



## II-6.20: Germany implements the UCIT IV directive

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### MAIN INFORMATION

Germany adopted a law modifying its investment legal framework in application of the UCITS IV Directive (Directive 2009/65/EC) on December 15th, 2010. This law introduces three main changes, in taxation, in the framework of micro finance funds and in the supervisory regime for investments.

### CONTEXT AND SUMMARY

The European Directive on investment funds (undertakings for collective investment in transferable securities – known as UCITS IV) aims at increasing the efficiency of investment funds businesses as well as creating a competitive framework at the European level for such activities. The directive also includes, as part of the way to attain those objectives, a special care for increasing investor protection.

Germany, as well as other Member States, had until July 1st to implement this directive. The German investment law will thus be modified in accordance with the directive. The taxation system will have to be modified as a result of the main changes introduced by the new law, so that investment funds can be classified as foreign or domestic – to provide them with a clear taxation framework.

First of all, Germany has interestingly decided to enlarge the scope of the directive to all funds, even those not aimed at by the UCITS IV Directive, known as non-UCITS funds – such as open-ended real estate funds for example. This is justified by the Ministry of Finance by the similarity of the interests involved with any of these funds.

Second, the new law provides a lighter framework for micro finance funds, relieving them from the previously existing obligation to be established in Germany. Such a restriction to

the freedom to provide services and establishment is no longer justified in the eyes of the government, which therefore aims at increasing Germany's attractiveness for micro finance funds.

On top of that, the new law introduces several notable changes to the supervisory framework of investment funds.

The first constituent of the reform concerns investor protection: the law, accordingly with the Directive's provisions, obliges investment companies to provide investors with a two-page document containing easy-to-understand and clear information on the main characteristics of an investment fund. Also, Germany spontaneously decided to require that investment companies, in the case of mergers or master-feeder structures provide information to the investors using durable media – letters and emails. Thus, the investors will hold important information about investment strategies and costs of funds (in the case of mergers).

Also, the cooperation between supervisory authorities is going to get enhanced by the facilitation of automatic cross-border exchange of information between authorities on the marketing of fund units. Also, a better exchange of information and the harmonization of the supervisory standards are foreseen for domestic and cross-border fund mergers. This should enable a better fluidity of the market.

In order to improve the efficiency of the European market, the UCITS IV directive and the German law also facilitate cross-border fund management, and enable cross-border master-feeder structures – which are a form of pooling of assets.

Finally, the German law introduces a redress procedure for consumers, similar to the ombudsman procedure already existing for banks.

**Links with other documents in the same sector**

**BRIEF COMMENTARY**

The German implementation of the UCITS IV Directive therefore follows and applies the main objectives of the Directive: the improvement and facilitation of cross-border activities, especially for micro finance funds, and the harmonization and better communication between supervisory authorities throughout the European Union. Such a cooperation of the supervisory authorities helps rendering the market and its observers more fluid.

Germany went a step further in the clarification of the legal framework for investment funds by including both UCITS and non-UCITS funds, thus standardizing the legal requirements for any kind of investment funds, avoiding as such that a formal boundary separates funds which can be very similar in terms of the interests involved.

Also, the Directive, and its German application, clearly identifies information as the cornerstone for market fluidity, which is the very good exchanged on financial markets. Once consumers obtain sufficient level of information, their decision and market positioning on the investment fund products can become well-informed, and thus their choices more rational. Hence, the price of the market should reflect this informational fluidity, and obligating investment fund companies to inform their customer should break down informational dams. Investment fund companies will thus bear the price of their informational favored position, by being the issuers of information that consumers will no longer have to look for for themselves.