Guidance Notice (2013)

on marketing of units of EU UCITS in the Federal Republic of Germany pursuant to section 310 of the Investment Code (Kapitalanlagegesetzbuch – KAGB)

„Incoming UCITS-notification“
„Incoming UCITS-update“

I. Member state: Germany

II. Last updated: 12 April 2019

III. Notification of marketing

A notification letter in accordance with the model set out in Annex I to Commission Regulation (EU) No 584/2010 of 1 July 2010 must be used for the notification. The notification must contain the documents required pursuant to section 310 (1) and (2) of the Investment Code (Kapitalanlagegesetzbuch – KAGB). For information on the requirements pertaining to these documents, see section IV below. The notification shall be filed with the competent authorities of the home member state (the term “home member state” shall refer to both Member States of the European Union and signatory states to the Agreement on the European Economic Area), which will then forward it to BaFin by e-mail.

Guidelines for completing the notification letter:

Language: The notification letter and the attestation certifying compliance with the requirements of Directive 2009/65/EC must be submitted in a language customary in the sphere of international finance. BaFin has not made any agreement as referred to in section 310 (2) sentence 4 of the Investment Code or Article 93 (4) of Directive 2009/65/EC.

In Part A and Part C of the model notification letter, no special provisions specific to Germany are required to be observed. For Part B, the following shall apply:

1. Arrangements for marketing of units of EU UCITS
Information as to the manner in which units of EU UCITS are to be marketed in the Federal Republic of Germany. Information on all intended marketing channels must be provided.

The bodies responsible for marketing must be specified in the notification letter.

a) UCITS management company
Marketing will be carried out by the management company of the EU UCITS which is the subject of the notification referred to in section 310 of the Investment Code.


c) credit institutions

Marketing in the Federal Republic of Germany will be carried out by credit institutions within the meaning of section 1 (1) of the Banking Act (Kreditwesengesetz – KWG).

d) authorised investment firms or advisers

Marketing in the Federal Republic of Germany will be carried out by authorised financial services institutions with a corresponding authorisation under section 1 (1a) of the Banking Act.

e) other bodies

Marketing in the Federal Republic of Germany will be carried out by other bodies.

Other bodies shall also include brokers not authorised under the Banking Act. No authorisation under the Banking Act will be required in those cases where the requirements of any exemption codified in section 2 (6) sentence 1 no. 8 of the Banking Act are met. Such requirements are presented in „BaFin Merkblatt – Hinweise zur Bereichsausnahme für die Vermittlung von Investmentvermögen und Vermögensanlagen“ (BaFin Guidance Notice – Information on the exemption for the brokering of investment units) of November 2017 (available at: https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Merkblatt/mb_150416_ausnahmeinvestmentfondsvermittlung.html; only available in German). If an enterprise’s business meets the requirements of an exemption, a commercial licence under section 34f (1) of the Industrial Code (Gewerbeordnung – GewO) shall suffice.


a) Information on paying agent (if applicable):

Provide name, legal form, registered office and address of all German credit institutions or German branches of foreign-domiciled credit institutions via which payments to investors will be remitted and the redemption and, where applicable, exchange of units by the UCITS management company will be settled.

In accordance with section 309 (1) sentence 2 of the Investment Code, a paying agent must only be specified in those cases where at least some of the units of EU UCITS are issued as printed individual certificates. If no paying agent is specified for this reason, it should be noted at this point that no units will be issued as printed individual certificates in order to avoid follow-up questions.
b) Information on any other persons from whom investors may obtain information and documents (information agent):

Name and address of the agent(s) within the Federal Republic of Germany (information agent) from whom investors may obtain information and documents.

In order to avoid follow-up questions, it is requested that all information agents within the Federal Republic of Germany be listed; where the paying agent is also acting as information agent, it should be listed here as well.

c) Manner in which the issue, sale, redemption or repurchase price of units of EU UCITS will be made public:

Specification of an appropriate publication medium to inform investors in Germany in which the issue, sale, redemption or repurchase prices of the units or shares will be published. For more information on appropriate publication media, see section IV 3.

3. Other information to be provided to the competent authorities of the host Member State under Article 91 (3) of Directive 2009/65/EC:

a) Proof of payment of the fee:
For processing the notification, BaFin charges a fee in accordance with section 2 (1) of the Regulation on the Imposition of Fees and Allocation of Costs Pursuant to the FinDAG (Erhebung von Gebühren und die Umlegung von Kosten nach dem Finanzdienstleistungs-aufsichtsgesetz – FinDAGKostV) and no. 4.1.7.1.2 of its fee schedule amounting to €380 (in the case of umbrella funds, each investment compartment is subject to the duty to pay fees).

The fee is to be remitted to the following account:

Recipient: Bundeskasse Trier
Deutsche Bundesbank, Filiale Saarbrücken

IBAN: DE 81 5900 0000 0059 0010 20

BIC: MARK DEF 1590

Reference:

"BaFin,... (name of EU UCITS to which the notification relates), AnzGeb."

In each case, the full name of the EU UCITS is to be provided as far as technically possible, e.g. to the extent the number of characters provided for the payment reference on the transfer form allows. When remitting payment, please ensure that the fee is paid in full and that no bank or other charges are deducted.
Proof of the transfer of the fee, e.g. a scan of the transfer form, is to be attached to the notification as proof of payment.

b) Other information: No other information need be provided in this section.

IV. Requirements for marketing:

1. Statutory provisions
   A non-exhaustive list of the provisions to be complied with when marketing units of EU UCITS, which are not covered by Directive 2009/65/EC, is contained in the Annex.

2. Requirements for paying and information agent
   a) Paying agent: A German credit institution or the German branch of a foreign-domiciled credit institution as paying agent must only be specified in those cases where at least some of the units of EU UCITS were issued as printed individual certificates. If no such certificates were issued, a paying agent need not be specified. In such cases, BaFin must be informed that no printed individual certificates were issued. Furthermore, the UCITS management company must ensure that it is able to remit payments to German investors and redeem the units in the Federal Republic of Germany. Information on this – in particular details on how investors can request redemption or conversion of units and when they are entitled to receive payments – must be included in the prospectus specific to Germany which is used for marketing within Germany.

   b) Information agent: An information agent domiciled in Germany must be specified. Where the specification of a paying agent is not required pursuant to section 309 (1) of the Investment Code, this shall not affect the obligation to specify an information agent domiciled in Germany.

3. Publication of information to investors:
   a) Pursuant to section 298 (1) sentence 1 of the Investment Code, the following documents and information must be published in the Federal Republic of Germany in an appropriate information medium:

      o the key investor information in German (to be made available on the website of the UCITS management company pursuant to section 301 of the Investment Code);

   as well as

      o the annual report for the end of each financial year;
      o the semi-annual report and, to the extent issued, quarterly reports;
o the prospectus;
o the fund rules or articles of association;
o the issue and redemption prices of the units or shares; and
o other documents and information which are required to be
published in the home member state of the EU UCITS,
in German or in a language that is customary in the sphere of international finance.

b) Appropriate publication media for other documents and information are:

- newspapers published in Germany;
- a durable medium (section 167 of the Investment Code);
- the Federal Gazette (Bundesanzeiger);
- other electronic information media aimed at investors, such as the
  website of the UCITS management company;
- for documents (e.g., relevant contracts and legislation) available
  for investors in the home member state solely for inspection at an
  office specified in the sales documentation, the information agent
  as well.

c) Appropriate publication media for the issue and redemption prices are:

- newspapers published in Germany;
- a durable medium (section 167 of the Investment Code);
- the Federal Gazette;
- other electronic information media aimed at investors, such as
  the website of the UCITS management company or fund platforms.

d) In the following cases, the information must be provided to investors in Germany by means
of a durable medium in accordance with section 167 of the Investment Code in German or
in a language that is customary in the sphere of international finance (section 298 (2) of the
Investment Code):

- suspension of the redemption of the units or shares of an EU UCITS (see section VI);
- termination of an EU UCITS’ management or the winding-up of an EU UCITS;
- amendments to the fund rules which are inconsistent with existing investment
  principles, affect material investor rights, or relate to remuneration or the
  reimbursement of expenses that may be taken out of the EU UCITS’ assets,
  including the reasons for the amendments and the rights of investors, the
  information must be communicated in an easily understandable form and manner
  and must indicate where and how further information may be obtained;
- the merger of EU UCITS in the form of information on the proposed merger which
  must be drawn up in accordance with Article 43 of Directive 2009/65/EC;
- the conversion of an EU UCITS into a feeder fund or any change to a master fund
  in the form of information which must be drawn up in accordance with Article 64
  of Directive 2009/65/EC.
The information provided by means of a durable medium as referred to in section 298 (2) of the Investment Code is required in addition to publication in another medium. If the UCITS management company has already selected a durable medium as its standard information medium, publication in another information medium, which is to be specified in the prospectus, will also be required in addition to providing information by means of a durable medium.

4. **Requirements for sales documentation**

   a) **The key investor information** must be translated into German. No translation will be required if the key investor information has already been submitted in German for investors in the home member state of the EU UCITS.

   b) **All other documents and information** must, to the extent they are not already in German, be translated into German or published in a language that is customary in the sphere of international finance. If the documents and information are published both in German and in a language that is customary in the sphere of international finance, the German text shall be controlling in accordance with section 303 (2) of the Investment Code. Any changes in the language of the sales documentation shall constitute an amendment subject to notification referred to in section 310 (4) of the Investment Code (see section V).

   c) **The prospectus** intended for marketing in the Federal Republic of Germany must contain a page-numbered information section for investors in Germany that is an integral part of the prospectus and is listed in the table of contents. Adding a loose insert or merely attaching a separate sheet containing such additional information is not sufficient. Such information must be included in the same language as that of the prospectus intended for marketing in the Federal Republic of Germany, i.e., in German, if the prospectus was translated into German or was originally written in German, otherwise in the language that is customary in the sphere of international finance in which it was written.

   d) The prospectus must contain the following information for investors in the Federal Republic of Germany (section 309 (3) of the Investment Code):

      - Where a paying agent is to be specified (see section 309 (1) of the Investment Code): name and address of the **paying agent(s)** in the Federal Republic of Germany; in such case

         o information to the effect that applications for the redemption and, in the case of an umbrella fund, also the exchange of units (which may be marketed in the Federal Republic of Germany) may be submitted to the German paying agent(s); and

         o information to the effect that all payments to investors (redemption proceeds and disbursements or other payments) may be remitted via the German paying agent(s)

      is also required.
If no paying agent is specified, the information required under IV 2 a) is to be included here.

- Name and address of the information agent(s) in the Federal Republic of Germany indicating that the documents to be specified in the following are available at such information agent(s) free of charge and how they may be obtained:
  
  o the prospectus;
  
  o the key investor information;
  
  o the investment company’s articles of association or the fund rules of the EU UCITS;
  
  o the annual and semi-annual reports, as well as quarterly reports if applicable;

and

a reference to the effect that the following information is available for inspection at or may be obtained free of charge from the information agent:

  o the issue and redemption prices (and if applicable the exchange prices);
  
  o other information and documents which are required to be published in the home member state of the EU UCITS (e.g. the relevant contracts and legislation).

The sales documentation, other documents and other information in the prospectus must be listed individually.

Any additional information (e.g. regarding fees for the paying agent) that is not contained in the original prospectus should not be included here.

e) The fund rules or the articles of association must be annexed to the prospectus unless the prospectus contains a notice as to where these may be obtained free of charge within the jurisdiction of the Investment Code (see section 297 (3) of the Investment Code).

f) Specification of an appropriate publication medium to inform investors in Germany in which the issue and redemption prices (and where applicable the exchange prices as well) of the units as well as other documents and information which are required to be published in the home country of the EU UCITS are published. See section IV 3 as to what is considered to be appropriate publication media and the special requirements for publication under section 298 (2) of the Investment Code.

g) Any (other) special provisions in the case of umbrella schemes (see section IV 5).
5. **Special provisions in the case of umbrella schemes:**

In the case of umbrella schemes having at least one investment compartment whose units may be marketed within the jurisdiction of the Investment Code and other investment compartments under the same umbrella for which no notification pursuant to section 310 of the Investment Code has been filed, the sales documentation shall include a prominent statement in prominent print indicating that no notification has been filed for the other investment compartments and that the units in such other investment compartments may not be marketed to investors within the jurisdiction of the Investment Code (section 293 (1) no. 3 and section 309 (3) of the Investment Code); such other investment compartments are to be identified by name. For the specific sales documentation, this means:

a) **prospectus:** the statements referred to in section 293 (1) no. 3 of the Investment Code must be included in the information specific to Germany and emphasised in boldface print;

b) **key investor information:** no changes. The statements referred to in section 293 (1) no. 3 of the Investment Code are not to be included in the key investor information;

c) **articles of association/fund rules:** the statements referred to in section 293 (1) no. 3 of the Investment Code are required to be included in the articles of association or the fund rules only where these are not part of the prospectus and where they contain references to investment compartments not authorised for marketing beyond merely mentioning their names;

d) **annual and semi-annual reports:** the statements referred to in section 293 (1) no. 3 of the Investment Code are required to be included in the annual and semi-annual reports only where they contain references to investment compartments not authorised for marketing beyond merely mentioning their names. If an investment compartment becomes ineligible for marketing after the annual and/or semi-annual report has been filed, the reports already filed need not be updated to include the statements referred to in section 293 (1) no. 3 of the Investment Code.

The statements must be included in the documents intended for investors in Germany regardless of whether these are used in German translation or in another language that is customary in the sphere of international finance.

V. **Updating documents and amendment notices**

BaFin must be informed of any amendments to the sales documentation without undue (i.e., culpable) delay. Amendments to certain information in the notification letter must be notified to BaFin prior to their implementation.

When submitting amended documents, the type of amendment must be indicated. This applies, in particular, to changes in addresses and names, a change in a company's name and/or legal form as well as mergers and liquidations.
Amendment notices may be submitted in German or in a language that is customary in the sphere of international finance.

1. Updating documents in accordance with section 310 (4) of the Investment Code

Notifications of amendments to the sales documentation are to be sent to the following e-mail address:

UCITS-Update@bafin.de

Please observe the instructions for filing by e-mail (section V 3) as well as the following points:

a) The notification must indicate where electronic versions of the amended documents are available. The amended documents must be included or the amendments made must be explained.

b) The notification must contain a statement to the effect that the amendments being notified have been approved or acknowledged by or notified to the competent authorities of the home member state of the EU UCITS in accordance with applicable rules and regulations in that jurisdiction. Such statement may in the alternative also be included directly on the enclosed sales documentation. In such case, the name and position of the party issuing the statement must be clearly visible.

c) If the amendment to the sales documentation is based on a change in the information regarding the arrangements made for marketing communicated in the notification letter or a change regarding unit classes to be marketed (see section V 2 below), the notification referred to in section 310 (4) of the Investment Code must make reference to the preceding notification referred to in section 310 (5) of the Investment Code.

2. Changes in the information regarding the arrangements made for marketing communicated in the notification letter or a change regarding unit classes to be marketed in accordance with section 310 (5) of the Investment Code

The notification referred to in section 310 (5) of the Investment Code must be filed before the changes are implemented. If the changes notified in accordance with section 310 (5) of the Investment Code require that the sales documentation be amended, BaFin must be informed of any such amendment to the sales documentation in accordance with section 310 (4) of the Investment Code (see section V 1 above).

The notification referred to in section 310 (5) of the Investment Code must be submitted in writing, including by e-mail or regular mail, pursuant to section 126b of the Civil Code (Bürgerliches Gesetzbuch – BGB). Notifications filed by e-mail should also be sent to the following e-mail address:

UCITS-Update@bafin.de

Please observe the instructions for filing by e-mail (section V 3).
3. Instructions for filing by e-mail

a) The size of the e-mail may not exceed 20 MB including all attachments; attachments may be included in a ZIP file. If necessary, the information should be broken down and sent in several separate e-mails, in which case this should be noted in the subject line (see c)).

b) The following file types may be used for attachments: pdf, doc and docx.

c) The subject line should include

- the 8-digit BaFin ID number\(^1\) (70XXXXXX),
- the name of the UCITS management company, as well as
- a serial number in those cases where the notification is sent using several separate e-mails (see a) above).

d) The full name of the sender and his or her position at the UCITS management company must be clearly indicated in the notification letter.

e) If the notification is filed by an authorised representative, the information in d) shall apply mutatis mutandis. The notification shall include a power of attorney unless reference is being made to a prior submitted power of attorney. In particular, the power of attorney must state whether and, if applicable, to what extent the authorised representative, whose name and function must be indicated, is empowered to make declarations on behalf of the EU UCITS. The power of attorney is to be signed by the UCITS management company's directors authorised for marketing, indicating the names and functions of the signatories.

In the case of collective submission of several key investor information sheets, sorting in alphabetical order by investment compartment/unit class is requested for the sake of clarity.

VI. Discontinuation of marketing in Germany

The discontinuation of marketing for EU UCITS which are not investment compartments of any EU UCITS is governed by section 311 (5) of the Investment Code. The arrangements for discontinuing marketing in the case of investment compartments will depend on whether, after marketing has been discontinued, any investment compartments of the EU UCITS are still authorised for marketing in Germany (section 311 (6) of the Investment Code) or not (section 311 (5) of the Investment Code). When an EU UCITS or an investment compartment of an EU UCITS is liquidated, it is not necessary for a separate notification under section 311 (5) or (6) of the Investment Code to be submitted in addition to the amendment notice under section 310 (4) of the Investment Code (see section V above), as these cases inherently involve the discontinuation of marketing.

\(^1\) The BaFin ID number, including for EU UCITS authorised for marketing prior to 1 July 2011, will be included in the Investment Funds Database published on BaFin's website (www.bafin.de).
1. **Discontinuation of marketing for an individual EU UCITS or all investment compartments of an EU UCITS, section 311 (5) of the Investment Code**

Proof of publication of the discontinuation of marketing pursuant to section 311 (5) of the Investment Code must be sent to the following e-mail address:

UCITS-Update@bafin.de

Please observe the instructions for filing by e-mail (section V 3).

2. **Discontinuation of marketing for individual investment compartments of an EU UCITS, section 311 (6) of the Investment Code (deregistration)**

Discontinuation of marketing of individual investment compartments of an EU UCITS which are authorised for marketing is permitted subject to the requirements set out in section 311 (6) of the Investment Code. The sales documentation (not including the key investor information) must include statements as referred to in section 293 (1) no. 3 and section 309 (3) of the Investment Code to the effect that the relevant investment compartment is not authorised for marketing (see section IV 5 above) and BaFin must be notified in accordance with section 310 (4) sentence 1 of the Investment Code. Proof of publication of the discontinuation of marketing pursuant to section 311 (6) sentence 4 of the Investment Code must also be submitted to BaFin.

BaFin will only effect deregistration after the required documents, proof of publication in the Federal Gazette and proof of payment of the deregistration fee pursuant to section 2 (1) of the Regulation on the Imposition of Fees and Allocation of Costs Pursuant to the FinDAG and no. 4.1.7.1.4 of its schedule of fees amounting to €280 per investment compartment have been submitted.

The fee is to be remitted to the following account (each investment compartment is subject to the duty to pay fees):

Recipient: Bundeskasse Trier
Deutsche Bundesbank, Filiale Saarbrücken

IBAN: DE 81 5900 0000 0059 0010 20

BIC: MARK DEF 1590

Reference:

"BaFin,... (name of umbrella fund to which the deregistration relates), DeRegGeb."

In each case, the full name of the undertaking is to be provided as far as technically possible, e.g. to the extent the number of characters provided for the payment reference on the transfer form allows. When remitting payment, please ensure that the fee is paid in full and that no bank or other charges are deducted.
Proof of the transfer of the fee, e.g. a scan of the transfer form, is to be attached to the notification as proof of payment.

The amended documents or the description of the amendments, the proof of publication of the discontinuation of marketing and proof of payment of the deregistration fee should be sent to the following e-mail address:

UCITS-Update@bafin.de

Please observe the instructions for filing by e-mail (section V 3).

VII. Transitional provisions (section 355 (4) of the Investment Code)

UCITS management companies which upon entry into force of the Investment Code (Kapitalanlagegesetzbuch) on 22 July 2013 have already submitted, via the competent authorities in the home member state of the EU UCITS, a notification under section 132 of the Investment Act (Investmentgesetz) in the version applicable up to 21 July 2013 or under section 15c (1) of the Foreign Investment Act (Auslandsinvestmentgesetz) in the version applicable up to 31 December 2003 and are authorised for marketing to the public are not required to submit any new notification pursuant to section 310 of the Investment Code; any marketing authorisation already obtained shall continue in force. UCITS management companies which, after 21 July 2013, perform activities or arrange for such activities to be performed in relation to their EU UCITS that did not qualify as public marketing under the Investment Act in the version applicable up to 21 July 2013 but qualify as marketing under the Investment Code are required to submit, via the competent authorities in the home member state of the EU UCITS, a notification pursuant to section 310 of the Investment Code by 21 July 2014.