

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:** 1 January 2023
- III. Notification of marketing**

A notification letter based on the template “Notification letter on the basis of section 310 of the KAGB”, which BaFin has made available online, is to be used for the notification. 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.

The following special provisions specific to Germany and supplementary requirements based on Directive (EU) 2019/1160 are to be observed for the purpose of processing the notification letter, particularly the information on the facilities for performing the tasks referred to in Article 92(1) and the details necessary for invoicing in accordance with Article 93(1) of Directive 2009/65/EC as amended by Directive (EU) 2019/1160 (section III. 2. a) and b)):

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.

b) any other management company authorised in accordance with Directive 2009/65/EC, Directive 2011/61/EU or the Investment Code

Marketing in the Federal Republic of Germany will be carried out by another management company authorised in accordance with Directive 2009/65/EC, Directive 2011/61/EU or 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_ausnahme_investmentfondsvermittlung.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.

2. Facilities to be made available to perform the tasks referred to in Article 92(1) of Directive 2009/65/EC as amended by Directive (EU) 2019/1160

a) Information on the facilities:

The company name, legal form, registered office, address, e-mail address and telephone number of the facilities must be provided, as well as details of the task they perform.

To avoid queries, please list all facilities and the task(s) they perform under "Part A" of the notification letter.

- b) In accordance with Article 93(1) of Directive 2009/65/EC as amended by Directive (EU) 2019/1160, the notification letter shall also include details of a contact point for invoicing or for communicating any applicable regulatory fees or charges. The name, address, e-mail address and telephone number of one contact person per fund must be provided.

3. Proof of payment of the fee:

For processing the notification, BaFin charges a fee amounting to **€322** (in the case of umbrella funds, each investment compartment is subject to the duty to pay fees).

An overview of the fees and charges levied by BaFin in relation to cross-border activities and an explanation of the legal basis can be found on the BaFin website.¹

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

¹ <https://www.bafin.de/dok/16411256>

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.

IV. Requirements for marketing:

1. Statutory provisions

In accordance with Article 5(1) of Regulation (EU) 2019/1156, a non-exhaustive list of all applicable national laws, regulations and administrative provisions governing marketing requirements, which must be complied with when marketing units in EU UCITS, is published on BaFin's website

(https://www.bafin.de/SharedDocs/Downloads/EN/Merkblatt/WA/dl_210802_merkbl_Regulation_EU_2019_11556_wa_en.html).

2. Requirements for the facilities to be made available to perform the tasks referred to in Article 92(1) of Directive 2009/65/EC as amended by Directive (EU) 2019/1160

If a UCITS management company intends to market units in a UCITS, it must ensure that the following requirements are met:

Article 92(3) of Directive 2009/65/EC as amended by Directive (EU) 2019/1160

The tasks referred to in Article 92(1) of Directive 2009/65/EC as amended by Directive (EU) 2019/1160 may also be performed by the UCITS management company. The UCITS management company shall ensure that the nominated facility/facilities is/are capable of performing the tasks referred to in Article 92(1) in the German language and electronically. It is not essential for the facility/facilities to have a physical presence.

Article 92(1) nos. 1 and 2 of Directive 2009/65/EC as amended by Directive (EU) 2019/1160:

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.

Article 92(1) no. 3 of Directive 2009/65/EC as amended by Directive (EU) 2019/1160:

The UCITS management company must ensure that investors are assured access to procedures and arrangements for exercising their rights in accordance with Article 15 of Directive 2009/65/EC (investor complaints).

Article 92(1) no. 4 of Directive 2009/65/EC as amended by Directive (EU) 2019/1160:
The UCITS management company must make the sales documentation referred to in section 297 (4) sentence 1 of the Investment Code available to investors interested in purchasing a unit or a share. It must do so in a durable medium or website, or make a hard copy thereof available free of charge at any time on request.

Article 92(1) no. 5 of Directive 2009/65/EC as amended by Directive (EU) 2019/1160:
The UCITS management company must provide investors with information relevant to the tasks that the facilities perform. It must do so in a durable medium.

Article 92(1) no. 6 of Directive 2009/65/EC as amended by Directive (EU) 2019/1160:
The facility/facilities act(s) as a contact point for communicating with BaFin.

3. Publication of information to investors in accordance with section 298 (1) of the Investment Code:

- a) Pursuant to section 298 (1) of the Investment Code, the following documents and information must be published in the Federal Republic of Germany in an appropriate information medium:
- the key information documents in accordance with Regulation (EU) No 1286/2014 in German (to be made available on the website of the UCITS management company pursuant to section 301 of the Investment Code);

Please note: the transitional period, during which investment funds that are distributed to retail investors and semi-professional investors and that draw up key investor information are not required to draw up key information documents in accordance with Regulation (EU) No 1286/2014, ends on 1 January 2023. If fund units are distributed to private investors or semi-professional investors, from 1 January 2023 it is therefore necessary that key information documents are drawn up in accordance with Regulation (EU) No 1286/2014. The previous key investor information no longer needs to be drawn up.

as well as

- the annual report for the end of each financial year;
- the semi-annual report and, to the extent issued, quarterly reports;

- the prospectus;
- the fund rules or articles of association;
- the issue and redemption prices of the units or shares; and
- 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, also the facility/facilities that perform(s) the tasks referred to in Article 92 of Directive 2009/65/EC as amended by Directive (EU) 2019/1160.

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 language and generally in electronic form (section 298 (2) of the Investment Code):

- aa) suspension of the redemption of the units or shares of an EU UCITS (see section VI.);
- bb) termination of an EU UCITS' management or the winding-up of an EU UCITS;
- cc) amendments to the fund rules which are inconsistent with existing investment principles, amendments to material investor rights to the detriment of investors, or amendments to the detriment of investors relating to remuneration or the reimbursement of expenses that may

- be taken out of the investment fund, 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;
- dd) 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;
- ee) 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 information documents in accordance with Regulation (EU) No 1286/2014 must be translated into German. No translation will be required if the key information documents have 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 of the Investment Code):

- Name or company name and address of the facility/facilities; in addition,
 - o Information regarding the procedures and arrangements established in accordance with section 306a (1) and (2)

is required.

- Name or company name and address of the facility/facilities, indicating that the documents to be specified in the following are available from it/them free of charge and how they may be obtained:
 - o the prospectus;
 - o the key information document;
 - 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 may be obtained free of charge from the facility/facilities:

- 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.

- Information regarding the procedures and arrangements established to allow the exercise of and to safeguard investor rights in accordance with Article 15 of Directive 2009/65/EC (investor complaints).

Any additional information (e.g. regarding fees for the facility/facilities) 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 EU UCITS 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 of the Investment Code and section 309 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 information document: no changes. The statements referred to in section 293 (1) no. 3 of the Investment Code are not to be included in the key information document;

- 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 number² (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 information documents, sorting in alphabetical order by investment compartment/unit class is requested for the sake of clarity.

VI. De-notification of marketing arrangements in Germany

The de-notification of arrangements made for marketing EU UCITS which are not investment compartments of any EU UCITS is governed by section 295a of the Investment Code and Article 93a of Directive 2009/65/EC as amended by Directive (EU) 2019/1160. The arrangements for de-notifying marketing arrangements in the case of investment compartments will depend on whether or not, after de-notification, any investment compartments of the EU UCITS are still authorised for marketing in Germany (section 295a (5) sentence 3 of the Investment Code).

² 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).



Bundesanstalt für
Finanzdienstleistungsaufsicht

The arrangements made for marketing investment funds/investment compartments may be de-notified as of a particular date (date of de-notification) on the following conditions:

The competent authority of the home member state of the EU UCITS must notify BaFin of the de-notification of marketing arrangements in accordance with section 295a (5) sentence 1 of the Investment Code, or in the case of investment compartments, in accordance with section 295a (5) sentence 3 of the Investment Code. The notification shall include information relating to the conditions set forth in section 295a (1) sentence 3 nos. 1 to 3 of the Investment Code. The information referred to in section 295a (1) sentence 3 nos. 1 and 2 of the Investment Code must be provided to investors in the German language and must clearly describe the consequences for investors if they do not accept the offer to redeem or repurchase their units or shares.

In order to demonstrate fulfilment of the conditions under section 295a (1) sentence 3 no. 1 of the Investment Code, the notification must state how the blanket offer was publicly available in the German language for at least 30 working days, and was addressed, directly or through financial intermediaries, individually to investors whose identity was known. "Making publicly available" includes publishing the blanket offer in any medium referred to in section IV. 3. b).

In order to demonstrate fulfilment of the conditions under section 295a (1) sentence 3 no. 2, the notification must state the publicly available medium through which the intention to de-notify the marketing arrangements was made public in the German language (including electronic means), which is customary for marketing UCITS and suitable for a typical UCITS investor.

Suitable means for publishing the intention to de-notify marketing arrangements include publishing in any medium referred to in section IV. 3. b).

In order to demonstrate fulfilment of the conditions under section 295a (1) sentence 3 no. 3, the notification must state that any contractual arrangements with financial intermediaries or delegates were modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the relevant units or shares.

When an EU UCITS or an investment compartment of an EU UCITS is liquidated, it is not necessary to file a separate notification under section Article 93a (2) of Directive 2009/65/EC as amended by Directive (EU) 2019/1160 with BaFin in addition to the amendment notice under section 310 (4) of the Investment Code (see section V. above), as these cases inherently involve the de-notification of marketing arrangements.

De-notification of the arrangements made for marketing individual investment compartments of an EU UCITS (de-registration)

The de-notification of arrangements made for marketing individual investment compartments of an EU UCITS which are authorised for marketing is permitted, subject to the conditions set out in section 295a (1) and (5) sentences 3 to 6 of the Investment Code. The sales documentation (not including the key information document) must include statements as referred to in section 293 (1) no. 3 and section 309 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.

BaFin charges a fee for processing the de-notification amounting to **€637** per investment compartment.

An overview of the fees and charges levied by BaFin in relation to cross-border activities and an explanation of the legal basis can be found on the BaFin website.³

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 and proof of payment of the deregistration fee should be sent to the following e-mail address:

³ <https://www.bafin.de/dok/16411256>

UCITS-Update@bafin.de

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

Duties to provide information following the de-notification of cross-border marketing arrangements in Germany

If the arrangements for marketing units or shares of an EU UCITS in Germany are de-notified, the UCITS management company shall, in accordance with section 295b (1) of the Investment Code, provide the remaining German investors with the latest version of the documents and information referred to in section 298 (1) sentence 1 and the key information documents in accordance with Regulation (EU) No 1286/2014 referred to in section 298 (1) sentence 2 from the date of the de-notification. The information and documents referred to in section 298 (1) of the Investment Code need not be published. In cases where section 298 (2) of the Investment Code applies, the information may be provided to the remaining German investors via any electronic or other distance communication means. It is not necessary for the information to be provided in a durable medium, except for the issue and redemption prices referred to in section 298 (1) sentence 1 no. 5.

The duties to provide information continue to apply for as long as there remain German investors in the relevant investment fund or, if applicable, investment compartment.