

## Cross border marketing of Czech UCITS or EU UCITS

Regulation	<ul style="list-style-type: none"> <li>• Act No. 240/2013 Coll., on Management Companies and Investment Funds, as amended (the <b>AMCIF</b>)</li> <li>• Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, as amended (the <b>UCITS Directive</b>)</li> <li>• Commission regulation (EU) No. 584/2010 as regards the form and content of the standard notification letter and UCITS attestation (the <b>regulation on notifications</b>)</li> </ul>
Key provisions	<ul style="list-style-type: none"> <li>• Articles 11, 242, 301 to 307, 461, 597(d), 638 of the AMCIF</li> </ul>

Question	<b>Under which conditions is it possible to market units of an EU UCITS in the Czech Republic or of a Czech UCITS in another Member State?</b>
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Answer

### I. Introduction

In this Opinion, the Czech National Bank summarises the conditions for the marketing of units of a Czech UCITS in another Member State and the marketing of units of an EU UCITS in the Czech Republic pursuant to the AMCIF<sup>1</sup> and specifies its essential technical aspects.<sup>2</sup>

#### *Definitions of some terms*

##### 1. For the purposes of this Opinion

- a. “units” shall also mean dematerialised securities, or another form of shares of an EU UCITS (“units” in the sense of the UCITS Directive),
- b. “point of contact facility” (or “kontaktní místo” in Czech language) shall mean a financial institution, which ensures, in connection with requirements of Article 92 of the UCITS Directive, the repurchases or redemptions of units, provision of payments (e.g. dividends) to unitholders in the territory of the Czech Republic, and which makes information on an EU UCITS notified in the Czech Republic available,
- c. “notification” shall mean the notification, and possibly also the notification procedure, of an intention to market units of an EU UCITS in the Czech Republic, or of a Czech UCITS in another Member State,
- d. “Notification letter” shall mean a standardised form pursuant to Annex I of the regulation on notifications,
- e. “attestation” shall mean an attestation pursuant to Annex II of the regulation on notifications,
- f. “UCITS” shall mean a domestic or EU UCITS,
- g. “EU UCITS” shall mean an investment fund from another Member State meeting the UCITS Directive requirements.

### II. Distribution in the Czech Republic

2. Intermediation of investment in a EU UCITS is the core investment service pursuant to Article 4(2)(a) of Act No. 256/2004 Coll., on Capital Market

<sup>1</sup> Under the AMCIF and this Opinion, the “marketing of units” shall mean an offer of securities or offer of different investment opportunities.

<sup>2</sup> This answer refers to the repealed Official Information of the Czech National Bank regarding the notification of UCITS and regarding the conditions for the distribution of EU UCITS in the Czech Republic, concerning the previous regulation in Act No. 189/2004 Coll., on Collective Investment, as amended.

Undertakings, as amended (hereinafter referred to as the “Capital Market Undertakings Act”), which can only be performed as business activity by an entity authorised to provide such investment services (the receipt and transmission of orders in relation to investment instruments) in the territory of Czech Republic, or authorised to provide the core investment service of underwriting or placing of issues of investment instruments (Article 4(2)(h) or (i) of the Capital Market Undertakings Act), or depending on the scope of its authorisation, an investment company, a comparable foreign entity from another Member State or an entity with an authorisation pursuant to Article 481 of the AMCIF (Article 11(1)e of the AMCIF). The point of contact facility may (but not need to) be a distributor as well (Article 306 of the AMCIF).

3. Distribution may also be provided by the EU UCITS itself (its “manager”<sup>3</sup>). Establishment of an organisational unit (a branch) or a notification of the intention to provide services in the Czech Republic is not required in this case (Articles 16 and 91(2) of the UCITS Directive)<sup>4</sup>.
4. Public marketing of an EU UCITS in the Czech Republic is allowed only if the Czech National Bank was duly notified (see points 19 to 23 below) and if such EU UCITS ensured the fulfilment of the conditions for marketing to the public, i.e. the provision of information to investors, and the existence of a point of contact facility (Articles 305 to 307 of the AMCIF).<sup>5</sup> A distributor different from the EU UCITS (or its manager) may not make notification by itself and on its own behalf.
5. When marketing the units of an EU UCITS to the public by a distributor that is different from the EU UCITS (or its manager), it is necessary to follow the relevant rules of the Capital Market Undertakings Act. All distributors then have to comply with the rules governing promotion (Article 242 of the AMCIF) and at the same time the Consumer Protection Act, the Advertising Act, etc.

### III. Notification of an EU UCITS

#### *When notification is necessary*

6. Notification is required in the Czech Republic in the event of an intention to introduce<sup>6</sup> units of an EU UCITS to the public (Article 305 and following of the AMCIF). Notification is also required in the event of a renewed introduction of units of an EU UCITS, which previously terminated the marketing of its units within the territory of the Czech Republic and was deleted from the list of EU UCITS of whose units may be marketed to the public.<sup>7</sup>
7. Notification is not required in the event of private placement (as Article 305(1) of the AMCIF requires notification solely for the case of public marketing), including the cases of offering the units of an EU UCITS to investment firms for the purpose of acquisition for the client’s portfolio when providing the investment service of portfolio management.<sup>8</sup> Notification is also not

<sup>3</sup> The term „manager“ of a UCITS refers to the person according to Article 6 of the AMCIF. In the case of an externally managed UCITS, the “manager” would be the fund management company in the sense of Article 2(1)b of the UCITS Directive. For self-managed investment funds, the manager is the UCITS itself (“investment company which has not designated a management company” pursuant to Chapter V, Article 27 and following of the UCITS Directive).

<sup>4</sup> This is without prejudice to the obligation of notifying the marketing of an EU UCITS, see Section III of this Opinion. Nonetheless, a separate notification with regard of an eventual external manager of a UCITS is not required.

<sup>5</sup> Where this Opinion speaks of obligations of a UCITS, the person responsible for their fulfilment is its manager.

<sup>6</sup> Where the marketing is public is defined in the Czech National Bank’s answer The term “the public” in the Collective Investment Act of 4 February 2013, available at: [http://www.cnb.cz/export/sites/cnb/en/faq/galleries/term\\_public\\_in\\_collective\\_investment\\_act.pdf](http://www.cnb.cz/export/sites/cnb/en/faq/galleries/term_public_in_collective_investment_act.pdf)

Article 597(d) of the AMCIF, cf. points 61 to 63.

<sup>8</sup> See the Czech National Bank’s answer Marketing of units to be acquired into managed assets of 30 August 2011, available at:

required in the event of a master EU UCITS if it raises capital in the Czech Republic from a feeder UCITS only. Notification is not required if an investor decides to invest in an EU UCITS on its own initiative (Article 295 of the AMCIF).

8. Notification to the Czech National Bank is submitted only once, even if the units of an EU UCITS are marketed in the Czech Republic by several distributors.
9. Rules for the concurrent notification of multiple UCITS and for the notification of investment compartments and classes of units are described in more detail in points 31 to 35.

#### *Requirements for the Notification letter*

10. An EU UCITS, which intends to market publicly investments in the Czech Republic, should notify its intention by means of the Notification letter (i.e. using the standardised form pursuant to Annex I to the regulation on notifications).
11. An EU UCITS should complete all parts (A, B and C) of the Notification letter in a language customary in the sphere of international finance (i.e. in English<sup>9</sup>). The Notification letter may also be accepted in the Slovak language.
12. In Part A of the Notification letter “Additional information about the UCITS (if necessary)”, the EU UCITS should state, if the situation requires it, that the funding documents (fund rules/instruments of incorporation) and the prospectus<sup>10</sup> have been consolidated into a single document, and thus the set of attachments to the Notification letter is limited.
13. In Part B.2 of the Notification letter “Arrangements for the provision of facilities to unit-holders in accordance with Article 92 of Directive 2009/65/EC”, the EU UCITS should inform about the arrangements for making payments to unitholders (e.g. dividends), repurchasing or redeeming of units (e.g. in the event of liquidation), and for making available the information required pursuant to Article 92 of the UCITS Directive. In the Czech Republic, such arrangements consist in the obligation to enter into contract with and make use of the services of the point of contact facility pursuant to Article 306 of the AMCIF. Thus, information about the point of contact facility should be given in Part B.2 of the Notification letter (see points 51 to 52 below).
14. The contract with the point of contact facility should not constitute an attachment to the Notification letter.<sup>11</sup>
15. No information in relation to Part B.3 of the Notification letter “Additional information required by the competent authorities of the host Member State in accordance with Article 91(3) of Directive 2009/65/EC” is required in the Czech Republic. In addition, no information about the administrative fees is necessary, as no fee in relation to marketing of units of an EU UCITS in the Czech Republic is required.
16. The EU UCITS should submit the Notification letter with the following attachments:
  - a. fund rules/instruments of incorporation)<sup>9</sup> if they are not part of the prospectus (see point 12),
  - b. the prospectus<sup>12</sup>,

[https://www.cnb.cz/export/sites/cnb/cs/casto-kladene-dotazy/galleries/archiv\\_stanovisek/nabidka\\_cennych\\_papiru\\_nabyvanych\\_do\\_obhospodarovaneho\\_majetku.pdf](https://www.cnb.cz/export/sites/cnb/cs/casto-kladene-dotazy/galleries/archiv_stanovisek/nabidka_cennych_papiru_nabyvanych_do_obhospodarovaneho_majetku.pdf)

<sup>9</sup> If so agreed by and between the home and the host authorities, the Notification letter and the attestation may be made out in the official languages of both Member States. Currently, however, no such agreement has been made by the Czech National Bank.

<sup>10</sup> In some jurisdictions, this is also referred as the statute. The statute of a collective investment fund pursuant to Article 219 of the AMCIF has a broader meaning and also includes the prospectus of the fund within the meaning of Part A of Annex I to the UCITS Directive.

<sup>11</sup> The Czech National Bank may request this agreement within the conduct of supervision later.

<sup>12</sup> The prospectus is to be understood as a document within the meaning of Article 68, in conjunction with Part A of Annex I to the UCITS Directive. This document is not identical with the prospectus pursuant to Directive 2003/71/EC as regards the prospectus to be published on the occasion of marketing or admission of units

- c. the latest existing annual or half-yearly report and
  - d. the key investor information document (KIID).
17. As for the different language versions of the attachments to the Notification letter, the following rules are applied:
- a. the KIID of the EU UCITS should be attached in the Czech language;
  - b. the fund rules/ instruments of incorporation and the prospectus (statute), the annual and half-yearly reports of the EU UCITS should be attached in the Czech, Slovak or English language.<sup>13</sup>
18. The form of the Notification letter (paper or electronic) and the format of the attachments to the Notification letter of the EU UCITS is determined by the competent authority of the home Member State.

*Procedure for the notification*

19. The EU UCITS should make the notification through the competent authority of its home Member State (Article 93(1) of the UCITS Directive), to which it files the Notification letter together with the attachments.
20. The competent authority of the home Member State shall attach to the Notification letter the Attestation and, no later than within 10 working days of the receipt of the complete Notification letter including the required attachments would than transmit all documentation to the Czech National Bank.
21. Notification of the EU UCITS directly filed with the Czech National Bank is not effective (Article 93(1) of UCITS Directive and Article 4(1) of the regulation on notifications). In such case, the Czech National Bank would inform the applicant of not being the competent authority and inform the applicant about the competence of the supervisory authority of the home Member State.
22. The competent authority of the home Member State would transmit all documentation to the Czech National Bank exclusively in electronic form to email address passport.ucits@cnb.cz. The size of the e-mail message (including the attachment) is limited to 20 MB. The attachments have to be provided in a format enabling the Czech National Bank to read and print the documents, i.e. doc, docx, xls, xlsx or pdf). The documents may be compressed into the zip, 7z or rar format. No special identification in the subject line is required for such an e-mail message.
23. The EU UCITS is allowed to start marketing its units in the Czech Republic immediately after it has been informed by the competent authority of the home Member State that the Notification letter had been transmitted to the Czech National Bank (Article 305(1) of the AMCIF).

*Additional information regarding the procedure following the receipt of the Notification letter and regarding the consequences of deficient notification*

24. At first, the Czech National Bank would automatically inform the sender (i.e. the foreign authority) about the delivery of the e-mail message, by means of which the competent authority of the home Member State has transmitted all documentation. Subsequently, no later than 5 working days of the receipt of the e-mail message, the Czech National Bank would confirm to the authority of the home Member State in electronic form that it has received all the documentation and that the attachments can be viewed and printed (Article 5(1) of the regulation on notifications).
25. Should the Notification letter or any of the attachments is missing, incomplete or is in a format other than that specified in point 22, the Czech National Bank

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to trading. In the Czech Republic, the prospectus in the former sense and the fund rules/instruments of incorporation are contained in the single document named "statute". As in the Czech Republic, any document of an EU UCITS containing the prospectus of the UCITS may, partly or fully, fulfil also the function mentioned in Article 93 of the UCITS Directive (i.e., the function of an instrument of incorporation).

<sup>13</sup> Cf. Article 307(5) and Article 638(3) of the AMCIF and Article 46 of CNB Decree No. 244/2013 Coll., on More Detailed Regulation of Some Rules set out by the AMCIF.

- would not issue the confirmation referred to in point 24 and would instead inform the competent authority of the home Member State that the transmitted documentation shows defects within the meaning of Article 4(2) of the regulation on notifications.
26. If the Attestation is missing, the Czech National Bank would request the competent authority of the home Member State to attach the Attestation.
  27. In case of other deficiencies of the Notification letter, other than incompleteness or an unpermitted technical format (e.g. when provided point of contact facility does not comply with the requirements of Article 306 of the AMCIF), the Czech National Bank would confirm the receipt of the Notification letter and subsequently discuss the rectification of such deficiencies with the competent authority of EU UCITS home Member State.
  28. The competent authority of the home Member State should inform the EU UCITS of the fact that it had transmitted the Notification letter to the Czech National Bank either after it has received the confirmation of the Czech National Bank, or after it has received the automatic 'read receipt' (point 24 of this Opinion) and will carefully verify that the transmitted documentation is complete, in the prescribed language and technical format. Should these conditions not be complied with, the Notification letter would not be considered that it has been transmitted.<sup>14</sup>
  29. Even though the EU UCITS has under the European Union law no right to market its units in the Czech Republic until the deficiencies of the Notification letter or its attachments (as referred to in point 25 of this Opinion) have been rectified, the Czech National Bank would take no measures against the EU UCITS or the distributor, which would regardless of the deficiencies start to market its units in the Czech Republic, given that the deficiencies are rectified without undue delay. This is without prejudice to the obligation to fulfil legal duties when marketing the units of the EU UCITS, e.g. to use only the admissible point of contact facility.
  30. After the EU UCITS is informed by the competent authority of its home Member State on the transmission of the Notification letter to the Czech National Bank, the Czech National Bank would add the EU UCITS to the list maintained pursuant to Article 597(d) of the AMCIF<sup>15</sup>. The list is available on the CNB website. The addition to the list is for information purposes only (see the end of point 23 of this Opinion).

*Notification of multiple funds, investment compartments and classes of units*

31. An intention to market in the Czech Republic the units of multiple EU UCITS requires a separate notification for each such fund. The reason for that consists particularly in the technical limitations of the Notification letter and the attestation, which do not allow to list multiple foreign UCITS in the relevant form.
32. Notification of the marketing of the units of one or more investment compartments of an EU UCITS, or of one or more classes of units of an EU UCITS or investment compartment, which issues multiple classes of units, may be also made via one joint Notification letter. The EU UCITS may also use a separate Notification letter for each investment compartment. In case of an intention to market in the Czech Republic an additional class of units of the EU UCITS or its investment compartment, the EU UCITS should, in reference to Article 93(8) of the UCITS Directive, proceed in a way that is

<sup>14</sup> Pursuant to Article 93(3) third sub-paragraph of the UCITS Directive, the EU UCITS may access the market of the UCITS host Member State as from the date of the notification by the home authority of the transmission of the documentation. Pursuant to Article 4(2) of the regulation on notifications, the documentation shall not be regarded as transmitted (the Directive loosely, yet equivalently makes use of the terms 'to transmit' and 'to transmit completely'), should any of the documents be missing, should the competent authority of the home Member State have failed to use the designated e-mail address, or should any technical failure have occurred.

<sup>15</sup> The Czech National Bank does not require the application pursuant to Article 503(1) of the AMCIF.



compliant with points 35 and 39 of this Opinion.

33. In compliance with the rules pursuant to Articles 25 and 26 of Commission Regulation (EU) No. 583/2010, as regards key investor information<sup>16</sup>, however, separate KIID is required for each investment compartment and for each class of units. Under the conditions set out in Article 26 of the above Regulation, it is exceptionally permitted to combine the KIID relating to the individual classes of units. If the Notification letter applies to certain investment compartments only, it would be sufficient to attach to the Notification letter only the part of the prospectus of the EU UCITS that relates to the investment compartment given in the Notification letter (i.e. the main section of the prospectus and the additional section relating to investment compartments).
34. Notification of an additional investment compartment or additional investment compartments of an EU UCITS requires a new Notification letter, which is to be submitted to the Czech National Bank through the competent authority of the home Member State. Thus, it is possible to notify multiple additional investment compartments in the Czech Republic using a single Notification letter. Regardless of potential overlaps with the previous notification of other investment compartments, it is necessary to attach all documents required by the European Union law (e.g. the prospectus) once again.
35. An EU UCITS should inform the Czech National Bank directly about the intention to market in the Czech Republic an additional class or classes of units of the EU UCITS (or of an investment compartment thereof) that have not been provided in the Notification letter, using the procedure for the provision of information on the changes as stated in point 39 of this Opinion.

## **V. The obligations of an EU UCITS related to its marketing in the Czech Republic**

### *Common rules*

36. The rules on the activities of an EU UCITS in the Czech Republic, as set out in this part of the Opinion, should apply equally to all EU UCITS.
37. An EU UCITS may perform its duties in relation to the marketing of its units by means of an entity that is authorised to perform the relevant activities within the territory of the Czech Republic (e.g. the provision of information to investors or to the Czech National Bank. As a rule, this entity shall be a bank or an investment firm in connection with their role of a distributor, or an investment fund administrator; a trade authorization shall also be sufficient, however). The provision of information itself may, however, be delegated also to other entities. Such delegation needs to be proved to the Czech National Bank only when it is requested.

### *Information duties of an EU UCITS to the Czech National Bank*

38. An EU UCITS has no regular information duties to the Czech National Bank.<sup>17</sup>
39. An EU UCITS should directly inform the Czech National Bank about any changes in the prospectus, the fund rules/ instruments of incorporation (if they are not part of the prospectus) and the KIID, or about any increase or decrease of number of classes of units marketed in the Czech Republic, and about any changes relating to the point of contact facility, and not through the supervisory authority of the home Member State (Article 461(1) and (2) of the AMCIF). It should inform about the changes without undue delay. The information about the change regarding the point of contact facility and the manner of marketing to the public should be provided by the EU UCITS before the change is

<sup>16</sup> Commission Regulation (EU) No. 583/2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

<sup>17</sup> This does not apply to a domestic manager of an EU UCITS because of supervision of compliance of the manager with prudential requirements.

implemented. The preferred form is via e-mail to: [podatelna@cnb.cz](mailto:podatelna@cnb.cz). No special identification in the subject line is required for such an e-mail message. In the body of the e-mail message the EU UCITS should identify the document to be affected by the change, briefly characterise the change<sup>18</sup> (particularly, by indicating any changes that must be reflected in the list of EU UCITS<sup>19</sup> including the date, on which the change is to be made (points 30 and 43)), and should specify the location (usually an internet address) where the updated electronic version of the changed document will be available. Should the change be notified for the first time by a representative that has not been specified in the Notification letter, he will attach to the e-mail a copy of a power of attorney. An authenticated copy is not required.

40. Within the information referred to in point 39, an EU UCITS should also provide the information regarding a merger, the incorporation into a master-feeder structure, the transfer of management, and regarding the liquidation of the EU UCITS.
41. In information specifying the amendment to the contract made with the point of contact facility (Article 306(1) and Article 461(2) of the AMCIF), the EU UCITS should describe the change, and if the information relating to arrangements for investors is affected (Part B.2 of the Notification letter) it should provide new information. The contract with the point of contact facility should not be submitted by the EU UCITS. However, the Czech National Bank may request to see it.
42. The Czech National Bank accepts the information about any changes in the Czech, Slovak, or English language.
43. If the change have to be reflected in the list of EU UCITS, it is necessary to explicitly inform the Czech National Bank about this fact and specify the date, as of which the change should be made (point 39). The Czech National Bank should reflect the change without undue delay.

#### *Provision of information to investors*

44. The manner of providing information in the Czech Republic does not deviate from the requirements imposed by the UCITS Directive.
45. On its website, an EU UCITS should make accessible<sup>20</sup> to investors in the Czech Republic its prospectus (including the fund rules/ instruments of incorporation), the annual and half-yearly reports, the KIID and the prices at which it issues or repurchases or redeems its units; all such documents and information have to be up-to-date (Article 307(1) of the AMCIF). In technical terms, it is irrelevant whether such information is being made accessible from the territory of the Czech Republic or from abroad, or who is this information technically provided.<sup>21</sup> If a central storage or a central access point is used to provide such information, technical measures must be taken to prevent the marketing of any EU UCITS or alternative funds whose marketing is not allowed in the Czech Republic.
46. More detailed rules on the provision of information (e.g. the content of the individual information duties, procedure for their performance, the format of the information provided and the time limits, particularly with regards to the time limit for the publication of the price for which the EU UCITS issues or repurchases or redeems its units) are stated, in reference to Chapter IX of the UCITS Directive, in the regulatory provisions of the home Member State.

<sup>18</sup> For example a change of the name, change of the manager or the administrator, change of the investment policy, change of the depositary, changes to the fees, regular update of the KIID, changes of the KIID required by a change of the prospectus, etc.

<sup>19</sup> A change in the name of the UCITS, point of contact facility, etc.

<sup>20</sup> Pursuant to Article 638(2) of the AMCIF, the information shall be published for the period of three years from the date on which the published document or information cease to be relevant.

<sup>21</sup> For example, by the manager of an EU UCITS, one of the European distributors, or the distributor in the Czech Republic.

47. The language regime for the provision of information is within the limits set in Article 94(1) of the UCITS Directive stipulated in Article 307(4) and (5) of the AMCIF, and specified in Article 46 of the CNB Decree No. 244/2013 Coll., on More Detailed Regulation of Some Rules set out by the AMCIF, and is also described in point 17 of this Opinion. The language regime allows an EU UCITS to publish the documents also in any other additional language.
48. The rules governing the marketing communications of collective investment funds (Articles 242 to 244 of the AMCIF) imply that marketing communications or their translations must not cause any uncertainty or inform investors in a deceptive or misleading manner and it must be evident from them that they are marketing communications. The name of any EU UCITS should neither in the prospectus nor in the KIID be translated into the Czech language as this would give a false impression of the fund's domestic origin and would make it difficult to identify the fund. A translation is acceptable, when it accompanies the original name of the fund in a form of an explanatory note; it has to clearly result from the presentation, however, which name is official and which is merely a translation into the Czech language. In addition, it is also not acceptable to use so called "commercial names" or "marketing names" – divergences from the official name other than only mere abbreviations derived directly from it. Also when performing the distribution, only the fund's original name or any common abbreviations derived from it may be used, or the fund's original name along with the Czech name used in a way so that it is obvious which name is official, and which is a mere translation to the Czech language.
49. Information of an EU UCITS must be made accessible to the final investors – i.e. as in the event of direct investment and as in the event of investment intermediated by an investment firm, which acquires units for the investor in its own name (as the nominee) and keeps them on a special client securities account (nominee account). Intermediated investment should not lead to abuse of investors' rights to obtain information in the extent guaranteed by the European law, for example in case of conditions for the provision of information in electronic form, or for the transformation of units into a securities, which would provide the investor with the narrower scope of rights than guaranteed by the UCITS Directive.
50. An EU UCITS that notified its intention to market the units of some of its investment compartments should only publish information solely in relation to these investment compartments. Where information relating to an investment compartment cannot be separated without adversely affecting its information value, the EU UCITS should supplement the information with a clear message that the units of the remaining investment compartments are not intended for, and marketed to investors in the Czech Republic.

#### *Point of contact facility*

51. Pursuant to Article 306(1) of the AMCIF, the point of contact facility may be a bank, a branch of a foreign bank in the Czech Republic, an investment firm or a foreign entity providing investment services in the Czech Republic through an organizational unit (a branch) pursuant to Article 24 or 28 of the Capital Market Undertakings Act.
52. A point of contact facility provides investors with certainty that any issues relating to the EU UCITS can be handled in the Czech Republic – e.g. complaints regarding not credited dividend, the repurchase of units or their redemption upon the fund's liquidation, or the availability of information. The activities performed by a point of contact facility represent a certain minimum standard of the services the provision of which must be ensured for EU UCITS Czech investors (for further information concerning the termination of activities of an EU UCITS, including the services of the point of contact facility, see below point 57).
53. Fulfilment of other functions exceeds the basic framework of the contract with the point of contact facility. Depending on the scope of the business authorization these tasks may be provided by the point of contact facility



as supplementary services, but also may be ensured by a third party. One example of these other services, the fulfilment of which cannot be required from the point of contact facility (or required only due to agreement between the UCITS and the point of contact facility), is for example the possibility of cash payments at a branch office of the point of contact facility, when the contractual documentation (the prospectus) requires cashless payments.

54. As mentioned above, the point of contact facility may, but does not have to ensure the distribution, and thus also the “issuance” of units of an EU UCITS. The EU UCITS may, therefore, undertake its distribution also via a different person (see point 2 and following).
55. The investor should also retain an option to assert its rights directly with the EU UCITS.

## **V. Termination of activities of an EU UCITS in the Czech Republic**

### *Preconditions for termination of activities*

56. Factual attenuation of the marketing of the units of an EU UCITS in the Czech Republic (e.g. the security is currently not being offered by any distributor) has no impact on the notification made and the marketing may be resumed at any time. Attenuation has no impact on the duties of the EU UCITS in connection with the marketing of units either.
57. Pursuant to Article 306(2) and Article 307(2) of the AMCIF, information duties and the obligation to have a point of contact facility in relation to an EU UCITS should last until any investors in the Czech Republic own any number of its units, regardless of a factual termination of their marketing in the Czech Republic. However, the fund would not always know the identity of its investors as it might not even have to be aware of which investors purchased the fund's publicly marketed units in the Czech Republic, or which investors purchased the units abroad, even after the termination of their marketing in the Czech Republic. In addition, the fulfilment of information duties is dependant on investors' collaboration.<sup>22</sup> In public-law terms, this requirement may be deemed fulfilled, if the fund makes every effort that could possibly have been required in order to repurchase its units from investors<sup>23</sup>.
58. The Czech National Bank would consider the “effort that could possibly have been required” in connection with termination of marketing as a procedure under which the EU UCITS addresses the investors from the Czech Republic and offers them to repurchase its units without any deductions within a time limit of at least 30 days. Such procedure complies with the measures aimed to protect investors (e.g. in the field of resolving the impacts of cross-border mergers of UCITS, or in the event of establishment of master-feeder structures (the second subparagraph of Article 43(2) and Article 64(1)(d) of the UCITS Directive). When an EU UCITS knows the identity of investors in the Czech Republic, it should address them individually. Otherwise, it is necessary to publish a blanket offer of repurchase in a manner and for a time period corresponding to the structure of the fund's investors or, as the case may be, corresponding to the structure of the typical investors to whom the EU UCITS is designed. At the same time, the fund must point out to the investors any consequences of the termination of marketing in the Czech Republic.
59. Investors who, even after having been warned of the consequences of the termination of marketing (point 58), decide to hold the units of the EU UCITS cannot count on the fact that the fund that it will perform the information duties in the Czech language or that the point of contact facility will be available. However, the Czech National Bank cannot preconceive the future

<sup>22</sup> The rules for the termination of activities are missing in the UCITS Directive, but its intention could not have been to inhibit the termination of activities under reasonable conditions ensuring investor protection.

<sup>23</sup> Analogously to the exculpatory conditions under Article 21(1) of the Act No. 250/2016 Coll., on Misdemeanours and Corresponding Proceedings, according to which: “A legal person is not accountable for a misdemeanour, if it proves that in order to prevent the misdemeanour, it exercised all possible effort, which could be asked for”.

court's decision in the event of an action filed by the investors. The present Opinion describes the approach of the Czech National Bank only.

60. An investment compartment of an EU UCITS should terminate its activities in the same manner as an EU UCITS itself. If unit classes are offered, the termination of activities should take place in relation to the last unit class. Until then, the termination of marketing of one unit class should be notified to the Czech National Bank pursuant to point 39.

#### *Deletion from the list of the Czech National Bank*

61. The Czech National Bank would delete a EU UCITS, whose units can be marketed to the public in the Czech Republic, from the list of EU UCITS as maintained pursuant to Article 597(d) of the AMCIF, if it has applied for deletion according to Article 506(2)(d) of the AMCIF. In such case the EU UCITS, has to inform the Czech National Bank on how it had fulfilled the condition requiring the fund to repurchase or redeem its units from investors in the Czech Republic and, simultaneously, informed about the date from which will terminate its activities in the Czech Republic. The Czech National Bank would also welcome the information about the reason for termination of activities. The date of termination of activities must not precede the completion of the repurchase or redemption of the units. As of the date of termination of the EU UCITS activities, the Czech National Bank would delete the EU UCITS from its list. The form of the Application for deletion of EU UCITS from the list of the Czech National Bank is available on the CNB website in section Supervision, regulation/Conduct of supervision/Licensing and approval proceedings/Management companies and investment funds/Specimen application forms/II<sup>24</sup> (available in Czech only).

#### *Entries in the lists and changes thereto*

62. The application may be submitted to the Czech National Bank directly or through the competent authority of the EU UCITS home Member State, if it is required by the legal regulations of the home Member State. The application should be transmitted in electronic form to [podatelna@cnb.cz](mailto:podatelna@cnb.cz). The attachments should be in the pdf format. If the application is submitted by the representative that has not been identified in the Notification letter, he will attach to the e-mail a copy of a power of attorney. An authenticated copy is not required. Further options of sending the application and the format of the attachments are set out in Article 50 of Decree No. 247/2013 Coll., on Applications According to the AMCIF, however their practical effect is evident in cases when using a representative from the Czech Republic.
63. The Czech National Bank would inform the EU UCITS of the deletion from the list.

#### *Other rules relating to termination of activities*

64. Deletion of an EU UCITS from the list would not affect the possibility of the fund to keep making information available to investors, ensuring payments to investors, repurchasing or redeeming of units to the investors in the Czech Republic when they will show interest in it.
65. The AMCIF does not regulate the details of such procedure, but in terms of the purpose of the rules contained in the Act, it should be stated that EU UCITS should terminate the contract with the point of contact facility pursuant to Article 306, and the publication of information in the manner prescribed by Article 307 of the AMCIF, and not earlier than from the day of its deletion from the relevant list.
66. An EU UCITS which markets its units within limited subscription period, and which has a fixed investment horizon, (typically capital protected funds)

<sup>24</sup> <https://www.cnb.cz/cs/dohled-financni-trh/vykon-dohledu/povolovaci-a-schvalovaci-rizeni/povolovaci-a-schvalovaci-rizeni-investicni-spolecnosti-a-investicni-fondy/>

should publish information pursuant to Article 307(1) of the AMCIF and perform other requirements until the fixed investment horizon has been reached. The need to make every effort to repurchase or redeem its units from investors described in points 57 and 58 would not be affected by this requirement. An earlier termination of the EU UCITS activities would result in an unacceptable reduction of the rights of investors from the Czech Republic. Either they would have to consent to repurchase of the units under less favourable conditions than they would have achieved within the expected investment horizon, or they would lose the option of asserting their rights in connection with the maturity of their investment within the territory of the Czech Republic. Moreover, they would lose the availability of the KIID in the Czech language.

## VI. Notification of a Czech UCITS

### *Basic rules*

67. A manager, which intends to market the units of a Czech UCITS in another Member State, should notify its intention through the Czech National Bank using the Notification letter.
68. The notification would be assessed by the Czech National Bank in terms of formal requirements (i.e., completeness and the permissible language of the Notification letter and the attached documents). The Czech National Bank would not investigate whether the Notification letter is necessary for the UCITS to perform its activities abroad.

### *Requirements for the Notification letter*

69. A manager of a Czech UCITS should complete all parts (A, B and C) of the Notification letter in the English language.<sup>25</sup>
70. In Part A of the Notification letter “Legal form of the UCITS”, the Czech UCITS should indicate that the legal form of the fund corresponds to the type of “common fund” or that the legal form of the fund corresponds to the type of “investment company”<sup>26</sup>. (No other forms should be considered.)
71. In the list of classes of units given in Part A, the Czech UCITS should indicate the types of units or investment shares of a Czech UCITS/compartments, to which different rights of unit-holders are attached within the limits of Article 120(1) and (2) or Article 167 of the AMCIF, and within the limits of the statute of the Czech UCITS. Simultaneously, the Czech UCITS should always give the identification of the relevant type of units or investment shares.
72. In Part A, the Czech UCITS may provide “Additional information about the UCITS (if necessary)”. For the time being, however, the Czech National Bank has not identified any information that would have to be given in this part.
73. Information required in Part B.3 should be given in accordance with the requirements imposed by the host Member State.
74. To the Notification letter, the manager should attach the statute, the latest annual or half-yearly report (whichever has been issued later) and the KIID.
75. The statute and the annual or half-yearly report should be submitted at the fund’s choice in the language customary in the sphere of international finance (i.e. in English language), in the official language of the Member State, to which the Notification letter is addressed (i.e. the host state),

<sup>25</sup> If so agreed by and between the home and the host authorities, the Notification letter (and the attestation) may be made out in the official languages of both Member States. Currently, however, no such agreement has been made by the Czech National Bank.

<sup>26</sup> “Investment company” in the European law terminology corresponds to an investment fund which is “constituted in accordance with its statute” (Article 1(3) of the UCITS Directive), hence in the form of a legal person. Also a UCITS in this form has to ensure redemptions of its units following a request of an investor. Pursuant to AMCIF, such an investment fund would be in the form of a joint-stock company with variable equity capital.

or in a language acknowledged by the supervisory authority of the host state. The KIID should always be attached translated into the official language (or one of the official languages) of the host Member State, or into a language acknowledged by the competent authority of the host Member State.

76. The Czech National Bank would refuse to transmit any Notification letter, which is incomplete or lacks the prescribed attachments, or any Notification letter, or the attachments that are written in an obviously inadmissible language. However, the Czech National Bank is not obliged to examine the details of the language regimes of the host Member States. Any consequences of transmitting a Notification letter, or its attachments in an inadmissible language should be borne by the manager of the notifying Czech UCITS.

#### *Manner of notification*

77. A manager that intends to market the units of a Czech UCITS in another Member State should notify its intention through the Czech National Bank. Notification made directly with the competent authority of the target Member State would not be effective.
78. The Notification letter and attachments thereto should be submitted by the manager of the Czech UCITS to the Czech National Bank to the e-mail address [podatelna@cnb.cz](mailto:podatelna@cnb.cz) in electronic form, with a guaranteed electronic signature attached, in the doc, docx, xls, xlsx or pdf format given that they can be printed. The size of the e-mail message must not exceed 15 MB. The documents may be compressed into the zip, 7z or rar format.
79. Should the documentation be incomplete or have other deficiencies, the Czech National Bank would invite the manager of the Czech UCITS to rectify the defects.
80. The Czech National Bank should attach the attestation to the complete documentation (i.e. to the Notification letter and the attachments thereto) and, no later than within 10 working days of the receipt of the complete documentation, would transmit the documents to the competent authority of the host Member State.
81. The manager or its contractual distributor would be allowed to start marketing the units of a Czech UCITS in the Member State, which it notifies of its intention, immediately after it has been informed by the Czech National Bank that the Notification letter has been transmitted to the competent authority of the host Member State.
82. The Czech National Bank would inform the manager about transmitting the Notification letter by an e-mail message addressed to the contact person to the address given in Part A of the Notification letter. Should this be impossible (i.e. should the e-mail message return as undeliverable), the Czech National Bank would inform the manager to the e-mail address from which the application for notification was filed with the Czech National Bank, or to the physical address of the manager's registered office.
83. Should the Czech National Bank receive no confirmation within 5 working days of the transmission of the notification to the foreign authority (Article 93(3) third sub-paragraph of the UCITS Directive), it would contact the foreign supervisory authority and verify whether the complete documentation has been transmitted, and would inform the manager about the further procedure.
84. Should, instead of receiving the confirmation, the Czech National Bank be informed by the foreign authority that the transmitted documentation is not regarded as complete, the Czech National Bank would without undue delay request the manager to rectify the deficiencies, and that would transmit the compliant documentation to the competent foreign authority. The details would be specified in the request.

#### *Notification of multiple funds or classes of units*

85. An intention to market the units of multiple UCITS in another Member State

requires a separate notification for each UCITS. The reason for that consists particularly in the technical limitations of the Notification letter and the attestation, which does not make it possible to include multiple UCITS in the relevant form.

86. Notification of the marketing of the units of one or more investment compartments of an UCITS, or of one or more classes of units of an UCITS or investment compartment that issues multiple classes of units may also be made by the manager using one single Notification letter. The manager may also use a separate Notification letter for each investment compartment. No separate notification for each unit class is required. However, in case of an intention to market in the host Member State an additional class of units of the Czech UCITS, the Czech UCITS should, in reference to Article 93(8) of the UCITS Directive, proceed appropriately in compliance with points 35 and 39 of this Opinion.
87. However, in compliance with the rules of Articles 25 and 26 of Commission Regulation (EU) No. 583/2010, as regards key investor information, a separate KIID is required for each investment compartment and for each class of units. Under the conditions set out in Article 26 of the above Regulation, it is exceptionally permitted to combine the KIID relating to the individual classes of units. If the Notification letter applies only to certain investment compartments, it would be sufficient to attach to the Notification letter only the part of the statute of the Czech UCITS that relates to the investment compartment included in the Notification letter (i.e. the main section of the prospectus and the additional section relating to investment compartments).
88. Notification of an additional investment compartment or additional investment compartments of a Czech UCITS requires new Notification letter. It is possible to notify multiple additional investment compartments using a single Notification letter. Regardless of potential overlaps with the previous notification of other investment compartments, it is necessary to attach all documents required by the European Union law (point 74) again.
89. The manager should inform the supervisory authority of the host Member State directly in a manner determined by this supervisory authority about the marketing in another Member State of another class or classes of units of a Czech UCITS, which had not been given in the Notification letter.

#### *Termination of activities of a Czech UCITS abroad*

90. The conditions for the termination of the activities of a Czech UCITS abroad should be determined by the host Member State or, as the case may be, by the competent authority of the host Member State. The Czech National Bank does not have any prescribed role in this process.

Nature of the Opinion: This answer expresses the opinion of the Czech National Bank staff members. The court and, as the case may be, the Bank Board of the Czech National Bank may be of a different opinion.

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*Note: The changes made to the Opinion by 11 March 2019 were predominantly formal, reacting to amendments of the AMCIF and of the UCITS Directive. The Opinion was also complemented by a more detailed clarification concerning the rules for marketing communications (in particular with regard to the prohibition of marketing UCITS under a “commercial name” different than its official name).*