

After a short interlude, our UCITS IV News is back with hot information on the implementation status of the new directive and the manner in which European countries will transpose the many texts comprising UCITS IV¹.

The 27 EU Member States should have transposed the provisions of the UCITS IV Directive into their national legislation by 1 July 2011. Perhaps because of economic difficulties (Spain, Portugal and Ireland), upcoming elections (Germany, Italy and, to some extent, France), or political difficulties (Belgium) but, most likely, due to challenges faced by national lawmakers to contend with the tidal wave of European regulation, the fact is – with less than two months to go to the deadline – only one country, Luxembourg, has fully transposed UCITS IV. France’s consultation process is ongoing: AMF has just launched a new consultation (this time on mergers, M/F, KIID, notification procedure and global risk calculation method) which runs until June 6, Italy has also consulted on its draft law decree (this consultation closed 8 May). Ireland has finished consulting on its amended UCITS notices (closed 31 March), as has the UK (Treasury and FSA consultation closed 21 March). Germany voted its transposition text in Parliament on 8 April and awaits confirmation by Senate and publication. Belgium has not publicly consulted on a transposition text and there are only unofficial drafts circulating

between the Belgian regulator and industry bodies. The Spanish Ministry of the Economy issued a draft transposition text on 20 April which will be presented to an upcoming Parliament and Senate vote. Although many countries have not transposed the relevant legislation as yet, expectations are that they will mostly do so in time for the 1 July deadline. However, the detailed implementation rules, those necessary to make the new aspects of UCITS IV work, which are generally handled in authorities’ circulars and rules may still be missing.

Transitioning and grandfathering periods

Despite the absence of full transposition legislation in the various countries, national regulators (or the draft texts) have already given an indication of how existing products will be treated, when management companies need to be ready for UCITS IV, and when the Key investor information documents (“KIID”) need to be prepared.

The following chart summarises these rules for some of the countries surveyed at the end of April:

| | LU | DE | FR | ES | UK | BE | IE |
|---|-------------|--|--------------------|-------------|-------------|-------------|---|
| Management company compliance with UCITS IV | 1 July 2011 | 1 July 2011 | 1 July 2011 | 1 July 2011 | 1 July 2011 | unclear | 1 July 2011 |
| Mandatory Issuance of KIID for existing funds | 1 July 2012 | 1 July 2011* (31/12/2012 for non-UCITS) | 1 July 2012* | 1 July 2012 | 1 July 2012 | 1 July 2012 | 1 July 2012 |
| Self-managed investment companies (“SMICs”) Compliance with UCITS IV | 1 July 2011 | 1 July 2011 (very few UCITS investment companies in Germany) | No SMICs in France | 1 July 2011 | 1 July 2011 | unclear | 1 July 2011 (for rules of conduct and risk management): 1 July 2013 (for the rest) |

*KIIDs will be required for UCITS and non-UCITS funds

¹ 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 UCITS.

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.

Commission Directive 2010/42/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.

Commission Regulation (EU) N°583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing KII or the prospectus in a durable medium other than paper or by means of a website.

Commission Regulation (EU) N°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.

Luxembourg, Germany and Ireland have issued guidance with regards to the timelines and the manner in which documentation needs to be submitted, in relation to the management companies' compliance with UCITS IV, the risk management process or fund products (beyond the obvious change of legal reference in the constitutive documentation: see e.g. for Luxembourg CSSF Circular 11/508 of 15 April, 2011, the Irish Central Bank's amendments to its notices and guidance notes, attached to its Consultation Paper CP50 and the German Bafin Letter to the German Fund Association dated 27 April, 2011). A "fast-track" procedure for the efficient adaptation of products is already foreseen in Luxembourg and Germany. Luxembourg, Ireland, France and Germany have also already considered the adaptation for money market funds in order to be compliant as from 1 July 2011 with ESMA's "Guidelines on a common

definition of European money market funds". Luxembourg is granting its money-market funds a period of 6 months to make their investments compliant with the new rules.

KIID review by national regulators

Given that the KIID will be a pre-contractual document produced under the responsibility of the management company for the funds it manages, the question arises whether the regulators of the different Member States will review and approve this document for their local funds either when they are transitioning from the simplified prospectus to the KIID or upon creation of a new fund and associated KIID.

Not surprisingly, the approach from one country to another is likely to diverge:

| | LU | DE | FR | ES | UK | BE | IE |
|---|-----|-----|---------|-----|----|---------|--------|
| Approval upon switching from simplified prospectus to KIID | No | Yes | No | Yes | No | Yes | No |
| Approval upon creation of KIID for a new product | Yes | Yes | Yes | Yes | No | Yes | Yes |
| Approval upon change to existing KIID (other than periodic update) | Yes | Yes | Yes (1) | Yes | No | Yes (1) | No (2) |

- (1) For substantial changes only
 (2) Spot checks will be done

Delegation of administrative tasks by the management company

UCITS IV provides for a management company 'passport', whereby funds and their management companies may be situated in different Member States. In the future it will be difficult for the fund State to prescribe - as some do today - that administrative tasks relating to that fund be performed locally. The concept of "central administration" or "head office" of a fund will probably need to be revisited in the situation where fund and management company are in different States!

UCITS IV also provides that the 'home' country of the management company will determine the rules on delegation of tasks, including administrative tasks. In the past, France and Belgium, alongside Luxembourg and Ireland, were against a delegation of administrative tasks outside of their jurisdiction (see Issue 17 of our UCITS IV Newsflash, dated April 2009). It would now appear that both countries are rethinking their rules on delegation and moving towards greater liberalisation in this regard

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