



EUROPEAN SAVINGS BANKS GROUP
GROUPEMENT EUROPEEN DES CAISSES D'EPARGNE
EUROPÄISCHE SPARKASSENVEREINIGUNG

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DOC 0591/06

Brussels, 1 June 2006

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European Savings Banks Group (ESBG)

Response to CESR on its guidelines to simplify the notification procedure of
UCITS (second consultation paper)

(Ref: CESR/06-120)

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Profile European Savings Banks Group

ESBG (European Savings Banks Group) is an international banking association that represents one of the largest European retail banking networks, comprising about one third of the retail banking market in Europe, with total assets of €4,716 billion (1 January 2005). It represents the interests of its members vis-à-vis the EU Institutions and generates, facilitates and manages high quality cross-border banking projects.

ESBG members are typically savings and *retail* banks or associations thereof. They are often organised in decentralised networks and offer their services throughout their *region*. ESBG member banks have reinvested *responsibly* in their region for many decades and are one distinct benchmark for corporate social responsibility activities throughout Europe and the world.



The European Savings Banks Group (ESBG) welcomes this opportunity to comment on CESR guidelines to simplify the notification procedure of UCITS. We would nevertheless like to comment on several aspects of the paper which in our view still require some improvement.

Q1: Is the starting of the two-month period dealt with in a practicable way in your view?

We believe that CESR has dealt with the two-month period in a practical way. As indicated in our first response to CESR, the ESBG is especially pleased with the possibility to shorten the two-month period. However, we urge CESR to provide an indication in the wording of the guideline that national regulators are encouraged to make both a formal and a material check of all the documents within the period of one month (as CESR suggested during the hearing on 23 May 2006). Otherwise, one month would be too long a period to check only whether the notification is complete. Therefore, if CESR cannot make sure that its members would be encouraged to make the complete check within a month, the proposed period to check only whether the notification is complete should be cut to a maximum of two weeks.

Q2: Respondents are asked to provide their view on the practicability of the proposed approach.

Host authorities should communicate with the applicant on terms of good faith in order to speed up the application process. The two-month period should be regarded as a deadline and shortened whenever possible. In the event of non-compliance, communication should be speeded up in order to accept the UCITS' application within the same two-month period, presuming that effective cooperation on the applicant's side can be reached.

Furthermore, we would like to draw CESR's attention to the fact that some national regulators currently consider that the two-month period re-starts each time they request additional documentation.

Q3: Respondents are asked to provide their view on the practicability of the proposed approach.

We agree that this approach would be very helpful for improving the notification process, although CESR must be aware that some national regulators require certification from the home state authorities not only for the UCITS, but also for the full and abridged prospectus and for the annual and semi annual reports. Therefore, this approach cannot be applicable in certain Member States unless a legal reform takes place.

Q4: Do you consider the suggested approach appropriate?

We consider the suggested approach appropriate. It is in both the investor and the fund distributor's best interest to ensure that the information transmitted to the host authority is correct and understandable. Taking into account the "home country control" principle, supplementary home certification of translated documents would only be a burden. In addition, we consider that it would be helpful if all national regulators provide a list of the accepted languages and of the requirements for the translations on their websites. In our view, this could help management companies to commercialise cross-border UCITS business.



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Q5: Do you consider the suggested approach as appropriate?

We welcome the simultaneous certification procedure for all subfunds in a single notification letter. With regards to adding a new subfund, however, we disagree with the instalment of a fresh two-month notification period. Since marketing arrangements of the new subfunds are in most cases already known to the host authority and in order to avoid duplication of work, a maximum notification period of one month should be allotted to the applicant.

We also believe that the entire umbrella fund should refer to only one prospectus, outlining only those subfunds which the applicant wishes to promote in the host country – in the event that the subfund’s characteristics differ from the other subfunds within one and the same structure, these differences would have to be reflected in the subfund’s appendix/fact sheet contained in the umbrella fund’s prospectuses.

Q6: Do you consider the suggested approach as appropriate?

We agree with the points outlined in CESR /06~120 Guideline 11 – although we disagree with CESR /06~120 paragraph 37 with regards to documents that are “able to streamline the notification process”. Taking into account the home-country control principle, the host authority should not question documents already approved by the home authority.

Furthermore, we fear that it is difficult to expect that all home Member State authorities would issue original attestations in English. It might be more feasible to require the home Member State authority to provide a bilingual attestation (in the local language and in English).

Q7: Do you consider the suggested approach appropriate?

We consider the suggested approach appropriate. It seems clear that investors in the host country deserve the same consistency information as the investors in the UCITS’ domestic marketplace. Any modification of the marketed fund’s instruments of incorporation, prospectuses, etc. has to be communicated to the host country authority.

Q8: Do you agree with the proposals concerning the publication of the information or do you prefer another procedure and if, which one?

We agree with the proposals, as the content of Annex III, filled in by the host State authorities, may be helpful to simplify the access to information for UCITS. It could also be helpful if the accompanying instructions on how to fill in these forms are attached, preferably in the language customary in the sphere of finance.

Q9: Do you feel that an issue in this consultation paper should be dealt with in more detail or that other aspects of an issue already contained in the consultation paper should also have been treated?

Contents of Guideline 2 can be further developed. From the Guideline, it is clear that divergent interpretations on whether the UCITS complies with the Directive cannot be used as a reason to refuse the notification according to the Directive. We believe that CESR should provide explanations on how to solve the situation if the host Member State understands that the UCITS does not comply with the Directive. In addition, the understanding of minimum



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UCITS requirements should be fully harmonized between the Member States to avoid these divergent interpretations.

Q10: Should some additional issues related to the notification procedure have been dealt with in the consultation paper, and if yes, which?

Requirements of the notification procedure in case of private placements could have been taken into account.

Q11: Is the model attestation practicable on your view?

We find the model practical in theory, but as noted in question 6, we are afraid that the home Member State authority will have difficulties to issue an original attestation (only) in English. Furthermore, as indicated in question 5, we feel that points 13 & 14, breaking down the “List of sub-funds to be marketed in the host Member State...” should be omitted.

Q12: Is the model notification letter practicable in your view?

The model is practical in theory, but as noted in question 3, self certification is not possible in certain Member States.

Q13: What would you suggest CESR to do regarding the national requirements to simplify the notification procedure?

National marketing rules should not be applicable to private placements. A specific notification procedure for private placements would speed up the process and never be subject to national marketing rules.