 of 20 December 2010);
- CESR's guide to clear language and layout for the Key Investor Information document (CESR/10-1320 of 20 December 2010);
- CESR's template for the Key Investor Information document (CESR/10-1321 of 20 December 2010)

These documents are available for consultation on the website of the European Securities and Markets Authority ("ESMA", <http://www.esma.europa.eu/>), the newly created European supervision authority which succeeded CESR on 1 January 2011¹.

Yours faithfully,

COMMISSION FOR THE SUPERVISION OF THE FINANCIAL SECTOR

Claude SIMON
Director

Simone DELCOURT
Director

Jean GUILL
Director General

¹ Regulation (EU) No. 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervision Authority (European Securities and Markets Authority). For information: "Frequently Asked Questions – A Guide to Understanding ESMA" (ESMA/2011/009) of 3 January 2011 can be found at the following address: <http://www.esma.europa.eu/popup2.php?id=7366>.