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MANDATE FOR THE EXPERT GROUP ON INVESTMENT MANAGEMENT

1 Introduction

The 11th Meeting of CESR in Dublin, 11 and 12 December 2003, decided to establish a provisional Expert Group on Investment Management (Ref. CESR/03-411). It was also decided that after establishment of the Expert Group, the Group would work on drawing up its specific mandate based upon the Consultation Paper “The role of CESR in the regulation and supervision of UCITS and asset management activities in the EU” (Ref. CESR/03-378b) and the comments arising from the consultation.

It was decided, that the Expert Group should consider in particular the following areas and priorities: promotion of single market; supervisory convergence; harmonised implementation of the UCITS Directives; simplification of registration procedure for UCITS; harmonisation of marketing rules for UCITS; consistency with other EU Directives (e.g. ISD); common approach to non-harmonised funds; fund mergers and pooling techniques.

2 Areas of work with urgent priority: transitional provisions and clarification of definitions of the UCITS Directives

The deadline for the Member States to implement the amending UCITS Directives (2001/107/EC and 2001/108/EC) was 13 February 2004. To get the single market on investment funds fully functional the open issues relating to these Directives have to be dealt with as a matter of urgency. The short-term priority of the Expert Group will be to work on the two central groups of issues relating to the harmonised implementation of the UCITS Directives: the application of the transitional provisions of the amending Directives and the clarification of some central definitions in the Directives.

2.1 Transitional provisions

The term “transitional provisions” refers to all practical issues which are faced by those management companies and UCITS that have not yet complied with the amending UCITS Directives (2001/107/EC and 2001/108/EC). Thus, the following issues could be considered as “transitional”:

- Issues related to the marketing of funds and the simplified prospectus (e.g. in case the Home Country regulator has not yet issued detailed guidance on the simplified prospectus);
- Issues related to the scope of permissible activities of grandfathered management companies (e.g. with respect to the launching of “passportable” UCITS III funds);
- Issues related to UCITS launched after February 2002 which benefit from a “grace period” (e.g. smooth convergence to the new UCITS regime, coordinated approach to a transitional treatment by statements of conformity etc.); similar issues related to grandfathered UCITS I umbrella funds which have launched further sub-funds after February 2002.

Practical questions related to the scope of the European passport and problems resulting from the relationship between the management company’s passport and the fund’s passport need to be clarified.



The Group will prepare draft guidelines for supervisors for the transitional period to be accepted by the CESR meeting at the latest in March 2005. Being aware of the urgency to get practical guidance for the supervisors to ensure the proper functioning of the markets, the Group will prepare such guidance even earlier, where possible.

2.2 Clarification of definitions

The need to clarify some definitions of the UCITS Directives relates mainly to the eligible assets of UCITS (i.e. in which financial instruments the UCITS can invest their assets). The main open issues might include investments of UCITS to money market instruments, structured securities and non-harmonized funds and also questions related to closed-end funds.

The work of the Expert Group relating to the clarification of definitions will be based on a Level 2 mandate from the European Commission on the basis of Art. 53a of the UCITS Directive and will be finalized by [June 2005].

3 Areas of work by the end of 2005

3.1 Simplification of the registration procedure for UCITS

The requirements for fund registration (e.g. which documents have to be presented) differ from market to market. Following the work done regarding transitional provisions, which will already affect significantly the registration process, the Expert Group will conduct additional work on this area to develop consistent standards for the registration requirements foreseen by the UCITS Directives to streamline the registration process.

3.2 Conduct of business rules

The Group will at first contribute to the harmonised implementation of conduct of business rules in the field of collective investment management ensuring consistency with the Level 2 mandate under the FIM Directive by giving input to other CESR groups.

Secondly the group will consider the existing CESR Standards for Investor Protection and the work done on the Level 2 mandate under the FIM Directive in order to check, whether it is necessary to develop specific rules on Level 3 for collective investment management (this might include establishing rules i.e. on issues like ensuring consistency with the investment policy described in the prospectus, and rules concerning churning and soft-commissions).

3.3 Outsourcing

The Group will at first contribute to the work being done on outsourcing in other CESR groups on the Level 2 mandate under the FIM Directive to ensure consistency between the fields of collective investment management and financial instruments in general.

Secondly the Group will consider whether it is necessary to develop specific rules on Level 3 for collective investment management on outsourcing taking into account the work done on the Level 2 mandate under the FIM Directive. The Group has initially indicated a need to clarify especially what functions of management companies can be delegated and to which kind of entities, also taking into account the delegation of functions to third country service providers and the safeguards included in Article 5g of the UCITS Directive, in particular, on the delegation of the investment management function. Also the term “letter box entity” used in that same Article should be clarified.

3.4 Common approach to non-harmonized funds

Non-harmonised funds are outside the scope of the UCITS Directive and therefore regulated and supervised on a national basis. This prevents these funds from taking advantage of single EU-wide marketplace.



The Expert Group will first make an inventory on the non-harmonised collective investment schemes which are marketed throughout Europe. On the basis of the inventory, which will prepare the ground for a common view of certain issues such as prudential rules or rules on adequate disclosure, the Group will draft a common approach to non-harmonized funds (hedge funds, real estate funds, private equity funds, also in relation to the specificities of closed-end funds).

4 Areas of work by early 2006

4.1 Consistency with other EU Directives

The Group will work on the clarification of the interaction between the several relevant EU Directives (FIM, E-Commerce, Distance selling) to facilitate cross border marketing of UCITS. The Group will prepare draft guidelines for supervisors by early 2006.

4.2 Convergence of supervisory systems

It is considered necessary that CESR members develop a common view of the central risks related to the investment fund activity, risks that may cause undesirable effects for investors. To further this common view the Expert Group will explore differences and similarities in the supervisory approaches to key areas of investor protection with the following objectives:

- to make enforcement responses adaptable to various situations (e.g. on-site inspections, requests of further information of fund managers, interview of internal auditors)
- to prioritize supervisory resources in order to carry out focused and cost-effective enforcement actions
- to update regulatory practices including reporting requirements and supervisory techniques on the basis of a common assessment of product and process innovations in the European market.

The common view should lead to more efficient and effective communication between regulators and also to a more consistent regulatory response to issues that may arise.

5 Issues for which the Group will give continuous input to the work done by other CESR groups

5.1 Accounting rules for investment funds

The Group will input the work already started by CESR-FIN on the application of IFRS to UCITS.

5.2 Conduct of business rules and outsourcing

As described under items 3.2 and 3.3, the Expert Group on Investment Management will contribute to the work being done in other CESR groups on the Level 2 mandates under the FIM Directive in the areas of conduct of business rules and outsourcing to ensure consistency regarding collective investment management.

6 Possible requests of assistance by the European Commission

The European Commission has on 30 March 2004 adopted the Communication "Regulation of UCITS depositaries in the Member States: review and possible developments", COM(2004) 207 final. It is indicated in this Communication, that the Commission may ask CESR to work on two sets of standards: 1) standards of investor information and conflicts of interest, 2) standards on the depositary's missions, resources and liability.



The Commission has on 27 April 2004 adopted two Recommendations on UCITS: the Commission Recommendation on the use of financial derivative instruments for undertakings for collective investment in transferable securities (UCITS) and the Commission Recommendation on some contents of the simplified prospectus as provided for in Schedule C of Annex I to Council Directive 85/611/EEC. Both these recommendations include a call for further work to be done by the regulators on some central issues e.g. risk-measurement methodologies.

Further work on these issues and its timetable is related to the legislative agenda of the new Commission to be established autumn 2004.