

UCITS IV Cross-border notification of UCITS

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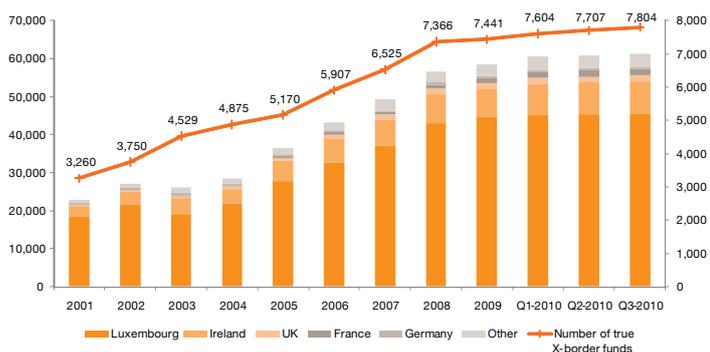
Further to the adoption of the recast UCITS Directive ('UCITS IV') that is due to come into force in July 2011, the EU Commission issued on 1 July 2010 new level 2 regulations relating to the cross-border notification procedure for UCITS ('Level 2 Regulations').

Background

Since the implementation of the previous UCITS Directive, (the so-called "UCITS III Directive") and thanks to the June 2006 CESR guidelines, there has been a significant increase of the number of true cross-border funds⁽¹⁾ from 3,750 back in 2002 to 7,804 in September 2010. Indeed, one of the objectives of the EU Commission was to simplify the notification process for a UCITS which intends to market its units on a cross-border basis in the European Union introducing harmonized rules and to give a common approach on market access.

The recast of the UCITS Directive providing for the overhaul of the notification procedure should contribute to the continuous growth of the number of cross-border funds. Indeed, this time the main objective is to accelerate the market entry process thanks to a simplified notification process as well as a removal of unnecessary administrative burdens. The new notification procedure is based on swift, electronic communication of standardised documentation between authorities. It removes ex-ante check of marketing arrangements by authorities of the UCITS host Member States and facilitates immediate access to the host Member States market for UCITS.

Number of cross-border funds and registrations

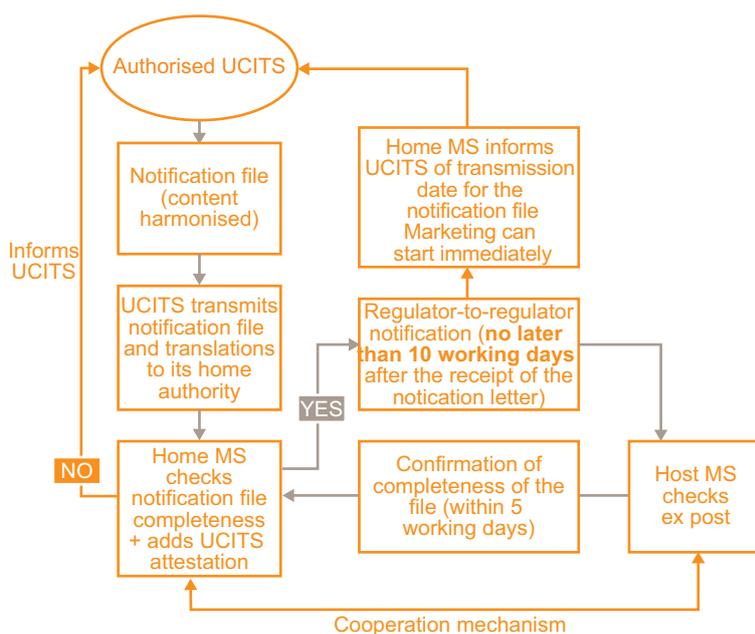


Source: Lipper Hindsight and PwC analysis, September 30, 2010.

Note: (1) Funds distributed in at least 3 countries including their domicile.

Scope of the UCITS IV notification process

The new notification process will be a regulator-to-regulator process, the UCITS home Member State regulator having only a maximum of 10 working days to review a notification file (standardised in form and content) and to transmit it to the host Member State regulator, thereby triggering the immediate right to start marketing activities in that country.



Core requirements of UCITS IV

Information to be published by each Member State

Member States are required to publish by electronic means full information on their local laws, regulations and other provisions relating to the marketing of foreign UCITS in their jurisdiction.

This information must be disclosed in a clear and unambiguous manner and be kept up to date.

Access for host Member State to the notification documentation

The home Member State regulator is required to transmit by e-mail to host Member State regulators the UCITS supporting documentation together with the standard notification letter.

Post notification, the UCITS itself is required to keep this documentation up to date and to notify any amendments to the host Member State regulators.

Standard notification letter and attestation

The UCITS IV Directive requires a UCITS intending to be registered in a host EU Member State to submit a notification letter to the host Member State regulator, this document having to be submitted together with a UCITS compliance attestation provided by the home country regulator.

This requirement is derived from the harmonised documents already contained in the June 2006 CESR guidelines to simplify the cross-border notification process of UCITS.

Based on CESR's proposals, the Commission issued new drafts of notification and attestation letters. Minor modifications have been made to 'Part A' of the notification letter but it has to be noted that 'Part B' covering non-harmonised requirements has been expanded and will have to be completed with the details requested by each host Member State regulator. No changes have been made to the UCITS attestation.

Electronic transmission of notification files

Member States regulators shall accept transmission and filing of notification documents by e-mail.

The Level 2 Regulations foresee, upon agreement between the EU regulators, the possibility of replacing the transmission by e-mail with a 'more sophisticated method of electronic communication' to deal with the notification procedure. However, it is unlikely that this more sophisticated system will be available before the notification Regulation comes into force on 1 July 2011.

From 1 July 2011, Member States regulators will have to comply with the following notification rules, which should shorten the timeframe for UCITS funds to enter new markets within the EU:

- Upon sending of the notification e-mail including the UCITS documentation, the home Member State regulator shall inform the UCITS of its right to access the host country market immediately;
- The host Member State regulators shall confirm receipt / completeness of the notification request within 5 working days;
- The home Member State regulator must ensure that the transmission of the complete documentation to the host Member State regulators has taken place before it notifies the UCITS about its transmission.

Main business implications for the UCITS industry

Focus on preparation of the notification file

- A UCITS must make sure it complies with the local laws, regulations and other provisions applicable in any host Member States;
- How can the UCITS rely on the information made publicly available by the Member States i.e. what is the liability of the host Member States, if the information provided is not fully up-to-date?;
- A UCITS must make sure its marketing documents are in line with all host Member State requirements;
- How will the UCITS make sure its interpretation of the information disclosed by the Member States is correct and is in line with what is expected?;
- A UCITS must make sure the notification file is complete before sending it to the home Member State regulator;
- A UCITS must use the standard notification letter and make sure that Part B (disclosing non-harmonised requirements) is in line with the host Member State's requirements. Since information included in Part B of the notification letter will be different depending on each host Member State's requirements, there will be one specific file per country where the UCITS intends to be registered for distribution to the public;
- Standard notification letter is disclosing the list of sub-funds to register requiring the ISIN Codes. Does that mean that the registration will have to be made at a unit/share class level even in the countries where it is currently done at a sub-fund level?

Focus on registration maintenance process

- What about the update of the UCITS documents? The UCITS itself will have to notify all host Member States regulators and keep its documentation up to date and available. What would be the process to follow? The same as the one currently applicable?;
- What process must be followed in the case of the liquidation / merger / de-registration in the host Member States? There is no guidance available.
- How will the marketing of UCITS in a host Member State be impacted in cases where the marketing documents are not in compliance with local requirements?

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