



**Finanzgruppe**

Deutscher Sparkassen- und Giroverband

**Comments  
of the  
Deutscher Sparkassen- und Giroverband  
on  
CESR's guidelines for supervisors  
regarding the notification procedure  
according to Section VIII of the UCITS Directive  
Consultation Paper  
(CESR/05-484)**

Deutscher Sparkassen-  
und Giroverband

Berlin:  
Charlottenstraße 47  
10117 Berlin  
Telefon +49 30 20225-0  
Telefax +49 30 20225-250

Büro Bonn:  
Simrockstraße 4  
53113 Bonn  
Telefon +49 228 204-0  
Telefax +49 228 204-250

Büro Brüssel:  
Avenue des Nerviens 9-31, Box 3  
B-1040 Bruxelles  
Telefon +32 274016-10  
Telefax +32 274016-17

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 CESR's consultation paper as an important step on the way to a simplification of notification requirements. These guidelines will considerably foster the cross border marketing of UCITS. However, some alterations should be made to the guidelines in order to further streamline and standardise the notification process. Some suggestions to this effect have been made by answering the following questions CESR put forward in its consultation paper.

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

The DSGV considers the approach taken by CESR practicable. We expressly welcome the possibility to **shorten the two-month period by allowing the application** for cross border marketing **expressly** before the two-month period expires (paragraph 15). We would advocate strongly making use of this possibility increasingly in order to foster cross border marketing of UCITS.

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

In principle we consider the proposed approach apt to streamline the notification process. Furthermore we share CESR's view that UCITS will provide the required information as soon as possible, since they are interested in accelerating the notification procedure.

However, the required pieces of information or documents proving the requested information usually have to be translated. Thus, in some cases, the original two-month period might have already been expired when the host State authority receives the additional information. We understand CESR's approach being to the effect that the host State authority in the

aforementioned case will non the less finalise the checking of the notification in the remaining time that was left of the two-month period, when the authority required for further information. We kindly ask for respective clarification.

In this context we would like to suggest that the host State authority's requiring for additional information and even denying the notification of a UCITS orientate more closely to the UCITS Directive.

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

As the certification of original documents is a considerable hurdle to an efficient notification process, we welcome CESR's approach that no further confirmation measures by the home State authority are needed, if the simplified prospectus of the UCITS is published on an official website of the home State authority. As CESR points out in paragraph 31, the official website in the internet should be under the responsibility of the home State authority. We consequently understand that operative risks (e.g. the website can not be accessed temporarily) would not entail any responsibilities of the UCITS nor be to their detriment in any other respect. We kindly ask for respective clarification.

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

As far as the transparency via internet proposed in paragraph 37 concerns the language the information is to be translated in, we welcome CESR's approach. In addition to this we would suggest devising a **common notion** of when a translation is correct and especially when an error or omission is material. Furthermore we would recommend providing for the **consequences** an incorrect translation would entail with regard to the procedure.

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

In general, we consider this approach appropriate. However, despite the general reservation that not all CESR Members can abide by the proposed CESR guidelines, we would prefer **material questions** to be **harmonised**, such as whether the two-month period applies or what the understanding of “marketing” is. This would help market participants more than mere transparency of respective requirements by host State authorities. Especially as regards their understanding of “marketing” we are aware of the fact that this question is pending with the European Commission. Nevertheless we would appreciate very much, if CESR Members came to a common understanding of “marketing” in the meantime while awaiting an announcement by the commission.

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

Yes, we consider the suggested approach as appropriate.

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

In general we consider the approach as appropriate. As the guidelines set out in chapters A.II., III. and B. are to apply, we also refer to our answers to questions 3, 4, and 6.

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

In this context we want to ask for clarification: We understand the reference to “certified documents” in paragraph 54, 5<sup>th</sup> indent to refer only to the simplified prospectus, as a conflict to the guidelines under A.II. would arise where it has been stated that only the simplified prospectus has to be certified.

**Q 9: Do you feel that an issuer in this consultation paper should be dealt within more detail or that other aspects of an issue already contained in the consultation paper should also have been treated”.**

**Q 10: Should some editorial issues related to the notification procedure have been dealt within this consultation paper, and if yes, which?**

DSGV would like to point out that it would generally be preferable to transparency of diverging national requirements, if CESR Members agreed upon a **common understanding** of what requirements have to be fulfilled by UCITS when undergoing the notification procedure. We especially refer to our answers to questions 4 and 5.

Another aspect concerns the problems arising when UCITS change their legal form. In France for example a SICAV might change to become an FCP. To be able to continue the marketing of UCITS a **preliminary notification** should be possible in host Member States. Otherwise a two-month break of marketing would be the consequence.

**Q 11: Is the model attestation practical in your view?**

Yes. In DSGV’s view it would be very helpful, if it there was a **common understanding** among CESR Members and market participants of how the spaces in the form have to be filled in by UCITS.

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

In general, we consider the model notification letter practicable. However, the declaration to be made by the UCITS according to paragraph 14 of Annex II does not take into account so called **consolidated prospectuses**: Especially in case of umbrella funds the major part of the prospectus is identical for all sub-funds and only some parts vary according to the characteristics of the respective sub-funds. If a new sub-fund is added to the umbrella fund and cross border marketing is sought, the notification procedure has to be undergone (*cf.* paragraph 45). In this case it is not common practice to submit to the host State authority and translate the entire prospectus, but

only the part concerning the new sub-fund. We, therefore, ask CESR to take this case into account and alter paragraph 14 of the model notification letter in Annex II respectively.

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

To give market participants more security as to the requirements to be met when undergoing the notification procedure it would be very helpful if the **list** in Annex III was **exhaustive**, *i.e.* if point “VIII. Other issues” was deleted.

Berlin, 27 January 2006