



Finanzgruppe

Deutscher Sparkassen- und Giroverband

Position Paper
of the
Deutscher Sparkassen- und Giroverband
on
CESR's guidelines to simplify the notification procedure of UCITS
2nd Consultation Paper

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The German Savings Bank Association (Deutscher Sparkassen- und Giroverband — DSGV) thanks CESR for the opportunity to comment on its consultation paper concerning the guidelines for supervisors regarding the notification procedure according to Section VIII of the UCITS Directive. The DSGV — a central organisation of the German banking industry — is an umbrella organisation of the German savings banks and Landesbanken. In total, we represent more than 490 banks and management companies.

The DSGV welcomes that in its second consultation paper CESR has taken up some suggestions submitted by the industry. Given the Member States' manifold opportunities for diverging national legislation in the field of notification of UCITS, we consider CESR's guidelines as a practicable tool to close the existing gaps in the Member States as far as this possible from an supervisory point of view. Nevertheless, we would like to submit some proposals to further streamline the notification procedure by dismantling barriers for market participants.

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

Yes, the starting of the two-month period is dealt with in a practicable way. Moreover we welcome that this guideline will increase planning reliability for UCITS as regards two aspects: Firstly, the host State authority is to inform the UCITS about the incompleteness in any case within one month from the date of receipt of the incomplete notification and, secondly, the clarification that the receipt of notification will be assumed if delivery by physical submission or by electronic filing has been confirmed by the host State authority.

Some Member States understand the two-month period to be a period for both controlling the completeness of and materially assessing the notification. In these cases the approach of guideline 4 would *de facto* lead to an extension of the two-month period. We hope that the Member States in question will continue to comply the aforementioned approach to the benefit of market participants.

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

First of all, we embrace both the possibility set out in guideline 5 to shorten the two-month period and that the competent authority is to inform the UCITS via email that it can start the marketing in the host State.

The approach proposed in guideline 6 is practicable. Additionally we would like to encourage Member States to make use of the possibility provided by guideline 5 to shorten the two-month period when the UCITS provides the requested clarification pursuant to guideline 6 and the host State authority does not need the remaining time of the two-month period to check the contents of the notification.

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

The DSGVO embraces the possibility to self certify the documents to be presented to the host State authority as part of the notification. We understand this guideline to be a commitment by CESR members not to require documents to be officially certified.

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

We appreciate the opportunity of the host Member State to approve also the use of another language than the official language of that Member State. However we understand that guideline 7 in this context means that Member States are not allowed to require a translation of the notification documents to be officially certified as opposed to self certification. Otherwise the additional requirement to officially certify the translation of the necessary documents would increase the costs for UCITS without producing considerable benefit for investors or the host State authority. A clarification to this effect would be very helpful.

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

The DSGV welcomes both the approach to notify only such sub-funds that are to be marketed in the host State (guideline 9) and the approach taken in guideline 10, especially the proposal to shorten the two-month period when a sub-funds of a notified umbrella fund is notified.

However, as both guidelines lack a common understanding of what “marketing” means, legal uncertainty for market participants will continue. Although it is up to the Commission to give a definition for “marketing”, it would be very helpful if CESR members agreed upon a common understanding of the term “marketing”, albeit only transitionally until the Commission has put forward a definition.

Furthermore, the following passage in the model notification letter (Annex II paragraph 12) might lead to an unnecessarily high burden for UCITS when notifying a recently launched sub-fund of an umbrella fund, sub-funds of which have already been notified:

“The notification letter may refer to documents that have already been sent to the host Member State competent authority, if still valid.”

This passage might have the consequence that a UCITS notifying a further sub-fund may not refer to, for example, a certified prospectus already filed with the host State authority in order to update this prospectus. As the prospectus filed with the host State authority is not up-to-date any more because of the recently launched sub-fund, it cannot be referred to in order to update it. Consequently, the UCITS would have to certify the complete updated prospectus and file it with the host State authority. This does not seem to be CESR’s intention. We would therefore ask CESR to clarify that reference to the document already filed with the host state authority is possible for the sake of updating it.

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

This approach is only to the benefit of market participants if the letters of commercialisation are no longer required by host State authorities. DSGV however has reason to doubt that the standardised notification letter as set out in Annex II will lead to less bureaucracy for UCITS. According

to CESR's approach Member States can and may require a notification letter in a different language or more documents than provided for in Article 46 Directive 85/611/EEC (UCITS Directive). As a consequence national requirements will most probably persist (e. g. *comunicación previa* in Spain, *documento integrativo* in Italy).

Footnote 1 to the model attestation in Annex I CESR puts forward that the compliance of the management company with the UCITS Directive has to be taken into account in the product passport mechanism. This gives rise to the concern that the "management company passport" could become part of a (model) attestation and that, therefore, additionally to the documents enumerated under Article 46 UCITS Directive, a further document would have to be certified and filed with the host State authority. We ask CESR members to refrain from such procedure.

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

We consider the suggested approach as appropriate, as it is in accordance with Article 47 UCITS Directive. We would appreciate very much if the detailed requirements as regards the ongoing update process of notified documents were not left to the Member States. As according to the explanatory text under paragraph 40 guideline 7 applies to the notification of updated documents, the same problem rises as referred to under question 5: Is it, in order to update for example a prospectus, possible to refer to the certified prospectus already filed with the host State authority, although it is not up-to-date anymore, or is it necessary to send the whole updated and certified prospectus? We would appreciate very much a clarification to the effect that reference to the document already filed with the host state authority is possible for the sake of updating it.

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

The DSGV welcomes the commitment of CESR members to publish the national peculiarities of the respective notification procedure on the web sides of the host State authorities. In addition to this we would appreciate very much if regularly updated links to model documents and instructions how to fill in the necessary forms were established. This would help UCITS preventing a possible lack of information due to altered national provisions. To this end it would be very helpful, if

the text of statutory provisions, forms and instructions how to fill in these forms were provided in English language in the internet.

Q 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?

We would like to refer to our answers to questions 1 to 8.

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

No.

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

Yes. However, a “management company passport” should not become part of a (model) attestation, since the UCITS would consequently have to present a further document (to be certified) in addition to the documents required by Article 46 UCITS Directive.

Q 12: Is the model notification letter practicable in your view?

In general we consider the model notification letter practicable. A clarification to the effect that the UCITS may refer to a document already filed with the host State authority is possible for the sake of updating it (cf. Q5 and 7).

Berlin, June 1, 2006
