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Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic
AIFMD scope

Additional Legal Reference
Article 6 of Directive 2009/65/EC

Subject Matter
Scope of activities that a management company may carry out in a host Member State

Question

When a management company intends to pursue the activities for which it has been authorised in a host Member State, either directly or through a branch, may that management company passport in that host Member State only the administration or marketing functions referred to in Annex II of the UCITS Directive, without also passporting investment management functions?

ESMA Answer

13-06-2023

Original language

[ESMA34-43-392 UCITS Q&A, Section IV, Q&A 10]

No. The UCITS passporting regime is linked to the management of UCITS by UCITS management companies on a cross-border basis. Pursuant to Articles 5 and 6 of the UCITS Directive, UCITS management companies are authorised to manage collective investment undertakings and to perform the activities referred to in Annex II to the UCITS Directive. Pursuant to Article 17(2), point (b), and Article18(1), point (b), of the UCITS Directive, a UCITS management company intending to manage UCITS established in another Member State, either directly or through the creation of a branch in another Member State, shall communicate to the competent authorities of its home Member State a program of operations referring to the services it intends to provide. That requirement cannot be interpreted otherwise than referring to investment management foremost, whereas auxiliary services remain as such auxiliary and are to be performed only in relation to the management of a UCITS.

The answers provided by the European Commission clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of

the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.