

UCITS Directive

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

Asset Management Unit C4, DG FISMA

1. A few figures of interest

- A major success story for the EU funds sector
- EU UCITS market*
 - Size EUR 9.67tn on Q1 2018** vs EUR 6.1tn in 2007
 - Top 4 country share in UCITS assets (LU 36%, IE 19%, UK 13%, FR 9%)
 - UCITS funds account for 62% of the total investment funds assets (in 2017) with the AIFs accounting for the remainder
 - Diversity in terms of fund types: equity 38%, bond 27%, multi-asset 18%, money market 12%, other 4%
- More than 32,000 UCITS funds in the EU**

* EFAMA Factbook 2018

** EFAMA. Trends in the European Investment Fund Industry in Q1 2018

2. Scope and overview

- Undertakings for Collective Investment in Transferable Securities
 - An open-end fund; allows collective investment schemes to operate freely throughout the EU based on a single authorisation from one MS
 - MSs can impose additional requirements for the benefit of investors
- Long-lasting legacy – 1st directive dates back to 1985
- Exclusions:
 - Closed-end funds
 - Capital raising without promotion of sale to the public
 - Only sold to the public in third countries
 - Where inappropriate under national law due to investment or borrowing policies

3. Authorisation and operation conditions

- Legal form can vary:
 - Contract, corporation, trust
 - May lack legal personality
- Authorised and domiciled in a Member State
 - Authorisation requirements
 - Authorisation valid for all MSs
 - Conditions for taking up business
- Operating conditions
- Freedom of establishment and to provide services

4. UCITS requirements

- Investment rules and policies:
 - Eligible assets only
 - Diversification limits
 - Leverage limits
- General obligations of UCITS
- Policies to manage any conflicts of interest
 - Incl. between manager and unit holders; between different unit holders classes
- Master-feeder structures
- Policies on risk management
- Transparency requirements:
 - Annual and bi-annual reports
 - Key investor Information Document – KIID
 - Prospectus and periodical reports; other disclosures

5. Role of the depositary

➤ Missions of the depositary

- Holds UCITS assets in custody
- Oversees compliance (ensuring that decisions by UCITS or its management company comply with applicable laws, fund rules and the prospectus)
- Monitoring of UCITS' cash flows, obligations pertaining to custody, record-keeping and ownership

➤ Which entities can be depositaries?

- Central banks, credit institutions, other authorised entities, e.g. investment firms (subject to capital adequacy requirements)
- Cannot be the management company
- Act independently and solely in the interest of the unit-holders
- Conflict of interest management to be put in place by the depositaries and management companies

➤ Depositary authorisation process

- Subject to prudential regulation and ongoing supervision
- Subject to strict liability in the event of loss of assets

6. Cross-border distribution of funds

- Commission's UCITS/AIFMD package proposal published in 03/2018; EuVECA/EuSEF regulations also amended; political agreement 02/2019
- Commission's impact assessment, barriers to cross-border activities and problem statement
- Explanation of the key elements of the Proposal
- Selected elements of the compromise text:
 - Pre-marketing
 - De-notification
 - Other aspects
- Publication expected in May / June 2019

Questions