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Unser Zeichen, Sachbearbeiter
BSBV 64/2006
Dr. Rudorfer/Gr

Durchwahl
DW 3137

Datum
22nd May 2006

Re: CESR's guidelines for supervisors regarding the notification procedure according to Section VIII of the UCITS Directive (2nd Consultation Paper)

The Bank and Insurance Department of the Austrian Economic Chamber - representing all Austrian Credit Institutions and the entire Investment Fund Industry - welcomes the opportunity to comment on this Consultation Paper:

General Remarks

In general, we welcome the fact that CESR took the received responses into consideration by adapting the first consultation paper due the concerns by the industry. It is important that the first consultation paper provided too many examples of current practices in CESR Member States but did not exactly identify common ground.

It is highly important that the intention that informal contacts between host and home authorities will be enhanced to speed up the notification procedures is explicitly stressed. We appreciate that national regulators will improve their cooperation between each other and that CESR will create a contact list of UCITS-regulators. The Austrian Investment Fund Industry believes that such an intensive cooperation will facilitate a rapid, effective and balanced solution on open issues by home and host State authorities. We are aware that some proposals for speedier processing cannot be guaranteed immediately by all host authorities but we would like that CESR makes a clear commitment that the authorities will try everything in order to guarantee the speedier processing within an appropriate time frame.

Moreover, we want to point out that not only the notification letter, which- according to the 2nd consultation paper - should be submitted in a *language common in the sphere of finance*, but also the correspondence with the competent authorities should be in English.

In detail we would like to make the following specific remarks:

Specific Remarks

A. PROCEDURE

I. Starting the two-month period

Question 1: Is the starting of the two-month period dealt with in a practicable way in your view?

The amended proposal is to the advantage of all parties involved. We in particular welcome that the start of the two-month period is exactly determined by the proof of delivery of a reliable commercial courier service.

II. Managing the two-month period

Question 2: Respondents are asked to provide their view on the practicability of the proposed approach.

In case the notification procedure is deficient, we consider it useful, if the competent authority would explicitly provide the applicant with the information that the two-month period is inhibited until the requested information has been received by the authority.

In this context, we would like to point out that there is no clear rule on the procedure in case of a change/adaptation of the prospectus or other relevant documents during the two-month period. For the sake of clarification, an adaptation in this regard would be very useful.

We would prefer a more official way than an e-mail is.

II. Certification of documents

Question 3: Respondents are asked to provide their view on the practicability of the proposed approach.

The possibility of "self-certification" is in general due to its cost-saving nature appreciated. Nevertheless there are some doubts within the credit industry that in practise one can always rely on the administrative bodies of a fund, to identify the recent valid documents for each fund / sub-fund.

III. Translation

Question 4: Do you consider the suggested approach as appropriate?

As already stressed in the general remarks above, not only the notification letter but also the correspondence with the competent authority should be in English since it is *the* language common in the sphere of finance.

Furthermore, we would like to point out that the competent authorities should not have the possibility to avoid regulations or documents in English due to the exemption clause.

It would be useful, when modifications, supplementary etc. would be marked.

IV. Umbrella funds

Question 5: Do you consider the suggested approach as appropriate?

Due to the restrictive wording, we feel a potential danger that some specific funds of certain countries could be favoured in the notification procedure and therefore we would appreciate a more general clause for umbrella funds guaranteeing an equal treatment of funds from all Member States.

A harmonized waiting period would be necessary too.

B: Content of the file

Question 6: Do you consider the suggested approach as appropriate?

Due to the fact that Art 46 of the Directive is not applied in the same manner in all member states, CESR's commitment that the proposed guidelines should not be supplemented by other documents and information than those in the guidelines, is welcomed.

C: Modification and on-going process

Question 7: Do you consider the suggested approach as appropriate?

It might not always be possible to submit the documents and information without delay after they have been made available in the home Member State due to the necessary translations.

Furthermore, we suggest that it would be useful to submit a copy of the certified documents in order to save costs.

Moreover, we are of the opinion that the certificates of conformity in English would make the procedure easier, faster and cheaper.

Furthermore it could be helpful, if member-states in their function as home State would publish on their home-page the publication procedures / requirements (to be complied with in the host-State).

D: National marketing rules and other specific national regulations

Question 8: Do you agree with the proposals concerning the publication of the information or do you prefer another procedure and if, which one?

Question 9: 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?

Question 10: Should some additional issues related to the notification procedure have been dealt with in this consultation paper, and if yes, which?

In general, we are in favour of a notification procedure that is that transparent and structured in such a manner that the applicant does not need a local lawyer or legal support in the respective country. In this context, published guidelines on the website of the competent authority would be very useful.

In our view, additional issues related to the notification procedure would be:

- *Publicity of Prospectus etc:* We would welcome a statement that a reference to the website of the applicant is sufficient regarding the publicity of the prospectus and the other documents in the host member states. That would significantly diminish translation costs as well as administrative costs.
- *Fees for supervisors:* There are significant differences between the member states that should be avoided.
- *Adaptation/change of Prospectus etc:* In some member states a certificate of conformity is needed when changing or adapting the prospectus and the other documents. This practice contradicts to the Directive itself that allows any changes or adaptations in case the conformity with the Directive is guaranteed
- *Competent Authority:* It would be useful if just one authority in every member state is responsible for the notification procedure. In Italy currently two authorities are responsible for the notification procedure.

Annexes to the consultation paper

ANNEX I:

Question 11: Is the model attestation practicable in your view?

We consider the model attestation practicable.

ANNEX II:

Question 12: Is the notification letter practicable in your view?

We consider the notification letter practicable.

ANNEX III:

Question 13: What would you suggest CESR to do regarding the national requirements to simplify the notification procedure?

We would recommend that the notification procedure should solely be in English and for the sake of clarification examples might be useful in order to avoid misinterpretations.

Best regards

Dr. Herbert Pichler

Department Bank and Insurance
Austrian Federal Economic Chamber