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Additional Information

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

Topic
Depositaries

Subject Matter
Supervision of depositary functions in case of branches in other Member States

Question
Where depositary functions are performed by a branch established in the home Member State of a UCITS other than the home Member State of the depositary's head office, who is responsible for supervising the activities of the branch relating to depositary functions? Is it the competent authority of the Member State where the depositary's head office is

established or the competent authority of the Member State where the branch is established?

ESMA Answer

01-06-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 10, Q&A 5]

The UCITS Directive, the CRD and the MiFID II do not grant any passport for depositary activities in relation to UCITS. Hence, branches located in the home Member State of the UCITS other than the home Member State of the depositary's head office may also be subject to local authorisation in order to perform depositaries activities in relation to UCITS. Therefore, the competent authority of the Member State where the branch is established should be responsible for supervising the activities of the branch with regard to depositary functions in relation to UCITS. This includes the supervision of the allocation of depositary functions from the branch to its head office or vice versa to avoid any possible circumvention of the establishment requirement under Article 23(1) of the UCITS Directive.