

# ZENTRALER KREDITAUSSCHUSS

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15 October 2008  
Ref. ZKA: IG-INV-Re  
Ref. BdB: U 13.5.3 - Aro/To

## **Consultation paper on UCITS Management Company Passport** Ref: CESR/08-748

Dear Madam, dear Sir,

Thank you for the opportunity to comment on your work on a UCITS Management Company Passport. We welcome the fact that CESR has been so quick and thorough in addressing this issue. Our basic assessment was set out in the comment letter sent to you in August 2008.

We consider your proposals for introducing a management company passport to be generally sound and would therefore welcome it if, having taken account of the comments outlined below, they could be incorporated into the revision of the UCITS Directive which is currently under way.

Our observations on the questions raised in your paper are as follows:

1. We basically agree with the definition of home member state in Box 1 but wonder whether it is really necessary to stipulate that the management company actually has to manage assets in the country in which it is domiciled. Regulatory arbitrage, which is

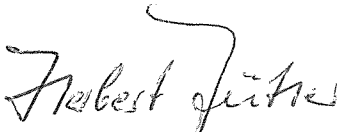
evidently the concern prompting the rule in no. 4 of Box 1, is unlikely to be a problem in our view thanks to the harmonising effect of the UCITS Directive. Management companies should therefore also be allowed to manage assets in another member state only.

2. We consider the “local point of contact” described in Box 3 to be superfluous since the necessary relations between depositary, management company and competent authority can be maintained through electronic channels. The objective of the rule, namely to have a direct contact person in the home country of the UCITS, can also be achieved in other, less expensive, ways. Contact could take place by means of electronic communication, for instance, also on a cross-border basis.
3. Furthermore, the form of the agreement between the depositary and management company should be flexible. CESR’s recommendation permits the agreement to be included in the depositary contract normally concluded. It would be appropriate, however, also to allow an agreement in electronic instead of written form provided that this would achieve the same objective.
4. CESR’s proposal in Box 4 that the depositary should be domiciled in the same member state as that of the UCITS itself is consistent with the current approach of the UCITS Directive. We would nevertheless like to suggest introducing some flexibility on this point in the medium term by establishing a European passport for depositaries. The details of the passport should be determined at Level 1 of the European legislative process and, in our view, a basic prerequisite should be that the depositary is in possession of a banking licence. The general convergence of depositary functions envisaged in para. 7 of the explanatory text on Box 4, no. 6 should then be carried out on the legal basis of this Level 1 harmonisation.
5. The proposals in Box 8 for authorising UCITS which conform with the directive make good sense in our view. It is important, however, for steps to be taken to ensure that the suggested requirements will not be undermined or their implementation delayed by legislation, rules or regulations at national level. Only if the envisaged rules are really observed and if information is exchanged between competent authorities in an unbureaucratic manner will the theoretical objectives translate into practical success.

6. We consider the present wording in Box 10 (adequate arrangements) sufficient to ensure the necessary flow of information between management company, UCITS and depositary. In the interests of principles-based regulation, we would suggest retaining this open wording at Level 2 in order to give the parties involved the flexibility they need. What is decisive is the result, namely the necessary exchange of information, not the means of achieving it.

We would naturally be happy to answer any queries or supply any additional information you may require.

Yours sincerely  
on behalf of the Zentraler Kreditausschuss,  
Bundesverband deutscher Banken



Herbert Jütten



Patrick Arora