

POSITION PAPER



ESBG response to CESR consultation on its technical advice at level 2 on measures related to the UCITS management company passport

September 2009



The European Savings Banks Group (ESBG) welcomes the opportunity to comment on CESR's draft technical advice at level 2 on the measures related to the UCITS management company passport.

ESBG agrees with many of the proposals included in CESR's level 2 draft advice and therefore limits its comments on some critical issues:

I. Organisational requirements and conflicts of interest

ESBG agrees that effective information flows between the management company and any third party involved, including the depositary and distributors, is in general crucial.

The idea (presented in point 57. on page 29f) of giving each other appropriate access to the information registered in the respective IT systems and databases is, however, seen critically, as this would concern confidential data.

II. Rules of conduct

ESBG welcomes the proposed details of the technical advice regarding rules of conduct for management companies.

III. Measures to be taken by a depositary of a UCITS managed by a management company situated in another Member State

ESBG welcomes the proposed elements of the standard arrangement between the depositary and the management company situated in another Member State (in particular as they are presented in Box 2 on page 90f) as this contributes to a level playing field for depositories.

ESBG appreciates it that CESR sees these elements as a set of general requirements on the content of the agreement, without extending to the provision of a precise set of standard agreement terms (see point 10. on page 92). This enables the contract partners to comply with national provisions, i.e. the national law of the UCITS' home Member State. In this context, ESBG fully supports the reference to national law of the UCITS as the governing law for the agreement (as proposed in Box 3 on page 95). ESBG adds that according to the UCITS-Directive (UCITS IV) the depositary is either registered or established in the UCITS home Member State.

The depositary should inform the management company in case it delegates duties to a third party depositary, while keeping its liability. The management company cannot interfere in this decision. Likewise, the depositary cannot intervene in management decisions of the management company.

ESBG supports the provision presented in Box 1 on page 89, according to which the depositary must not fulfil specific conditions when the assets of a UCITS is managed by a management company situated in another Member State, apart from entering into a written agreement with the management company.

As regards the proposed extension of the requirements to domestic structures (see Box 5 on page 97) ESBG opposes to this proposal and confirms that it is still of the view that the agreement

should be an addendum for cross-border cases only. In cases where the UCITS and the management company are situated in the same Member State, they apply the same law and practises; they are also supervised by the same regulator. According to ESBG Members' experience the normal service agreements are in the described cases functioning well and no lack of investor protection has been identified.

IV. Risk management

ESBG appreciates that CESR states that adequate procedure to be used in the event of actual or anticipated breaches to the risk limit system of the UCITS shall result in **timely** remedial action (as outlined in Box 4 on page 108). This allows for a proper investigation and for a reaction in the best interest of the client. The exact time for reacting will depend on the kind of breach observed.

On another note, ESBG supports the exigent procedure proposed for the valuation of over-the-counter derivatives (contained in Box 6 on page 112); for such funds qualified risk management methods are necessary in line with the proportionality principle.

As regards CESR's proposals in the field of supervision (see point 45. on page 115) regarding new UCITS ESBG notes CESR's clarification that competent authorities may take into account the appraisal carried out at the time of authorising the management company and/ or at subsequent changes on the risk management process. Although this shortens the possible disruption in the issuing of new funds, ESBG confirms that it will still cause a disruption.

V. Supervisory cooperation

No comments.



About ESBG (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 € 5967 billion (1 January 2008). It represents the interest 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.



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