

UCITS IV News

Issue 19 – December 2011



The deadline of 1 July 2011 for a full transposition into national legislation of the 2009 UCITS IV Directive and its implementing texts of 2010 has expired over 4 months ago. Can the big wave of fund rationalisation and the quest for more efficiency really begin? Has the registration for cross-border fund distribution become a piece of cake?

In an ideal world, neither troubled by economic crisis nor repeated changes of governments, Member States should all have transposed all the texts, should have issued tax legislation to allow for example a cross-border fund merger to occur in all tax neutrality, and should have published on their regulator's website a list of information¹ relating to the non-harmonised aspects of marketing.

Transposition status of the UCITS IV Directive

As of early November 2011, this is what the real world looks like, in terms of permitting a full functioning of UCITS IV:

	DE	FR	LU	ES	UK	IE	A	NL	IT	P	PL	SW	BE
Full transposition of UCITS IV	😊	😊	😊	😊	😊	😊	😊	😊	😞	😞	😞	😊	😞
Info on local marketing arrangements published	😞	😞	😞	😞	😊	😊	😞	😞	😞	😞	😞	😊	😞
Tax measures published	😊	😊	😊	😞	😊	😊	😞	😊	😞	😞	😞	😊	😞

😞 information requirements only partially achieved

Now, even if transposition has occurred in a given country, it does not necessarily mean that a cross-border merger or a master-feeder will be straightforward: Spain for example has omitted to transpose in its law the provisions on master-feeder, which means that currently, no master-feeder is possible, either domestic or cross-border. This shortfall should be fixed early next year. Italy, on the other hand, has not yet transposed UCITS IV, but its authorities are already open to discussing management company passports and cross-border mergers! Regarding the information on marketing arrangements and also on tax measures, Sweden is one of the crowns of Europe: many of the large EU target markets should follow that kingdom's example.

It remains to be seen whether or not ESMA's recent "Opinion on practical arrangements for the late transposition of UCITS IV"² will help solve the issue of doing cross-border operations when one of the two Member States involved have not transposed. The lack of national legal provisions to permit e.g. a management company to set up a fund abroad, especially if the fund is domiciled in a non-transposing country, is a strong obstacle!

Including stock lending income in the KIID's ongoing charges figure

One section of the KIID deals with all costs and charges borne by the fund and requires that an "ongoing charges figure" ("OCF") is disclosed³. No consensus has emerged yet on the question of whether or not the revenues derived from stock lending and retroceded to the management company or to other persons under a fee-sharing agreement should be included in the OCF. If they were, this could severely impact the charges disclosure policy currently applied by some funds and potentially create a commercial impact.

¹ See art. 91 of Dir. 2009/65/EC UCITS IV and art. 30 of Dir. 2010/42/EU impose to make accessible information (the type of which is prescribed) relating to "arrangements made for marketing"

² ESMA/2011/342 of 13 October 2011

³ CESR's guidelines on the methodology for calculation of the ongoing charges figure in the KIID, CESR/10-674 of 1 July, 2010

Even at regulator's level, a quick survey shows that not all of them have taken a view yet on the topic:

	DE	FR	LU	ES	UK	IE	A	IT	SW	BE
Is income derived from stock-lending included in the OCF?	?	Y	?	Y	Y	Y ⁴	?	?	?	Y

Note: A “?” generally means that the question was left unanswered by the regulator concerned and therefore that the stock lending revenues are generally not included in the OCF, in whole or in part.

Some trade associations (e.g. IFIA, AFG, IMA, Austrian fund association) have already expressed their strong concerns about, if not opposition to, this rule. Pending a harmonized approach to what is included (or not) in the OCF, KIIDs will not be comparable and one of the major purposes of their introduction in UCITS IV will not be achieved.

Delegation of administrative functions to the depositary bank

The conditions and the extent of the delegation by a management company of functions included in the Collective Portfolio Management of UCITS will be determined by the laws of the management company's Member State. While the delegation of tasks relating to investment management no longer seems to be an issue (although some countries still perceive a full delegation of that function as triggering the risk of creating an “empty box”), delegating tasks to the depositary bank remains a tricky question. Indeed, the depositary bank is supposed to be a watchdog over certain administrative and management functions falling under the responsibility of the management company: this role seems difficult to reconcile with outsourcing to the depositary the performance of tasks that it is supposed to oversee.

And indeed, Member States are taking quite different approaches to a management company delegating these administrative functions to the depositary bank (notably relating to the funds' assets valuation and the NAV calculation).

	DE	FR	LU	ES	UK	IE	A ⁵	IT	PL	BE ⁶	NL	SW
Delegation of administrative functions to the depositary bank permitted?												

⁴ To a question raised in that respect during a KIID workshop with the Central Bank of Ireland in April 2011, the response was: “Yes. The ongoing charges figure must include all costs borne by the UCITS and include the portion of fee payable to the manager under these arrangements, if this fee is in addition to the annual charge of the manager.”

⁵ It is not really a delegation: according to Austrian law, either the management company or the depositary bank is allowed to perform NAV calculation, S/R etc. If it is the depositary bank, the duties it performs have to be mentioned in the prospectus.

⁶ In Belgium, the Law prohibit in particular the depositary bank to perform the following activities: valuation, compliance and registration of S/R. The depositary bank may also not establish and publish the annual accounts of the fund.

For further information on this newsletter, please contact one of the following specialists:

Thierry Blondeau European Coordinator, Luxembourg thierry.blondeau@lu.pwc.com tel.: (352) 49 48 48 5779

Location	Contact Name	Company	Phone Number
Austria	Peter Ivancsits	PwC	(43) 1 50 18 81 210
Belgium	Bénédicte Passagez	PwC	(32) 2 71 04 423
France	Eric Sidot	PwC	(33) 1 56 57 1298
Germany	Stefan Peetz	PwC	(49) 69 9585 3946
Ireland	Ken Owens	PwC	(353) 1 79 28 542
Italy	Giovanni Stefanin	PwC	(39) 02 9160 5220
Luxembourg	Thierry Blondeau	PwC	(352) 49 48 48 5779
Poland	Zbigniew Korba	PwC	(48) 22 746 7116
Spain	Enrique A. Fernandez Albarracin	PwC Landwell	(34) 91 56 84 504
Sweden	Veronica Sommerfeld	Ohrlings PwC	(46) 10 21 33 737
Switzerland	Guenther Dobrauz	PwC	(41) 58 792 1497
The Netherlands	Martin Eleveld	PwC	(31) 88 79 24 997
United Kingdom	Laura Cox	PwC	(44) 20 72 12 15 79