THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Ref: CESR/05-302b

Implementation of the European Commission's Recommendations on UCITS

Report of the review conducted by CESR

JULY 2005

11-13 avenue de Friedland - 75008 PARIS - FRANCE - Tel.: 33.(0).1.53.36.43.21 - Fax: 33.(0).1.58.36.43.30
Web site: www.cesr-eu.org

CESR

INDEX

CESR

INTRODUCTION

1. This report presents the results of the review CESR has conducted regarding the implementation of two European Commission Recommendations, which deal with the use of financial derivative instruments for UCITS[1] and some of the key contents of the simplified prospectus of UCITS[2].

2. These two Recommendations were published on 30th April 2004. They provide guidance to the Member State authorities as regards the implementation of two of the most significant sets of changes to the UCITS legislation brought about by the Directives 2001/107/EC and 2001/108/EC, the so-called UCITS III. The Recommendations were developed in response to concerns regarding potential inconsistencies between Member State implementation. The Recommendations were the result of extensive discussions and preparation in the former UCITS Contact Committee.

3. In the context of the implementation of the UCITS III, discussions within the European Securities Committee in the autumn of 2004 confirmed the continued importance of transparency regarding steps taken to give effect to the Commission Recommendations in Member States. Information of the implementation is needed in order to maintain confidence that important changes to national measures implementing the UCITS legislation are being introduced as foreseen and in a manner which supports the effective implementation of the Directive.

4. Therefore, the European Commission asked CESR to conduct a detailed survey on the implementation of the Commission Recommendations. The questionnaires in Annex IV and V (Ref. CESR/04-604 and CESR/04-605), which were used to collect the information needed for the survey, were developed at the initiative of the European Commission and put together with the collaboration of DG MARKT services.

5. The amending UCITS Directives (2001/107/EC and 2001/108/EC) were published in the Official Journal of the European Union on 13th February 2002. Member States had to transpose and apply the Directives into domestic laws or regulations no later than 13th February 2004. The Directive 2001/107/EC introduced harmonised rules on market access and operating conditions (e.g. capital requirements) as well as prudential safeguards to be respected by UCITS management companies. In addition, the Directive introduced a new type of prospectus for UCITS, a simplified prospectus. The Directive 2001/108/EC focused essentially on the "product", the investment fund. It extended the range of financial assets in which UCITS may invest. As a result, UCITS are now permitted to invest not only in listed shares and bonds as before, but also in bank deposits, money market instruments, financial derivatives (i.e. standardised option and futures contracts dealt on regulated exchanges and over-the-counter) and in units of other collective investment undertakings. The new rules

[1] Commission Recommendation 2004/383/EC of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities (UCITS), OJ L 144, 30.4.2004, p. 33.

[2] Commission Recommendation 2004/384/EC of 27 April 2004 on some contents of the simplified prospectus as provided for in Schedule C of Annex I to Council Directive 85/611/EEC, OJ L 144, 30.4.2004, p. 42.

also recognise investment management techniques widely employed such as "tracking" an index (i.e. investment in securities of different issuers provided for in a given index).

6. Preparation of this report has been undertaken by the Expert Group on Investment Management. The Group is chaired by Mr Lamberto Cardia, Chairman of the Italian securities regulator, the Commissione nazionale per le società e la Borsa (CONSOB) and supported by Mr Jarkko Syyrilä from the CESR Secretariat.

IMPORTANT NOTICE

In the interest of transparency and to inform interested parties, CESR has published the following documents:
• the report of the review conducted by CESR on the implementation of the European Commission's Recommendations on UCITS (Ref. CESR/05-302b);
• the individual responses of CESR Members to the questionnaires in Annex IV and V of the above mentioned report;
• the explanatory notes and caveats attached to the individual responses of Members
within the constraints of and solely for the purposes of the CESR process of monitoring the status of implementation of the Commission Recommendations on UCITS in Member States, as requested by the Commission.

The documents have no legal effect; they do not present any interpretation of, or definitive position on, existing law or regulation in any jurisdiction. These documents are not intended to affect in any way the competences of the European Commission and the European Court of Justice. The documents should not be relied upon for any purpose other than the purpose for which they were prepared. In particular, they should not be relied upon as a substitute for, or as guidance on, any aspect of the regulatory system of any Member State or as a defence in supervisory activities or enforcement proceedings; and they cannot be used to restrict competent authorities in taking regulatory or enforcement actions.

The information set out in the documents is the response of each Member's self-assessment. For this reason, the content of the documents regarding a particular Member State has been prepared solely by the relevant Member on a best-efforts basis. The Members' responses have been reviewed by the CESR Secretariat for internal consistency.

The documents provide a "snap shot" and therefore they cannot be considered as fully finalised or definitive reflections of regulatory provisions in Member States.

THE IMPLEMENTATION SITUATION

I Overview to the general implementation situation

The Commission Recommendations on the use of financial derivative instruments for UCITS and on some contents of the simplified prospectus of UCITS were published on 30th April 2004. The Member States[3] had therefore had approximately one year to implement the Recommendations when this review was being finalized.

Since the review process was started in November 2004, the implementation situation has improved significantly. Many of the Member States have in the meanwhile issued new implementing measures in this field, either as part of their overall national implementation measures of the so-called UCITS III, or as separate implementing measures. Most Member States had already implemented the amending UCITS Directives before the Commission Recommendations were issued, and were therefore not able to take the final versions of the Recommendations into account when drafting their implementation measures regarding UCITS III, even if drafts of the Recommendations had been discussed in the UCITS Contact Committee during 2003-2004.

In conclusion, the overall implementation of the Recommendations is at a reasonably good level in the Member States. Many Member States have implemented the Recommendations almost word by word into their national regulations. Many other Member States have also implemented the Recommendations in high level of consistency.

A significant number of Member States have indicated the implementation of the Recommendations to still be "work in progress", either already under public consultation or still under internal consideration by the national authorities. It is therefore to be expected that the implementation situation will still improve by the end of 2005.

The level of implementation varies considerably between different parts of the Recommendations, as analysed more precisely later in this report. When analysing the responses, it has to be noted, that the Commission Recommendations include two different types of recommendations: some are aimed to ensure a high level of investor protection in the investment activity of a UCITS and its disclosure, while some other recommendations are aimed to allow within the limits of the UCITS Directive some flexibility in the activity and investments of a UCITS.

The review concentrated on the core elements of the Recommendations. The results of the review are based on a self-assessment by the CESR members, i.e. the responses of the CESR members to the questionnaires in Annex IV and V. The members' responses have been reviewed by the CESR Secretariat using supporting evidence on the national implementing measures, where available.

[3] The term "implementation by Member States" used in this report refers to the EU countries and the two EEA countries that are members of CESR, i.e. Iceland and Norway.

II The Commission Recommendation 2004/383/EC on the use of financial derivative instruments by UCITS

1. The aim of the Recommendation

One of the aims of the amendments introduced by Directive 2001/108/EC was to widen the scope of financial instruments in which a UCITS can invest and to enable UCITS to make use of modern investment techniques. UCITS are now permitted to employ financial derivative instruments as part of their general investment policy, and not only for the purposes of hedging positions/efficient portfolio management, as before.

Another aim of the amendments to the UCITS Directive was to ensure investor protection. The amended Directive therefore establishes an extensive system of risk-limitation: In order to ensure that the risks related to the new classes of financial instruments, in particularly regarding derivatives, are duly and accurately monitored, measured and managed, management companies and investment companies are required to apply sound risk measurement processes under the supervision of the competent authorities. In particular, these risk measurement processes should enable them to monitor, measure and manage at any time the risks of the positions and their contribution to the overall risk-profile of the portfolio.

According to Recital 11 of the Recommendation, it provides some basic elements which should be taken into consideration by Member States for their implementation of Directive 85/611/EEC as amended by Directive 2001/108/EC. The Recommendation is not intended to provide exhaustive guidelines on the use of financial derivative instruments for UCITS but to outline some principles which can be considered as an essential basis of a common risk-measurement approach for UCITS. The requirements of the amended Directive call for the establishment of an adequate framework for the risk-measurement and –management of a UCITS by Member States. In order to facilitate the development of such a framework and to ensure a harmonised approach, it was considered desirable to recommend some common basic principles for risk-measurement.

According to Recital 3, the principles of the Recommendation should help Member States to ensure an equivalent and effective protection of investors throughout the Community and level the playing field for UCITS operators and products regulated under different jurisdictions.

The Commission Recommendation therefore introduces:

- a clarification regarding the total *maximum exposure* that may be incurred by a UCITS;
- approaches for *market risk* measurement;
- methods to assess *leverage;*
- methods to calculate *counterparty risk* associated with financial derivative instruments;
- standards for the application of *issuer concentration* limits with regard to derivatives; and
- a clarification on the concept of *uncovered sales* regarding financial derivative instruments, with criteria applicable to the cover of derivatives transactions in order to facilitate compliance with Art. 42 of the UCITS Directive.

2. The implementation situation

2.1. Overview of the implementation

The level of implementation varies considerably between different parts of the Recommendation. The key recommendations concerning *risk-measurement systems* that have been adapted to the risk-profile of a UCITS and limitations to a UCITS' *global exposure* on derivatives and *overall risk exposure* have been implemented by almost all Member States and most of the remaining ones are working on the implementation.

Regarding the recommendation on measurement of *market risk*, most Member States have implemented the recommendations concerning the employment of the commitment approach for 'non-sophisticated' UCITS. The level of implementation is clearly lower on the recommendations concerning the risk measurement methods for 'sophisticated UCITS'. A significant number of the Member States have indeed not yet implemented the differentiation of UCITS to sophisticated/ non-sophisticated.

Some jurisdictions, especially from among the new Member States, explained not having implemented this categorization of UCITS regarding their risk-measurement systems by the low number of UCITS in general in their jurisdiction, and that the existing UCITS have no positions in complex derivative instruments and do not intend to invest in such types of derivatives. It was also referred to the absence of clear definitions of "sophisticated" and "non-sophisticated" UCITS in the EU as a reason not to have implemented this recommendation.

The commitment approach is therefore the dominant method to measure market risk. Those Member States that use the VaR-approach have also mostly chosen the parameters suggested in the recommendation, with small variations.

Also regarding methods to assess the *leverage* of a UCITS, the commitment approach is clearly the dominant method. Most Member States require using the commitment approach to assess leverage, either because they have not defined the difference between sophisticated and non-sophisticated UCITS, or sophisticated UCITS do not exist in their jurisdiction.

The recommendations concerning standards and techniques to limit *counterparty risk* have so far been implemented by approximately half of the Member States. Many others are working on the implementation or still considering it. It should be noted that some of the recommendations include more precise requirements on the risk-assessment process, whereas many of the recommendations provide more flexibility on the investment activity of the UCITS (e.g. use of maximum potential loss instead of notional value, use of collateral to reduce counterparty risk and the recognition of netting).

The recommendations on methodologies to limit *issuer risk* have been implemented, partly to a high level, partly work is still on-going, e.g. on issues related to the use of index-based derivatives and the requirements for the underlying indices.

Also regarding the recommendations on the relevant *cover rules* to transactions with derivative instruments the degree of implementation varies a lot. Most Member States have implemented the recommendation concerning compliance with the Directive and the investment policy of the UCITS. Calculation of the level of cover with the commitment approach is still under work in many Member States. The recommendations providing more flexibility to the investment activity of a UCITS by the use of an alternative underlying cover have been implemented by more than half of the Member States in the case of cash-settlement, but by a minority in the absence of cash settlement, work is still on-going on this issue.

The following information has been provided by those CESR members, whose jurisdiction has not implemented the Recommendation at all, or only partly so far:

In *Cyprus* national implementing measures are foreseen through secondary legislation provided for in the national legislation. Currently the implementation of the Recommendation and the best measures towards this effect are being considered. The CySEC anticipates being in a position to implement the Recommendation after it consults with the industry experts and the Ministry of Finance, and no later than the end of 2005. To date, no local UCITS have been authorized.

Estonia has so far implemented only some parts of the Recommendation. The preliminary consultation process regarding the implementation of the Recommendation has taken place between the Ministry of Finance and the Financial Supervision Authority. The implementation date for the Recommendation into domestic legislation will presumably be the second half of 2005.

In *France* further work on the implementation regarding some parts of the Recommendation is being carried out by the AMF, where it was felt more detailed analysis of the Recommendation and its impacts was needed to achieve an effective regulation of the use of derivatives by UCITS. The AMF Draft Regulation is currently at a consultative stage.

Iceland has so far implemented only some parts of the Recommendation. The FME is currently working on guidance on the use of derivatives by UCITS.

In *Latvia* only some parts of the Recommendation have been implemented so far. The Recommendation will be incorporated in the Regulations on the Compliance with Prudential Requirements for UCITS, which are expected to be approved in the near future.

In *Malta* the MFSA is drafting the relevant requirements, which are to be included in the Investment Services Guidelines ("ISG") – which include, inter alia, the Standard Licence Conditions ("SLCs") applicable to harmonised UCITS. The drafting is anticipated to be completed by end of June 2005. The MFSA has not yet authorised any UCITS schemes.

In *the Netherlands* the Recommendation 2004/383/EC will be implemented in the Decree on the supervision of collective investment schemes 2005 and in the Further Regulations on the conduct of business supervision of collective investment schemes of the Authority for the Financial Markets. The Decree and the Further Regulations are scheduled to enter into force on 1st September 2005.

Slovenia plans to implement the remaining provisions during the second half of 2005.

In *Spain*, although Spanish law has not been amended in order to implement the Commission Recommendation there is already specific legislation developing most of the Commissions' recommendations. Besides that, there is a new law which came into force in February 2004 (Law 35/2003). Currently, there is a draft Royal Decree developing this new law which could take into account most of the Commission´s recommendations.

2.2. The implementation of the Recommendation in detail

2.2.1. Risk-measurement systems adapted to the relevant risk-profile of the UCITS

Extract from the Commission Recommendation 2004/383/EC

1. Risk-measurement systems adapted to the relevant risk-profile of the UCITS

In applying Article 21(1) of Directive 85/611/EEC, Member States are recommended to ensure that management or investment companies employ risk measurement systems which are adapted to the relevant risk-profile of a UCITS in order to make sure that they accurately measure all material risks related to the UCITS under the supervision of the competent authorities.

Implementation by Member States

21 Member States (*Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and the UK*) have implemented the recommendation to employ risk measurement systems which are adapted to the relevant risk-profile of a UCITS.

Five Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

2.2.2. Limitations to the UCITS risk-exposure

Extract from the Commission Recommendation 2004/383/EC

2. A harmonised interpretation of limitations to the UCITS' risk-exposure *2.1. Limitation to a UCITS' global exposure on derivatives and overall risk exposure* Member States are recommended to ensure that the global exposure relating to financial derivative instruments may not exceed 100 % of the UCITS' net asset value (NAV), and hence that the UCITS' overall risk exposure may not exceed 200 % of the NAV on a permanent basis.

Implementation by Member States

23 Member States (*Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and the UK*) have implemented the recommendation to ensure that the exposure of a UCITS related to derivatives does not exceed 100% of the NAV and that therefore the global exposure of a UCITS does not exceed 200% of the NAV. This recommendation is one of the most central suggestions by the Commission, and has resulted to a high level of implementation.

In addition, four Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/383/EC

2.2. Limitation to possible temporary borrowing Member States are recommended to ensure that the UCITS' overall risk exposure may not be increased by more than 10 % by means of temporary borrowing, so that the UCITS' overall risk exposure may not exceed 210 % of the NAV under any circumstances.

Implementation by Member States

22 Member States (*Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and the UK*) have implemented the recommendation to ensure that the exposure of UCITS related to borrowing does not exceed 10% of the NAV, and that therefore the global exposure of a UCITS does not exceed 210% of the NAV. In most Member States this implementation is based on a combined reading of the implementation of the previous point of the Recommendation, and the implementation of Art. 36 of the UCITS Directive concerning the 10% limit of the borrowing by UCITS and its temporary nature.

In addition, five Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/383/EC

2.3. Joint application of points 3 and 4 For the application of the 100% global exposure limit relating to derivatives, Member States are recommended to ensure that both points 3 and 4 are respected.

Implementation by Member States

16 Member States (*Austria, Belgium, Czech Republic, Denmark, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Poland, Portugal, Spain, Sweden and the UK*) have implemented the recommendation to ensure that both points 3 (market risk) and 4 (leverage) of the Recommendation are respected for the application of the 100% global exposure limit relating to derivatives.

Eight Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

2.2.3. Standards to measure market risks

Extract from the Commission Recommendation 2004/383/EC

> 3. Appropriately calibrated standards to measure market risk
>
> *3.1. Adaptation of risk-measurement methodologies to the risk-profile of a UCITS*
>
> In conformity with the overarching principle mentioned under point 1 and established in Article 21(1) of Directive 85/611/EEC, Member States are recommended to allow a differentiated methodological approach for the respective categories of 'non-sophisticated UCITS', which have overall less and simpler derivative positions by using e.g. a few plain vanilla options, and 'sophisticated UCITS'. The distinction between, and exact definition of, these categories requires further work in accordance with point 3.4. Pending completion of such work, Member States should move towards a more calibrated approach for measuring market risk in accordance with points 3.2 and 3.3.

Implementation by Member States

13 Member States (*Austria, Belgium, Denmark, Finland, Germany, Ireland, Italy, Lithuania, Luxembourg, Portugal, Slovak Republic, Sweden and the UK*) have implemented this recommendation, i.e. they allow different methodological approaches to be used in the risk-measurement of the UCITS' derivatives positions, depending on the complexity of the instruments used in the UCITS' investments. For non-sophisticated UCITS market risk will be computed on the basis of the commitment approach, and for sophisticated UCITS on the basis of VaR-approach with stress tests.

Eight Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Some jurisdictions, especially from among the new Member States, explained not having implemented this categorization of UCITS regarding their risk-measurement methods, by the low number of UCITS in general in their jurisdiction, and that the existing UCITS have no positions in complex derivative instruments and do not intend to invest in such types of derivatives. It was also referred to the absence of clear definitions of "sophisticated" and "non-sophisticated" UCITS in the EU as a reason not to have implemented this recommendation.

Extract from the Commission Recommendation 2004/383/EC

> *3.2. Non-sophisticated UCITS*
>
> 3.2.1. *Use of the commitment approach*

Member States are recommended to request their competent authorities to ensure that, in the case of non-sophisticated UCITS, they are satisfied that market risk is adequately assessed by using the commitment approach, whereby the derivative positions of a UCITS are converted into the equivalent position in the underlying assets embedded in those derivatives. For the application of the commitment approach, Member States' competent authorities should also take into account criteria such as the UCITS' overall exposure deriving from the employment of financial derivative instruments, the nature, aim, number and frequency of the contracts entered into by the UCITS and the management techniques adopted.

3.2.2. *Technical precisions*

In the case of options, Member States are recommended to allow the application of the delta approach, which is derived from the sensitivity of the change in the option's price to marginal changes in the price of the underlying financial instruments. The conversion of forwards, futures and swaps positions should depend on the precise nature of the underlying contracts. In the case of simple contracts, the marked-to-market value of the contracts will usually be relevant.

3.2.3. *Invitation to consider further additional safeguards*

Member States are required to consider whether additional safeguards are requested in the context of the use of the commitment approach, such as an appropriate cap to the global exposure relating to financial derivative instruments below 100 % of NAV for non-sophisticated UCITS.

Implementation by Member States

19 Member States (*Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Norway, Spain, Poland, Portugal, Slovak Republic, Sweden and the UK*) have implemented the recommendation in point 3.2.1., i.e. the employment of the commitment approach for non-sophisticated UCITS is allowed in measuring market risk.

Seven Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Member States do not generally require additional safeguards in addition to those associated with the application of the commitment approach, as referred to in point 3.2.3. of the Recommendation, in the context of the use of the commitment approach. It has not been deemed necessary by most Member States. In *Germany* stress tests are mandatory for all UCITS holding derivatives in their portfolio. In *Portugal* UCITS that are only obliged to use the commitment approach, can not invest more than 10% of their NAV in options' premiums.

Five Member States are still considering this recommendation.

Extract from the Commission Recommendation 2004/383/EC

3.3. Sophisticated UCITS

3.3.1. *Standard use of value-at-risk (VaR) approach with stress tests*

In the case of 'sophisticated UCITS', Member States are recommended to require management or investment companies to apply regularly VaR approaches. In the VaR-approaches, the maximum potential loss that a UCITS portfolio could suffer within a certain time horizon and a certain degree of confidence is estimated. Member States are recommended to require management or investment companies also to apply stress tests in order to help manage risks related to possible abnormal market movements. Stress tests measure how extreme financial or economic events affect the value of the portfolio at a specific point of time.

3.3.2. *Invitation to develop common reference standards as a further step*

For the application of VaR-approaches, Member States are recommended to require the use of appropriate standards in conformity with point 3.1. For this purpose, Member States should consider, as a possible reference the following parameters: a 99 % confidence interval, a holding period of one month and 'recent' volatilities, i.e. no more than one year from the calculation date without prejudice to further testing by the competent authorities. Once common standards have been developed by further work undertaken by Member States in accordance with point 3.4, Member States should allow management or investment companies to deviate from these standards only on a case-by-case basis, subject to the appropriate examination of the competent authorities in accordance with what is provided for in point 3.3.3.

3.3.3. *Internal risk-measurement models*

Member States are recommended to accept only those internal risk-measurement models proposed by a management or investment company which are subject to appropriate safeguards, including those set out in this recommendation. The models concerned should be subject to appropriate examination by the competent national authorities. Member States are also recommended to disclose a list of models recognised by the competent national authorities, and make them publicly available by appropriate means.

Implementation by Member States

13 Member States (*Austria, Belgium, Denmark, Finland, Germany, Ireland, Italy, Lithuania, Luxembourg, Portugal, Slovak Republic, Sweden and the UK*) have implemented the recommendation in point 3.3.1., i.e. for the risk-measurement of sophisticated UCITS it is required to use VaR-approach and stress tests.

Ten Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Some jurisdictions, especially from among the new Member States, explained not having implemented this recommendation by the low number of UCITS in general in their jurisdiction, and that the existing UCITS have no positions in complex derivative instruments and do not intend to invest in such types of derivatives. It was also referred to the absence of clear definitions of "sophisticated" and "non-sophisticated" UCITS in the EU as a reason not to have implemented this recommendation on the use of VaR-approaches and stress tests. One jurisdiction expressed that from their point of view the Recommendation does not clarify how to apply the VaR-approach in conjunction with the 100% global exposure limit relating to derivatives and the 210% overall risk exposure limit of the UCITS´ net asset value.

Twelve Member States (*Austria, Belgium, Czech Republic Denmark, Germany, Italy, Lithuania, Luxembourg, Portugal, Slovak Republic, Sweden and the UK*) have implemented the recommendation in point 3.3.2. to require the use of appropriate standards in connection to the VaR-approach.

These Member States have also mostly chosen the parameters suggested in the recommendation, i.e. a 99 % confidence interval, a holding period of one month and 'recent' volatilities, i.e. no more than one year from the calculation date. Small variations can be indicated in this regard: *Portugal* imposes as a minimum standard the Risk metrics approach (95 % confidence interval). *Austria*, *Denmark* and *Germany* require a holding period of 10 days. In the German experience this parameter has proven to be efficient when used by credit institutions.

In *Ireland* the regulatory framework sets out a number of factors which will be taken into account when the competent authority assesses a VaR model, including the parameters of the model such as minimum holding period, confidence level and historical observation period. Other factors include reliability through appropriate back testing, proposed stress testing, internal auditing and appropriateness to the UCITS.

Although the VaR-approach is not used by any management companies in *Spain*, the Spanish legal framework related to the use of internal risk-measurement model requires the following parameters: a 99% confidence interval and a holding period of ten days.

Eight Member States are currently working on the implementation of this recommendation, or considering the implementation of it. In *France* in the draft proposal under consultation it is foreseen at this moment to use a 95% confidence interval and a holding period of seven days.

Twelve Member States (*Austria, Belgium, Czech Republic, Denmark, France, Germany, Italy, Lithunia, Luxembourg, Portugal, Slovak Republic and the UK*) have implemented the recommendation in **point 3.3.3.** to accept only those internal risk-measurement models which are subject to appropriate safeguards. This rate of implementation is in direct relationship to the lack of sophisticated UCITS in many Member States.

All in all, practical cases of the use of internal models in connection to UCITS' risk-measurement seem to be quite rare in most Member States, and the assessment by the competent authority is/ would regarding possibly proposed models be conducted on a case-by-case basis. Therefore, there are generally also no intentions to publish lists of recognised/ authorized models.

Nine Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

2.2.4. Assessment of leverage

Extract from the Commission Recommendation 2004/383/EC

4. Appropriately calibrated standards to assess leverage

4.1. Use of the commitment approach

In the absence of the advanced methodologies mentioned under point 4.2, Member States are recommended to request the use of the commitment approach to assess a UCITS' leverage, in combination with the VaR-approaches and the stress-tests required for the purpose of measuring market risk exposure of sophisticated UCITS under point 3.3.

Member States are also recommended to allow management or investment companies which use the commitment approach according to point 3.2 to also employ the commitment approach for the assessment of leverage.

Implementation by Member States

Six Member States (*Denmark, Ireland, Italy, Lithuania, Portugal and the UK*) have implemented the recommendation under **point 4.1. first paragraph**, to request the use of the commitment approach to assess a UCITS' leverage for sophisticated UCITS, in combination with the VaR-approaches and the stress tests.

Four other Member States have partially implemented the requirement. In *Germany* sophisticated UCITS are required to use the VaR-approach as the commitment approach is not in their view able to deliver adequate results to assess leverage in case of complex derivative financial instruments. The additional use of the commitment approach is permissible. Stress tests are mandatory for all UCITS. In *Austria* regarding sophisticated derivatives UCITS have to use the VaR-approach and additionally to apply stress tests for the assessment of leverage. In *Sweden* the sophisticated funds are allowed to choose between the commitment approach and a VaR-model. Also *Luxembourg* has partially implemented this recommendation.

Other Member States mainly only require using the commitment approach to assess leverage, either because they have not defined the difference between sophisticated and non-sophisticated UCITS, or sophisticated UCITS do not exist in their jurisdiction.

Seven Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

14 Member States (*Austria, Czech Republic, Denmark, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Portugal, Spain, Sweden and the UK*) have implemented the recommendation under **point 4.1. second paragraph**, to allow the commitment approach for the assessment of leverage of those UCITS which also use this approach for measuring market risk (non-sophisticated UCITS).

Eight Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/383/EC

4.2. Invitation to allow the use of further advanced methodologies

In the case of sophisticated UCITS under point 3.3, provided that the supervisory authorities are fully convinced that a given management or investment company has already developed and tested an appropriate method of assessing leverage by the means of VaR-approaches and stress tests and provided that his method is duly documented by the management or investment company, Member States should consider recognising it for the assessment of leverage. For this purpose, Member States are specifically recommended to consider approaches relying on a standard of comparison such as the VaR/stress test value of an appropriate reference portfolio which complies with the investment policy of a UCITS or the VaR/stress test value of an adequate benchmark.

Implementation by Member States

Six Member States (*Austria, Germany, Lithuania, Luxembourg, Portugal and the UK*) have implemented the recommendation to allow the use of VaR-approaches and stress tests for the assessment of leverage of sophisticated UCITS in case a given management or investment company has already developed an appropriate method. However, some of them, e.g. *Luxembourg*, consider that the purpose of the text of the recommendation regarding approaches relying on a standard of comparison such as the VaR/stress test value of an appropriate reference portfolio, is unclear, and this has therefore not been required. Eight Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

In many Member States the reason for not having implemented this recommendation is explained by the small amount or non-existence of sophisticated UCITS. The commitment approach is clearly the dominating method to assess leverage.

2.2.5. Standards and risk-mitigation techniques to limit counterparty risk

Extract from the Commission Recommendation 2004/383/EC

5. Applying appropriate standards and recognised risk-mitigation techniques to limit counterparty risk

5.1. Criteria for the limitation of counterparty risk exposure to OTC derivatives

Member States are recommended to ensure that all the derivatives transactions which are deemed to be free of counterparty risk are performed on an exchange where the clearinghouse meets the following conditions: it is backed by an appropriate performance guarantee, and is characterised by a daily mark-to-market valuation of the derivative positions and an at least daily margining.

Implementation by Member States

15 Member States (*Austria, Belgium, Czech Republic, France, Germany, Hungary, Italy, Lithuania, Luxembourg, Norway, Portugal, Slovak Republic, Spain, Sweden and the UK*) have implemented this recommendation, i.e. transactions which are deemed to be free of counterparty risk are performed on an exchange where the clearinghouse meets the conditions set by the Recommendation.

Eight Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/383/EC

5.2. Recommendation to use maximum potential loss

Member States are recommended to require the exposure per counterparty on an OTC-derivative transaction to be measured on the maximum potential loss incurred by the UCITS if the counterparty defaults and not on the basis of the notional value of the OTC contract.

Implementation by Member States

15 Member States (*Austria, Belgium, Czech Republic, Denmark, France, Germany, Ireland, Italy, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovak Republic and the UK*) have implemented this recommendation, i.e. they require the counterparty risk on an OTC-derivative transaction to be measured on the basis of the maximum potential loss to the UCITS instead of the notional value of the OTC contract. This recommendation provides for more flexibility in the investment activity of a UCITS.

Eight Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/383/EC

5.3. Invitation to use the standards laid down in Directive 2000/12/EC as a first reference

In compliance with the fixed quantitative prudential limits already imposed by Directive 2001/108/EC, Member States are recommended to require the assessment of counterparty risk with regard to OTC-derivatives in accordance with the marking-to-market method laid down in Directive 2000/12/EC of the European Parliament and of the Council, notwithstanding the need of appropriate pricing models when the market price is not available. Member States should also require the use of the full credit equivalent approach laid down in Directive 2000/12/EC, including an add-on methodology to reflect the potential future exposure.

Implementation by Member States

14 Member States (*Austria, Belgium, Czech Republic, Denmark, France, Germany, Ireland, Italy, Lithuania, Luxembourg, Norway, Portugal, Slovak Republic and the UK*) require the assessment of counterparty risk with regard to OTC-derivatives in accordance with the recommendation.

Nine Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/383/EC

5.4. Recognition of collateral for the purpose of assessing a UCITS' counterparty risk exposure

5.4.1. *General criteria*

Member States are recommended to allow for the recognition of collateral in order to reduce a UCITS' counterparty risk provided that, in accordance with the prudential rules laid down in Directive 2000/12/EC and taking into account further developments, the collateral:

(a) is marked-to-market on a daily basis and exceeds the value of the amount at risk;

(b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;

(c) is held by a third part custodian not related to the provider or is legally secured from the consequences of a failure of a related party;

(d) can be fully enforced by the UCITS at any time.

5.4.2. *Risk concentration limits*

In accordance with the general principle of risk-spreading, Member States are recommended to ensure that the exposure to counterparty risk on a given entity, respectively group, after taking into account any collateral received from that entity, or group, may not be higher than the 20 % limit laid down in Directive 85/611/EEC, both at individual level, under the second sub-paragraph of Article 22(2) and at group level, under Article 22(5) of that Directive.

13 Member States (*Austria, Belgium, Czech Republic, France, Germany, Ireland, Italy, Lithuania, Luxembourg, Poland, Portugal, Spain and the UK*) allow for the recognition of collateral in order to reduce a UCITS' counterparty risk, provided that the collateral fulfils the stated requirements. This recommendation in point 5.4.1. provides for more flexibility in the investment activity of a UCITS.

Nine Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

23 Member States (*Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Slovenia, Slovak Republic, Spain, Sweden and the UK*) have implemented the recommendation in point 5.4.2. concerning risk concentration limits. Most Member States consider it being clear on the basis of their legislation that after taking into account any collateral received, a UCITS must comply with the general risk spreading limits provided by Art. 22 of the UCITS Directive, as implemented nationally. A specific provision to implement this point of the recommendation has therefore not been considered necessary in most Member States.

Four Member States have reported to be currently working on the implementation of this recommendation.

Extract from the Commission Recommendation 2004/383/EC

5.5. Recognition of netting Member States are recommended to allow UCITS to net their OTC-derivative positions vis-à-vis the same counterparty, provided that the netting procedures comply with the conditions laid down in Directive 2000/12/EC and that they are based on legally binding agreements.

Implementation by Member States

16 Member States (*Austria, Belgium, Czech Republic, Denmark, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Norway, Poland, Slovak Republic, Spain and the UK*) allow UCITS to net their OTC-derivative positions vis-à-vis the same counterparty, provided that the requirements mentioned in the recommendation are complied with. This recommendation in point 5.5. provides for more flexibility in the investment activity of a UCITS. Two of the Member States mentioned above (*Italy* and *Slovak Republic*) require, that the "legally binding agreement" is approved case-by-case by the competent authorities.

Nine Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

2.2.6. Methodologies when applying limitations to issuer risk

Extract from the Commission Recommendation 2004/383/EC

6. Using adequate methodologies when applying limitations to issuer risk *6.1. Adaptation of the risk-measurement methodologies to the derivatives typology* Considering that the fourth subparagraph of Article 21(3) of Directive 85/611/EEC provides that, in order to include financial derivative instruments into the issuer concentration limits foreseen by Article 22, they should be converted into equivalent underlying positions, Member States are recommended to require the use of methodologies adequate to the type of instrument considered. For example, Member States may allow the use of the delta approach for options. In cases where this approach is not relevant or technically impossible, due to the complexity of the concerned financial derivative instrument, Member States may then allow the use of an approach based on the maximum potential loss linked to that derivative as a maximum threshold assessment of the solvency risk.

Implementation by Member States

13 Member States (*Austria, Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Lithuania, Luxembourg, Portugal, Slovak Republic and the UK*) have implemented this recommendation. In addition, *Hungary* and *Sweden* have implemented it partially, i.e. the use of the maximum potential loss is not yet required.

Eight Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/383/EC

6.2. Case of index-based derivatives Member States are advised, in the use of their discretionary powers for the application of the option foreseen by the third subparagraph of Article 21(3) of Directive 85/611/EEC, to take into account

whether the underlying index of a financial derivative instrument meets the requirements of Article 22a of that Directive. For the application of Article 21(2) and the third subparagraph of Article 21(3) of that Directive, Member States are recommended to consider that, a management or investment company should generally be prevented from using financial derivative instruments based on a self-composed index with the intent to circumvent the issuer concentration limits of Article 22. Member States are also recommended to consider that a management or investment company should be prevented from using financial derivative instruments based on indices which do not comply with the concentration limits set by Article 22a of Directive 85/611/EEC.

Implementation by Member States

According to the third subparagraph of Article 21(3) of the UCITS Directive, the Member States may allow that, when a UCITS invests in index-based financial derivative instruments, these investments do not have to be combined to the risk diversification limits laid down in Article 22 of the UCITS Directive.

15 Member States (*Austria, Belgium, Czech Republic, Finland, France, Germany, Ireland, Italy, Luxembourg, Malta, Norway, Poland, Portugal, Slovak Republic and the UK*) have currently implemented the recommendation in **point 6.2.**, i.e. to apply the above mentioned derogation in Article 21(3) to exclude the underlying investments of an index-based financial derivative instrument of the calculation of the risk diversification limits, these Member States require that the underlying index of a financial derivative instrument meets the requirements of Article 22a of the Directive. In other words, if the index does not fulfil the criteria of Article 22a, the equivalent underlying positions must then be taken into account for the issuer limits of Article 22 of the Directive.

Six Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

14 Member States (*Austria, Belgium, Czech Republic, Finland, France, Germany, Italy, Luxembourg, Malta, Poland, Portugal, Slovak Republic, Sweden and the UK*) have implemented the recommendation in **point 6.2.** to prevent UCITS from using financial derivative instruments based on a self-composed index with the intent to circumvent the issuer concentration limits of Article 22. In addition *Ireland* has implemented this recommendation partially, i.e. there is no reference to a prohibition on a self-composed index, although in practice this would not be permitted.

Six Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

The purpose of the last sentence of point 6.2. seems unclear. It states the following: "Member States are also recommended to consider that a management or investment company should be prevented from using financial derivative instruments based on indices which do not comply with the concentration limits set by Article 22a of Directive 85/611/EEC." It can be asked, why should Member States prevent UCITS from using financial derivative instruments based on indices, which comply with the concentration limits set by Article 22 of the Directive. This kind of an index would be even more diversified than the one complying with the Article 22a limits.

The wording used earlier on in point 6.2. refers to "the requirements of Article 22a". This refers clearly to the qualitative requirements set by the Directive to the applicable indices, i.e. that:

- its composition is sufficiently diversified;
- the index represents an adequate benchmark for the market to which it refers;
- it is published in an appropriate manner.

Even if the purpose of the last sentence of point 6.2. would be to recommend, that Member States should not allow UCITS to invest at all in index derivatives which do not fulfil the qualitative criteria of Article 22a mentioned above, generally Member States seem to be of the view that this should not be the case. In accordance with the first sentence of point 6.2., investments in these kinds of index derivatives would have to be taken into account when calculating the application of the investment limits as required by Article 22. This interpretation is also in line with the general aim of the recommendation in point 6.2., i.e. to prevent UCITS from taking inappropriate issuer risks by circumventing the risk diversification limits of Article 22 via using index derivatives.

Extract from the Commission Recommendation 2004/383/EC

6.3. Risk-concentration limits

Member States are recommended to require management companies or investment companies to cumulate counterparty risk with issuer risk versus the same entity or group for the application of the 20% NAV-limit pursuant to the second subparagraph of Article 22(2) and Article 22(5) of Directive 85/611/EEC.

Implementation by Member States

19 Member States (*Austria, Belgium, Czech Republic, Finland, France, Germany, Ireland, Italy, Latvia, Lithuania, Luxembourg, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and the UK*) have implemented the recommendation concerning risk concentration limits. Most Member States consider it being clear on the basis of their legislation that counterparty risk and issuer risk of the equivalent underlying positions versus the same entity or group must be cumulated, because a UCITS must comply with the general risk spreading limits provided by Art. 22 of the UCITS Directive, as implemented nationally. A specific provision to implement this point of the recommendation has therefore not been considered necessary in most Member States.

Six Member States have reported to be currently working on the implementation of this recommendation.

2.2.7. Rules on cover of derivative transactions

Extract from the Commission Recommendation 2004/383/EC

7. Applying relevant cover rules to transactions with both listed, and OTC, financial derivative instruments

7.1. Appropriate cover in the absence of cash-settlement

When the financial derivative instrument provides for, either automatically or at the counterpart's choice, physical delivery of the underlying financial instrument on maturity or exercise, and provided that physical delivery is common practice on the considered instrument, Member States are recommended to require UCITS to hold this underlying financial instrument as cover in their investment portfolios.

Implementation by Member States

12 Member States (*Austria, Belgium, Czech Republic, Germany, Ireland, Italy, Lithuania, Luxembourg, Poland, Spain, Sweden and the UK*) currently require the holding of an underlying in case of derivatives providing for physical delivery. In 10 Member States work is going on regarding the implementation of this recommendation.

Extract from the Commission Recommendation 2004/383/EC

7.2. Exceptional substitution with an alternative underlying cover in the absence of cash settlement

In cases where the risks of the underlying financial instrument of a derivative can be appropriately represented by another underlying financial instrument and the underlying financial instrument is highly liquid, Member States should consider allowing UCITS to hold exceptionally other liquid assets as cover provided that they can be used at any time to purchase the underlying financial instrument to be delivered and that the additional market risk which is associated with that type of transaction is adequately measured.

Implementation by Member States

10 Member States (*Belgium, Czech Republic, Germany, Ireland, Italy, Lithuania, Luxembourg, Portugal, Spain and the UK*) have implemented the recommendation to allow an alternative underlying cover. This recommendation provides flexibility for the management company/ investment company in its investment activity concerning the cover used in UCITS' transactions with financial derivative instruments. In Italy the use of this possibility is limited to future contracts with notional underlying bonds, i.e. UCITS are permitted to hold bonds different from those that have to be delivered, provided that these instruments have the same duration, currency and maturity than the bonds to be delivered. In Ireland the use of alternative cover is also limited, to highly liquid fixed income securities. In the Czech Republic, holding of an alternative underlying is allowed only in case of currency derivatives acquired for the hedging purposes.

Eight Member States are working on the implementation of this recommendation, or considering the implementation.

Other Member States have considered the recommendation, but have decided not to implement it, at least so far. As a reason was mentioned e.g. the risk of holding inadequate assets for cover.

Extract from the Commission Recommendation 2004/383/EC

7.3. Substitution with an alternative underlying cover in the case of cash-settlement

Where the financial derivative instrument is cash-settled automatically or at the UCITS discretion, Member States should consider allowing the UCITS not to hold the specific underlying instrument as cover. In this case, Member States are recommended to consider the following categories as acceptable cover:

(a) cash;

(b) liquid debt instruments (e.g. government bonds of first credit rating) with appropriate safeguards (in particular, haircuts);

(c) other highly liquid assets which are recognised by the competent authorities considering their correlation with the underlying of the financial derivative instruments, subject to appropriate safeguards (e.g. haircuts where relevant).

In the context of the application of Article 42 of Directive 85/611/EEC, Member States should consider as 'liquid' those instruments which can be converted into cash in no more than seven business days at a price closely corresponding to the current valuation of the financial instrument on its own market. Member States are recommended to ensure that the respective cash amount be at the UCITS' disposal at the maturity/expiry or exercise date of the financial derivative instrument.

Implementation by Member States

16 Member States (*Austria, Belgium, Czech Republic, Denmark, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Poland, Portugal, Spain, Sweden and the UK*) have implemented

this recommendation, i.e. to allow the use of an alternative underlying cover in the case of cash-settled financial derivative instruments. This recommendation provides flexibility for the management company/ investment company in its investment activity concerning the cover used in UCITS' transactions with financial derivative instruments.

Eight Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/383/EC

7.4. Calculation of the level of cover Member States are recommended to require the level of cover to be calculated in line with the commitment approach.

Implementation by Member States

11 Member States (*Belgium, Denmark, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Portugal, Sweden and the UK*) have implemented this recommendation, i.e. they require the level of cover for financial derivative instruments to be calculated in line with the commitment approach. In addition the *Austrian* regulation prescribes the requirement that the UCITS has to be able to fulfil each of its payment and delivery obligations at any time. In *Poland* UCITS have to retain assets that will provide for settlement of transactions in derivatives, i.e. the level of cover should be always enough to close all positions in derivatives.

10 Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/383/EC

7.5. Nature of the underlying financial instrument Member States are recommended to require that the underlying financial instrument of financial derivative instruments, whether they provide for cash-settlement or physical delivery, as well as the financial instruments held for cover have to be compliant with the Directive and the individual investment policy of the UCITS.

Implementation by Member States

19 Member States (*Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovak Republic, Spain, Sweden and the UK*) have implemented this recommendation.

Eight Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

III The Commission Recommendation 2004/384/EC on some contents of the simplified prospectus of UCITS

1. The aim of the Recommendation

Provisions concerning the simplified prospectus were introduced in the UCITS Directive by the amending Directive 2001/107/EC in order to enhance effective investor information. According to Recital 1 of the Recommendation, the simplified prospectus is designed to provide clear information about the essentials the investor should know before investing in a fund, and be easily understood by the average retail investor. The simplified prospectus is also designed to facilitate the cross-border marketing of units of UCITS, and be used as a single marketing tool throughout the Community.

In order to ensure the effectiveness of this key element of investor protection, it was considered desirable to clarify the contents and presentation of some of the elements of information which have to be included in the simplified prospectus pursuant to Schedule C of Annex I to Directive 85/611/EEC. This was seen as critical to ensure a common reading of the contents of Schedule C.

The Commission Recommendation therefore includes interpretations concerning:

- the description of the UCITS' *investment objectives*;
- the description of the UCITS' *investment policy*;
- presentation of the *risk profile* of the UCITS;
- the way to present *past performance* of the fund;
- presentation of the *tax regime*;
- methods to provide for full *transparency of all the costs* actually borne by investors in relation to their investment; and
- disclosure of *fee-sharing agreements* and comparable fee arrangements.

2. The implementation situation

2.1. Overview to the implementation

As regarding the derivatives Recommendation, the level of implementation varies considerably between different parts of the simplified prospectus Recommendation. The key recommendations on the presentation of the *objectives* and the *investment policy* of a UCITS have been implemented by a large majority of Member States.

The recommendations concerning the *risk profile* of a UCITS have also been implemented by most Member States. It has to be noted that the level of detail used in the implementing measures varies between Member States, especially concerning the recommendations on the specific risks and horizontal risks factors. However, in view of the aims of the Recommendation, the core suggestion is that the most relevant and material risks involved with an investment to a particular UCITS should be presented for the information of the investors, and this recommendation has been very broadly implemented. Only very few Member States have chosen the option to require a synthetic indicator of risk based on the UCITS' volatility.

Regarding the recommendations concerning the presentation of the *past performance* of a UCITS and benchmark comparison, more than half of the Member States have implemented so far and some are currently working on the issue. Some Member States have implemented partially e.g. requiring the performance to be presented from a shorter period than recommended. Most Member States only consider disclosure of a benchmark necessary when the fund's investment objective explicitly refers to a certain benchmark.

Most Member States have implemented the recommendation concerning the presentation of the *tax regime*.

More than half of the Member States have implemented the recommendations concerning the transparency of *costs and fees*, e.g. the publication of the total expense ratio (TER), expected cost structure and portfolio turnover rate. Some Member States have implemented the requirements partially, e.g. without the requirement to publish the so-called synthetic TER, as explained in point 6 of Annex I of the Commission Recommendation (see Annex I of this report).

Nearly half of the Member States have implemented the recommendations concerning the indication of the existence of *fee-sharing agreements* and *soft-commissions*, and the recommendation to require UCITS to consider whether fee-sharing agreements and comparable fee-arrangements are for the exclusive benefit of the UCITS. Some jurisdictions are currently working on the implementation of these recommendations, or considering the implementation of it. Some of the new Member States' authorities explained not having implemented these recommendations, because fee-sharing agreements and soft commissions are currently not common in their jurisdiction.

The following information has been provided by those CESR members, whose jurisdiction has not implemented the Recommendation at all, or only partly so far:

In *Cyprus* national implementing measures are foreseen through secondary legislation provided for in the national legislation. Currently the implementation of the Recommendation and the best measures towards this effect are being considered. The CySEC anticipates being in a position to implement the Recommendation after it consults with the industry experts and the Ministry of Finance, and no later than the end of 2005. To date, no local UCITS have been authorized.

In *Malta* the MFSA is drafting the relevant requirements, which are to be included in the Investment Services Guidelines ("ISG"). The drafting is anticipated to be completed by end of June 2005. The MFSA has not yet authorised any UCITS schemes.

In *Latvia* the Recommendation of the Financial and Capital Market Commission that will cover these issues is being drafted.

In *the Netherlands* this recommendation will be implemented in the Further Regulations on the financial information leaflet 2002 changing the rules relating to the financial information leaflet pursuant to the Act on Collective Investment Schemes. The Further Regulations are scheduled to enter into force on 1st September 2005.

In *Norway* Schedule C of Annex I of the Directive 85/611/EEC has been implemented in the Norwegian Regulation on Prospectuses. The wording of the relevant decision in this Regulation corresponds to the wording of Schedule C of Annex I. For the time being, Kredittilsynet is working with the implementation process regarding the Recommendation.

2.2. The implementation of the Recommendation in detail

2.2.1. UCITS' objectives and investment policy

Extract from the Commission Recommendation 2004/384/EC

1.1. Interpretation of 'short definition of UCITS' objectives'

In the first indent, Member States are recommended to interpret 'a short definition of UCITS' objectives' as meaning the following information:

(a) a concise and appropriate description of the outcomes sought for any investment in the UCITS;

(b) a clear statement of any guarantees offered by third parties to protect investors and any restrictions on those guarantees;

(c) a statement, where relevant, that the UCITS is intended to track an index/indices, and sufficient indications to enable investors both to identify the relevant index/indices and to understand the extent or degree of tracking pursued.

Implementation by Member States

22 Member States (*Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and the UK*) have implemented the recommendation concerning the interpretation of 'a short definition of UCITS' objectives'.

Three Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/384/EC

1.2. Interpretation of 'the unit trust's/common fund's or the investment company's investment policy'

In the second indent Member States are recommended to interpret 'the unit trust's/common fund's or the investment company's investment policy' as meaning the following information, provided it is material and relevant:

(a) the main categories of eligible financial instruments which are the object of investment;

(b) whether the UCITS has a particular strategy in relation to any industrial, geographic or other market sectors or specific classes of assets, e.g. investments in emerging countries' financial instruments;

(c) where relevant, a warning that, whilst the actual portfolio composition is required to comply with the broad legal and statutory rules and limits, risk-concentration may occur in regard of certain tighter asset classes, economic and geographic sectors;

(d) if the UCITS invests in bonds, an indication of whether they are corporate or government, their duration and the rating requirements;

(e) if the UCITS uses financial derivative instruments, an indication of whether this is done in pursuit of the UCITS' objectives, or for hedging purposes only;

(f) whether the UCITS' management style contemplates some reference to a benchmark; and in particular whether the UCITS has an 'index tracking' objective, with an indication of the strategy to be pursued to achieve this;

(g) whether the UCITS' management style is based on a tactical asset allocation with high frequency portfolio adjustments.

Implementation by Member States

20 Member States (*Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Poland, Portugal, Slovak Republic, Spain and the UK*) have implemented the requirement on the interpretation of 'the unit trust's/common fund's or the investment company's investment policy'.

Five Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Some jurisdictions criticised the fact that there is no clear definition of what a tactical asset allocation means.

Extract from the Commission Recommendation 2004/384/EC

> **1.3. Joint presentation of the UCITS' objectives and investment policy**
>
> Home Member States are recommended to allow the information required under points 1.1 and 1.2 to be set out as a single item in the simplified prospectus (e.g. for the information on index tracking), provided that the information so combined does not lead to confusion of the objectives and policies of the UCITS. The order of the information items may be adapted to reflect the UCITS' specific investment objectives and policy.

Implementation by Member States

21 Member States (*Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Iceland, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and the UK*) have implemented the recommendation to allow the information concerning the UCITS' objectives and investment policy to be set out as a single item in the simplified prospectus, i.e. they allow this flexibility in the presentation of the fund's objectives and investment policy. In addition, one Member State has indicated that this requirement will be implemented in the future and two other Member States are considering the implementation.

Three Member States (*France*, *Ireland* and *Italy*) explicitly require these issues to be presented separately.

2.2.2. UCITS' risk profile

Extract from the Commission Recommendation 2004/384/EC

> **1.4. Interpretation of 'a brief assessment of the fund's risk profile'**
>
> In the second indent, Member States are recommended to interpret 'a brief assessment of the fund's risk profile' as meaning the following information:
>
> 1.4.1. *Overall structure of the information provided*
>
> (a) a statement to the effect that the value of investments may fall as well as rise and that investors may get back less than they put in;
>
> (b) a statement that details of all the risks actually mentioned in the simplified prospectus may be found in the full prospectus;
>
> (c) a textual description of any risk investors have to face in relation to their investment, but only where such risk is relevant and material, based on risk impact and probability.

Implementation by Member States

19 Member States (*Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovak Republic, Spain and the UK*) have implemented the recommendation on the interpretation of 'a brief assessment of the fund's risk profile'.

Five Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/384/EC

1.4.2. *Precisions regarding the textual description of risks*

1.4.2.1. Specific risks

The description referred to in point 1.4.1.(c) should include a brief and understandable explanation of any specific risk arising from particular investment policies or strategies or associated with specific markets or assets relevant to the UCITS such as:

(a) the risk that the entire market of an asset class will decline thus affecting the prices and values of the assets (market risk);

(b) the risk that an issuer or a counterparty will default (credit risk);

(c) only where strictly relevant, the risk that a settlement in a transfer system does not take place as expected because a counterparty does not pay or deliver on time or as expected (settlement risk);

(d) the risk that a position can not be liquidated in a timely manner at a reasonable price (liquidity risk);

(e) the risk that the investment's value will be affected by changes in exchange rates (exchange or currency risk);

(f) only where strictly relevant, the risk of loss of assets held in custody that could result from the insolvency, negligence or fraudulent action of the custodian or of a subcustodian (custody risk);

(g) risks related to a concentration of assets or markets.

1.4.2.2. Horizontal risk factors

The description referred to in point 1.4.1.(c) should also mention, where relevant and material, the following factors that may affect the product:

(a) performance risk, including the variability of risk levels depending on individual fund selections, and the existence, absence of, or restrictions on any guarantees given by third parties;

(b) risks to capital, including potential risk of erosion resulting from withdrawals/cancellations of units and distributions in excess of investment returns;

(c) exposure to the performance of the provider/third-party guarantor, where investment in the product involves direct investment in the provider, rather than assets held by the provider;

(d) inflexibility, both within the product (including early surrender risk) and constraints on switching to other providers;

(e) inflation risk;

(f) lack of certainty that environmental factors, such as a tax regime, will persist.

Implementation by Member States

16 Member States (*Austria, Belgium, Czech Republic, Estonia, France, Germany, Greece, Iceland, Ireland, Lithuania, Luxembourg, Poland, Portugal, Slovak Republic, Spain and the UK*) have implemented the recommendation concerning the 'Specific risks' and 'Horizontal risks factors'. Six Member States have implemented this recommendation partially.

It has to be noted, that the level of detail used in the implementing measures varies between Member States. However, in view of the aims of the Recommendation, the core suggestion is that the most relevant and material risks involved with an investment to a particular UCITS should be presented for the information of investors, and this recommendation has been very broadly implemented.

Four Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/384/EC

1.4.2.3. Possible prioritisation of information disclosure

In order to avoid conveying a misleading image of the relevant risks, Member States are also recommended to consider requiring the presentation of the information items to prioritise, based on scale and materiality, the risks so as to better highlight the individual risk profile of the UCITS.

Implementation by Member States

16 Member States (*Austria, Belgium, Estonia, Finland, France, Greece, Iceland, Ireland, Italy, Lithuania, Portugal, Slovak Republic, Slovenia, Spain, Sweden and the UK*) have implemented the recommendation concerning the prioritisation of the information on risks.

Five Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/384/EC

1.4.3. *Additional disclosure of a synthetic risk indicator*

Where the UCITS has been set up at least one year before, home Member States are also invited to consider as a possible option requiring that the description referred to in point 1.4.1.(c) be supplemented by a synthetic indicator of risk in just one figure or word, based on the volatility of the UCITS' portfolio, in which case:

(a) the volatility of the UCITS' portfolio should be intended as measuring the dispersion of the UCITS' return;

(b) the UCITS' return should be calculated taking into account all the UCITS' net asset values (NAVs) of the period, e.g. daily NAVs where this is the normal frequency of NAV calculation as approved by the UCITS competent authorities, computed by assessing the UCITS assets on that same frequency.

Implementation by Member States

Five Member States (*Belgium, Italy, Poland, Portugal and Slovak Republic*) have chosen the option to require a synthetic indicator of risk in the simplified prospectus based on the UCITS' volatility as mentioned under point 1.4.3. of the Recommendation. Some other Member States do not request but instead recommend the use of a volatility indicator. In *Greece* the synthetic indicator of risk is required in the UCITS' annual and semi-annual reports. The method to calculate and present this indicator varies considerably between Member States, however. Four Member States are currently considering, whether or not to implement this requirement.

2.2.3. UCITS' historical performance

Extract from the Commission Recommendation 2004/384/EC

1.5. Interpretation of 'historical performance of the unit trust/common fund/investment company (where applicable)' In the third indent, Member States are recommended to interpret the 'historical performance of the unit trust/common fund/investment company (where applicable)' with 'a warning that this is not an indicator of future performance' as meaning the following information: 1.5.1 *Disclosure of past performance:* (a) the UCITS' past performance, as presented using a bar chart showing annual returns for the last 10 full consecutive years. If the UCITS has been in existence for fewer than 10 years but at least for a period of one year, it is recommended that the annual returns, calculated net of tax and charges, be given for as many years as are available; (b) if a UCITS is managed according to a benchmark or if its cost structure includes a performance fee depending on a benchmark, the information on the past performance of the UCITS should include a comparison with the past performance of the benchmark according to which the UCITS is managed or the performance fee is calculated. Member States are recommended to require that comparison to be achieved by representing the past performance of the benchmark and that of the UCITS on the same barchart and/or separately.

Implementation by Member States

17 Member States (*Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Poland, Portugal, Slovak Republic, Sweden and the UK*) have implemented the recommendation on the disclosure of the UCITS' past performance and benchmark comparison. Some other jurisdictions have implemented the recommendation partially, i.e. requiring the past performance to be presented from a shorter period, e.g. three years (*Luxembourg*), or five years (*Denmark, Hungary, Spain*).

Five Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/384/EC

1.5.2. *Disclosure of cumulative (average) performance* Additionally, Member States are recommended to consider requiring disclosure, either of the cumulative performance, or the cumulative average performance of the fund over specific periods of time (such as on three, five and 10 years). In case they use either of these options, Member States are recommended to require also a comparison with the cumulative performance, or cumulative average performance (where relevant) of a benchmark, when comparison to a benchmark is required in accordance with point 1.5.1.(b).

Implementation by Member States

15 Member States (*Austria, Belgium, Estonia, France, Germany, Greece, Hungary, Iceland, Ireland, Lithuania, Poland, Portugal, Slovak Republic, Sweden and the UK*) have implemented the recommendation with respect to disclosure of cumulative (average) performance. Most of these Member States have chosen to require the presentation of the *cumulative average performance*. *Greece*, *Poland* and *the UK* require the presentation of the *cumulative performance*. *France* currently allows the fund manager to choose between these two options.

As a reason for not requiring the disclosure of cumulative (average) performance was mentioned particularly by some new Member States' authorities the short existence of funds so far, also with regard to consolidation of the collective investment funds´ sector which was accompanied by the transformation of investment funds into open-end funds, mergers and changes of investment policies of funds.

Four Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/384/EC

1.5.3. *Exclusion of subscription and redemption fees, subject to appropriate disclosure* Taking into account existing regulatory standards, Member States are recommended to consider, whether or not to require subscription and redemption fees to be included in the calculation of the fund performance. However, Member States should require the exclusion of that information (where relevant) to be subject to an appropriate statement drawing attention to this fact. Member States are also recommended to encourage their competent authorities to ensure progressive convergence to standards aligned on best practice in performance calculation.

Implementation by Member States

15 Member States (*Austria, Belgium, Czech Republic, Finland, Hungary, Iceland, Ireland, Italy, Lithuania, Malta, Portugal, Slovak Republic, Slovenia, Sweden and the UK*) have implemented the recommendation to either include the subscription and redemption fees to the fund performance calculation or to exclude these fees, but with appropriate disclosure.

The most common solution chosen is that the subscription and redemption fees are excluded from the calculation of the fund's past performance, but disclosure of that fact is required.

Three Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

Extract from the Commission Recommendation 2004/384/EC

1.5.4. *Disclosure of a benchmark* Member States are also invited to consider as a possible option requiring disclosure of a benchmark for all UCITS authorised in their jurisdiction, regardless of the fact that the UCITS' investment objective does not explicitly refer to a benchmark.

Implementation by Member States

Greece, France and *Italy* are the only Member States that have chosen to take this option, i.e. to require disclosing a benchmark to all UCITS authorised in their jurisdiction. Other Member States only consider disclosure necessary when the fund's investment objective refers to a benchmark.

Three Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

2.2.4. Tax regime

Extract from the Commission Recommendation 2004/384/EC

2. As regards the economic information referred to in the third heading of Schedule C in Annex I to Directive 85/611/EEC it is recommended that Member States apply the following interpretations:

2.1. Interpretation of 'tax regime'

In the first indent, Member States are recommended to interpret 'tax regime' as meaning the following information:

(a) the tax regime applicable to the UCITS in its home Member State;

(b) a statement which recalls that the regime of taxation of the income or capital gains received by individual investors depends on the tax law applicable to the personal situation of each individual investor and/or to the place where the capital is invested and that if investors are unclear as to their fiscal position, they should seek professional advice or information from local organisations, where available.

Implementation by Member States

21 Member States (*Austria, Belgium, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and the UK*) have implemented the recommendation on the interpretation of the 'tax regime'.

Five Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

2.2.5. Entry and exit commissions and other possible expenses or fees

Extract from the Commission Recommendation 2004/384/EC

2.2 Interpretation of 'entry and exit commissions' and 'other possible expenses or fees'

2.2.1. *Overall contents of the information provided*

In the second and third indents, Member States are recommended to interpret the 'entry and exit commissions' of the fund and 'other possible expenses or fees, distinguishing between those to be paid by the unit-holder and those to be paid out of the unit trust's/common fund's or the investment company's assets' as meaning the following information:

(a) disclosure of a total expense ratio (TER), calculated as indicated in Annex I, except for newly created UCITS where a TER cannot yet be calculated;

(b) on an ex ante basis, disclosure of the expected cost structure, i.e. an indication of all costs available according to the list set forth in Annex I so as to provide investors, insofar as possible, with a reasonable estimate of expected costs;

(c) all entry and exit commissions and other expenses directly paid by the investor;

(d) an indication of all the other costs not included in the TER, including disclosure of transaction costs when these are deemed to be available by the home Member State competent authorities;

(e) as an additional indicator of the importance of transaction costs, the portfolio turnover rate, calculated as shown in Annex II;

(f) an indication of the existence of fee-sharing agreements and soft commissions.

The requirement set out in point (f) of the first paragraph should not be interpreted as a general validation of the compliance of any individual agreement or commission with Directive 85/611/EEC, and especially with Article 5f(1)(b) thereof, or with national regulations. Taking into account current market practice, Member States are therefore invited to require UCITS to consider how far existing fee-sharing agreements and comparable fee-arrangements are for the exclusive benefit of the UCITS.

Member States are recommended to provide for the simplified prospectus to make a reference to the full prospectus for detailed information on that kind of arrangements, which should allow any investor to understand to whom expenses are to be paid and how possible conflicts of interest will be resolved in his/her best interest. Member States are therefore recommended to ensure that the information provided in the simplified prospectus remains concise.

Implementation by Member States

16 Member States (*Austria, Belgium, Czech Republic, France, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovak Republic, Sweden and the UK*) have in general terms implemented the recommendation on the interpretation of 'the entry and exit commissions' and 'other possible expenses or fees' as set out under point 2.2.1. Six Member States have implemented partially this recommendation, their regulation deviates to some extent from the Recommendation. In *Germany* for example costs mentioned in 2.2.1. (b) and (c) do not have to be described in the simplified prospectus, as a reasonable estimation of these costs is not possible due to incalculable external factors, in their view. The same applies for the portfolio turnover rate, its description is not required in Germany.

Five Member States are currently working on the implementation of this recommendation, or considering the implementation of it.

TER

More precisely analyzed, 15 Member States (*Austria, Czech Republic, Finland, France, Greece, Iceland, Ireland, Italy, Lithuania, Malta, Poland, Portugal, Slovenia, Slovak Republic and the UK*) have implemented the disclosure of the TER and its calculation method (see Annex I) as set out under point 2.2.1. (a). Four Member States have partially implemented the recommendation, e.g. in *Luxembourg* the publication of TER is an option to the UCITS, not an obligation. *Belgium*, *Germany* and *Spain* do not require disclosure of the synthetic TER. In Belgium the calculation of a synthetic TER has been removed from the initial proposal of the CBFA, taking into account the remarks passed by the Belgian CIS' industry during the public consultation. The obligation to calculate a synthetic TER was judged, by the industry, as a poor cost-benefit requirement. It needs costly IT developments and requires additional administrative workload when applying only to "funds of funds" which is small part of the Belgian CIS' market. Therefore it has been decided to not implement this requirement.

Five Member States are currently working on the implementation of the recommendation, or considering the implementation of it.

Expected cost structure

20 Member States (*Austria, Belgium, Czech Republic, Estonia, Finland, France, Hungary, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovak Republic, Slovenia, Spain and the UK*) have implemented the recommendation on the disclosure of the expected cost-structure on an ex-ante basis as set out under point 2.2.1. (b). Four Member States are currently working on the implementation of the recommendation, or considering the implementation of it.

In *Germany* it has been considered that the calculation on an ex-ante basis does not deliver adequate results and should therefore not take place.

Costs not included in the TER

15 Member States (*Austria, Belgium, Czech Republic, France, Greece, Hungary, Iceland, Lithuania, Malta, Poland, Portugal, Slovak Republic, Slovenia, Sweden and the UK*) have implemented the recommendation regarding the indication of all the other costs not included in the TER as set out under point 2.2.1. (d).

Three Member States have implemented the recommendation partially. In *Germany* whereas performance-based management remuneration have to be disclosed in the simplified prospectus other costs such as transaction costs and interest on borrowing do not. Detailed information regarding all costs can be found in the full prospectus. In *Italy* additional information on the costs borne by the fund in the last year can be found in the Annual Fund's Report of Operations. As for transaction costs, a statement that they cannot be quantified in advance since they are variable, must be put in the simplified prospectus. In *Luxembourg,* if a TER is published, the CSSF requires the indication of all other costs not included in the TER.

Five Member States are currently working on the implementation of the recommendation, or considering the implementation of it.

Portfolio turnover rate

15 Member States (*Austria, Belgium, Czech Republic, Finland, France, Greece, Iceland, Ireland, Italy, Lithuania, Malta, Poland, Slovak Republic, Slovenia and the UK*) have implemented the recommendation on the indication of the portfolio turnover rate and its calculation method (see Annex II) as set out under point 2.2.1. (e). Two Member States have implemented it partially. In *Luxembourg* the simplified prospectus may indicate the turnover rate of the portfolio on an annual basis using the calculation method given. In *Portugal* portfolio turnover rate is required, although the methodology used does not include the subscription and redemption flows.

Five Member States are currently working on the implementation of the recommendation, or considering the implementation of it.

Fee-sharing agreements and soft commissions

13 Member States (*Austria, Belgium, Estonia, Finland, France, Iceland, Ireland, Italy, Lithuania, Malta, Poland, Portugal and the UK*) have implemented the recommendation on the indication of the existence of fee-sharing agreements and soft-commissions. In *Germany* such disclosure is only required in the full prospectus. The simplified prospectus should, however, make a reference to the full prospectus. Currently in *Spain*, an indication of the existence of "related parties transactions" is included in the full prospectus.

Five Member States are currently working on the implementation of the recommendation, or considering the implementation of it. Some of the new Member States' authorities explained not having implemented this recommendation because fee-sharing agreements and soft commissions are not common in their jurisdiction currently.

Twelve Member States (*Austria, Belgium, Denmark, Estonia, France, Iceland, Ireland, Lithuania, Luxembourg, Poland, Portugal and the UK*) have implemented the recommendation to require UCITS to consider whether fee-sharing agreements and comparable fee-arrangements are for the exclusive benefit of the UCITS as set out under point 2.2.1. second sub-paragraph.

Furthermore, in *Germany* this recommendation is not implemented by governmental authorities. However, the fund industry associations' (BVI) Code of Conduct requires that any fee-sharing agreements and other comparable agreements should serve the exclusive benefit of the fund. In *Italy* the regulatory framework does not provide specific rules about the extent to evaluate the exclusive benefits of the UCITS in fee-sharing and soft commissions agreements. Nevertheless, Consob requires management companies to provide information about fee-sharing and soft commission agreements on a periodic basis for supervisory purposes.

Four Member States are working on the implementation of the recommendation, or considering the implementation of it. Some of the new Member States' authorities explained not having implemented this recommendation because fee-sharing agreements and soft commissions are not common in their jurisdiction currently.

14 Member States (*Austria, Belgium, Germany, Greece, Estonia, France, Iceland, Ireland, Italy, Lithuania, Malta, Poland, Portugal and the UK*) have implemented the recommendation to require the simplified prospectus to make a reference to the full prospectus for detailed information on fee-sharing and comparable fee-agreements as set out under **point 2.2.1. third sub-paragraph.**

Five Member States are currently working on the implementation of the recommendation, or considering the implementation of it.

2.2.6. "Fee-sharing agreements" and "soft commissions"

Extract from the Commission Recommendation 2004/384/EC

> 2.2.2. *Precisions on the notions of 'fee-sharing agreements' and 'soft commissions'*
>
> 2.2.2.1. Identification of 'fee-sharing agreements'
>
> Member States are recommended to identify and classify as fee-sharing agreements those agreements whereby a party remunerated, either directly or indirectly, out of the assets of a UCITS agrees to split its remuneration with another party and which result in that other party meeting expenses through this fee-sharing agreement that should normally be met, either directly or indirectly, out of the assets of the UCITS.
>
> Furthermore, Member States are recommended to consider the following as fee-sharing agreements within the meaning of the above paragraph:
>
> (a) fee-sharing agreements on transaction costs between a UCITS' management company and a broker whereby the broker agrees to split with the management company the transactions fees paid by the UCITS to the broker for processing transactions for the UCITS;
>
> (b) fee-sharing agreements in funds of funds between a UCITS management company and another fund (or its management company) whereby, if that UCITS invests in the fund, part of the fees charged to that UCITS (either directly – subscription/redemption fees – or indirectly – TER) because of this investment will be paid by the target fund (or its management company) to the UCITS management company.

Implementation by Member States

14 Member States (*Austria, Belgium, Estonia, Finland, France, Germany, Iceland, Ireland, Italy, Lithuania, Malta, Poland, Portugal and the UK*) have implemented the recommendation on the identification and classification of fee-sharing agreements. Furthermore, *Luxembourg* has partially implemented this recommendation and the CSSF applies it. In *Spain* currently an identification of

the existence of "related parties transaction" is required in the full prospectus. A more detailed identification of these operations must be included in the periodic reports.

Five Member States are currently working on the implementation of the recommendation, or considering the implementation of it. Some of the new Member States' authorities explained not having implemented this recommendation because fee-sharing agreements and soft commissions are not common in their jurisdiction currently.

Extract from the Commission Recommendation 2004/384/EC

2.2.2.2. Identification of 'soft commissions' Member States are recommended to identify as soft commissions any economic benefit, other than clearing and execution services, that an asset manager receives in connection with the fund's payment of commissions on transactions that involve the fund's portfolio securities. Soft commissions are typically obtained from, or through, the executing broker.

Implementation by Member States

14 Member States (*Austria, Belgium, Germany, Estonia, Finland, France, Iceland, Ireland, Italy, Lithuania, Malta, Poland, Portugal and the UK*) have implemented the recommendation on the identification of soft commissions. Furthermore, *Luxembourg* has partially implemented this recommendation and the CSSF applies it.

Five Member States are currently working on the implementation of the recommendation, or considering the implementation of it. Some of the new Member States' authorities explained not having implemented this recommendation because fee-sharing agreements and soft commissions are not common in their jurisdiction currently.

2.2.7. Presentation of TER and portfolio turnover rate

Extract from the Commission Recommendation 2004/384/EC

2.2.3. *Presentation of TER and portfolio turnover rate* Member States are invited to allow both the TER and the portfolio turnover rate to be either included in or attached to the simplified prospectus in the same paper as information on past performance.

Implementation by Member States

Nine Member States (*Belgium, Czech Republic, Finland, Ireland, Luxembourg, Malta, Poland, Sweden and the UK*) have implemented this recommendation, i.e. they allow the TER and the portfolio turnover rate to be either included in or attached to the simplified prospectus in the same paper as information on past performance. This recommendation gives the UCITS managers more flexibility when presenting this information on costs.

Three Member States are currently working on the implementation of the recommendation, or considering the implementation of it.

ANNEXES TO THE REPORT

ANNEX I

ANNEX I of the Commission Recommendation 2004/384/EC

Total expense ratio (TER)

1. Definition of the TER

The total expense ratio (TER) of a UCITS is equal to the ratio of the UCITS' total operating costs to its average net assets calculated as according to paragraph 3.

2. Included/excluded costs

2.1. The total operating costs are all the expenses which come in deduction of a UCITS' assets. These costs are usually shown in a UCITS' statement of operations for the relevant fiscal period. They are assessed on an 'all taxes included' basis, which means that the gross value of expenses should be used.

2.2. They include any legitimate expenses of the UCITS, whatever their basis of calculation (e.g. flat-fee, asset-based, transaction-based ([4])), such as:
— management costs including performance fees,
— administration costs,
— fees linked to depository duties,
— audit fees,
— payments to shareholder services providers including payments to the UCITS' transfer agent and payments to broker-dealers that are record owners of the UCITS' shares and that provide sub-accounting services for the beneficial owners of the UCITS shares,
— payments to lawyers,
— any distribution or unit cancellation costs charged to the fund,
— registration fees, regulatory fees and similar charges,
— any additional remuneration of the management company (or any other party) corresponding to certain fee-sharing agreements in accordance to point 4 below.

2.3. The total operating costs do not include:
— transaction costs which are costs incurred by a UCITS in connection with transactions on its portfolio. They include brokerage fees, taxes and linked charges and the market impact of the transaction taking into account the remuneration of the broker and the liquidity of the concerned assets,
— interest on borrowing,
— payments incurred because of financial derivative instruments,
— entry/exit commissions or any other fees paid directly by the investor,
— soft commissions in accordance with point 4.

3. Calculation method and disclosure

3.1 The TER is calculated at least once a year on an ex post basis, generally with reference to the fiscal year of the UCITS. For specific purposes it may also be calculated for other time periods. The simplified prospectus should in any case include a clear reference to an information source (e.g. the fund's website) where the investor may obtain previous years'/periods' TER figures.

---

[4] This non-exhaustive typology of calculation bases reflects the diversity of recent commercial practice across Member States (i.e. at the end of 2003) and should not be interpreted as a general validation of the compliance of any individual agreement or commission with Directive 85/611/EEC, as last amended by Directives 2001/107/EC and 2001/108/EC, and especially with Article 5f(1)(b) thereof, regarding conflicts of interest, or with national regulations.

3.2 The average net assets must be calculated using figures that are based on the UCITS' net assets at each calculation of the net asset value, e.g. daily NAVs where this is the normal frequency of NAV calculation as approved by the UCITS competent authorities. Further circumstances or events which could lead to misleading figures have equally to be taken into consideration.

Tax relief should not be taken into account.

The calculation method of the TER must be validated by the UCITS' auditors and/or competent authorities.

4. Fee-sharing agreements and soft commissions

It regularly results from fee-sharing agreements on expenses that are generally not included in the TER, that the management company or another party is actually meeting, in all or in part, operating costs that should normally be included in the TER. They should therefore be taken into account when calculating the TER, by adding to the total operating costs any remuneration of the management company (or another party) that derives from such fee-sharing agreements.

There is no need to take into account fee-sharing agreements on expenses that are already in the scope of the TER. Soft commissions should also be left outside the scope of the TER.

Thus:
— the remuneration of a management company through a fee-sharing agreement with a broker on transaction costs and with other fund management companies in the case of funds of funds (if this remuneration has not been already been taken into account in the synthetic TER or through other costs already charged to the fund and therefore directly included into the TER) should anyway be taken into account in the TER,
— conversely, the remuneration of a management company through a fee-sharing agreement with a fund (except when this remuneration falls under the scope of the specific fund-of-fund case covered in the previous indent) should not be taken into account.

5. Performance fees

Performance fees should be included in the TER and should also be disclosed separately as a percentage of the average net asset value.

6. UCITS investing in UCITS or in non-UCITS

When a UCITS invests at least 10 % of its net asset value in other UCITS or in non-UCITS which publish a TER in accordance with this Annex, a synthetic TER corresponding to that investment should be disclosed.

The synthetic TER is equal to the ratio of:
— the UCITS' total operating costs expressed by its TER and all the costs suffered by the UCITS through holdings in underlying funds (i.e. those expressed by the TER of the underlying funds weighted on the basis of the UCITS investment proportion), plus the subscription and redemption fees of these underlying funds, divided by
— the average net assets of the fund.

As mentioned in the previous subparagraph, subscription fees and redemption fees of the underlying funds should be included into the TER. Subscription and redemption fees may not be charged when the underlying funds belong to the same group in accordance with Article 24(3) of Directive 85/611/EEC.

When any of the underlying non-UCITS does not publish a TER in accordance with this Annex, disclosure of costs should be adapted in the following way:
— the impossibility of calculating the synthetic TER for that fraction of the investment must be disclosed,
— the maximum proportion of management fees charged to the underlying fund(s) must be disclosed in the simplified prospectus,
— a synthetic figure of total expected costs, by calculating:
  — a truncated synthetic TER incorporating the TER of each of those underlying funds for which the TER is calculated according to this Annex, weighted on the basis of the UCITS investment proportion, and
  — by adding, for each of the other underlying funds, the subscription and redemption fees plus the best available upper-bound assessment of TER-eligible costs. This should include the maximum management fee and the last available performance fee for that fund, weighted on the basis of the UCITS investment proportion.

6. Umbrella funds/multiclass funds

In the case of umbrella funds, the TER should be calculated for each subfund. If, in the case of multiclass funds, the TER differs between different share classes, a separate TER should be calculated and disclosed for each share class. Furthermore, in keeping with the principle of equality among investors, where there are differences in fees and expenses across classes, these different fees/expenses should be disclosed separately in the simplified prospectus. An additional statement should indicate that the objective criteria (e.g. the amount of subscription), on which these differences are based, are available in the full prospectus.

ANNEX II

ANNEX II of the Commission Recommendation 2004/384/EC

Portfolio turnover rate

A fund's or, where relevant, a compartment's portfolio turnover rate should be calculated in the following way:

Purchases of securities = X

Sales of securities = Y

Total 1 = Total of transactions in securities = X + Y

Issues/Subscriptions of units of the fund = S

Cancellations/redemptions of units of the fund = T

Total 2 = Total transactions in units of the fund = S + T

Reference average of total net assets = M

$$\text{Turnover} = \left[\frac{(\text{Total}\,1 - \text{Total}\,2)}{\text{M}} \right] * 100$$

The reference average of total net assets corresponds to the average of net asset values calculated with the same frequency as under Annex I, Article 1(3). The turnover rate disclosed should correspond to the period(s) for which a TER is disclosed. The simplified prospectus should in any case include a clear reference to an information source (e.g. the fund's website) where the investor may obtain previous periods' portfolio turnover rate.

ANNEX III

Schedule C of Annex I to Council Directive 85/611/EEC

Contents of the simplified prospectus

Brief presentation of the UCITS

— when the unit trust/common fund or the investment company was created and indication of the Member State where the unit trust/common fund or the investment company has been registered/incorporated,
— in the case of UCITS having different investment compartments, the indication of this circumstance,
— management company (when applicable),
— expected period of existence (when applicable),
— depositary,
— auditors,
— financial group (e.g. a bank) promoting the UCITS.

Investment information

— short definition of the UCITS' objectives,
— the unit trust's/common fund's or the investment company's investment policy and a brief assessment of the fund's risk profile (including, if applicable, information according to Article 24a and by investment compartment),
— historical performance of the unit trust/common fund/investment company (where applicable) and a warning that this is not an indicator of future performance — such information may be either included in or attached to the prospectus,
— profile of the typical investor the unit trust/common fund or the investment company is designed for.

Economic information

— tax regime,
— entry and exit commissions,
— other possible expenses or fees, distinguishing between those to be paid by the unit-holder and those to be paid out of the unit trust's/common fund's or the investment company's assets.

Commercial information

— how to buy the units,
— how to sell the units,
— in the case of UCITS having different investment compartments how to pass from one investment compartment into another and the charges applicable in such cases,
— when and how dividends on units or shares of the UCITS (if applicable) are distributed,
— frequency and where/how prices are published or made available.

Additional information

— statement that, on request, the full prospectus, the annual and half-yearly reports may be obtained free of charge before the conclusion of the contract and afterwards,
— competent authority,
— indication of a contact point (person/department, timing, etc.) where additional explanations may be obtained if needed,
— publishing date of the prospectus.

CESR

ANNEX IV

Date: November 2004
Ref: CESR/04-604

QUESTIONNAIRE ADDRESSED TO CESR MEMBERS REGARDING COMMISSION RECOMMENDATION 2004/383/EC on the use of financial derivative instruments for UCITS

In responding to the following questionnaire, CESR members are invited to comment exhaustively on the extent to which the guidance provided in the Recommendation has been implemented in their jurisdiction. The answers should not only indicate, whether or not the relevant part of the Recommendation has been implemented, but provide detailed information on how this has been done, i.e. what are the implementing measures and whether the level of detail of each implementing measure is equivalent to the level of detail of the Recommendation. If part of the Recommendation has not been implemented, the reason for this should be explained.

Where relevant, it should also be indicated whether the options foreseen by the Recommendation have been used and which option has been retained.

1. Risk-measurement systems adapted to the relevant risk-profile of the UCITS

Has the recommendation to employ risk measurement systems which are adapted to the relevant risk-profile of a UCITS as set out under point 1 been implemented?

2. Limitations to the UCITS risk-exposure

2.1 Has the recommendation to ensure that that the exposure of UCITS related to derivatives does not exceed 100% of the NAV and that therefore the global exposure of a UCITS does not exceed 200% of the NAV as set out under point 2.1 been implemented?

2.2 Has the recommendation to ensure that the exposure of UCITS related to borrowing does not exceed 10% of the NAV and that therefore the global exposure of a UCITS does not exceed 210% of the NAV as set out under point 2.2 been implemented?

2.3 Has the recommendation to ensure that both points 3 and 4 of the Recommendation are respected for the application of the 100% global exposure limit relating to derivatives as set out under point 2.3 been implemented?

3. Standards to measure market risks

3.1 Has the recommendation to allow a differentiated methodological approach regarding market risk-measurement methodologies for "sophisticated" and "non-sophisticated" UCITS as set out under point 3.1 been implemented?

3.2 Is the employment of the commitment approach for "non- sophisticated UCITS" as set out under point 3.2 allowed?

3.3 Are further safeguards in the context of the use of the commitment approach as set out under point 3.2.3 requested?

3.4 Has the recommendation to apply VaR-approaches and stress tests to "sophisticated UCITS" as set out under point 3.3.1 been implemented?

3.5 If yes, has the recommendation to consider the parameters set out under point 3.3.2 as a first reference been implemented?

3.6 How is the recommendation to accept only those internal risk-measurement models which are subject to appropriate safeguards as set out under point 3.3.3 dealt with?

4. Assessment of leverage

4.1 Has the recommendation to request the use of the commitment approach in combination with VaR-approaches and stress tests to assess leverage for sophisticated UCITS as set out under point 4.1 been implemented?

4.2 Has the recommendation to allow the commitment approach for the assessment of leverage of those UCITS which also use this approach for measuring market risk (non-sophisticated UCITS) as set out under point 4.1 2nd paragraph been implemented?

4.3 Has the recommendation to allow the use of VaR-approaches and/or stress tests for the assessment of leverage of sophisticated UCITS in case a given management or investment company has already developed an appropriate method of assessing leverage by the means of VaR-approaches and stress tests (e.g. relying on a standard of comparison) as set out under point 4.2 been implemented?

5. Standards and risk-mitigation techniques to limit counterparty risk

5.1 Has the recommendation to ensure that all derivatives transactions which are deemed to be free of counterparty risk are performed on an exchange where the clearinghouse meets the conditions set out under point 5.1 been implemented?

5.2 Has the recommendation to measure the exposure per counterparty of an OTC-derivative transaction on the maximum potential loss as set out under point 5.2 been implemented?

5.3 Has the recommendation to assess counterparty risk with regard to OTC-derivatives in accordance with the marking-to –market method laid down in Directive 2000/12/EC been implemented? Has recommendation to use the full credit equivalent approach laid down in Directive 2000/12/EC, including an add-on methodology, as set out under point 5.3 been implemented?

5.4 Has the recommendation to allow for the recognition of collateral provided that in accordance with the rules laid down in Directive 2000/12/EC the collateral fulfils the criteria set out under 5.4.1 been implemented?

5.5 Has the recommendation on the risk-concentration limits as set out under 5.4.2 been implemented?

5.6 Has the recommendation to allow UCITS to net their OTC-derivative positions provided that the netting procedures comply with the conditions laid down in Directive 2000/12/EC and that they are based on legally binding agreements as set out under point 5.5 been implemented?

6. Methodologies when applying limitations to issuer risk

6.1 How is the recommendation to require the use of methodologies adequate to the type of derivative instruments considered for their conversion into the equivalent underlying positions as set out under point 6.1 dealt with? In cases where e.g. the delta-approach is not relevant or technically impossible has the use of an approach based on the maximum potential loss as set out under point 6.1 been considered?

6.2 As regards the application of the option foreseen by the third subparagraph of Art. 21 (3) of Directive 85/611/EEC: Has the recommendation to take into account whether the underlying index of a derivative financial instrument meets the requirements of Art. 22a of Directive 85/611/EEC as set out under point 6.2 been implemented?

6.3 Has the recommendation to consider that management or investment companies should generally be prevented from using financial derivative instruments based on a self-composed index with the intent to circumvent the limits of Art. 22 of Directive 85/611/EEC as set out under 6.2. been implemented? Has the recommendation to consider that a management or investment company should also be prevented from using financial derivative instruments based on indices which do not comply with the limits of Art. 22a of Directive 85/611/EEC as set out under point 6.2 been implemented?

6.4 Has the recommendation to require management or investment companies to cumulate counterparty risk with issuer risk in certain circumstances as set out under point 6.3 been implemented?

7. Rules on cover of derivative transactions

7.1 Has the recommendation to require the holding of an underlying in case of derivatives providing for physical delivery as set out under point 7.1 been implemented?

7.2 Has the option to allow exceptionally the holding of an alternative underlying as cover as set out under point 7.2 been implemented?

7.3 Has the option to allow the holding of an alternative underlying in case of cash-settled derivatives as set out under point 7.3 been implemented?

7.4 Has the recommendation to calculate the level of cover in line with the commitment approach as set out under point 7.4 been implemented?

7.5 Has the recommendation to require that the underlying of the derivative instruments as well as the financial instruments held for cover complies with the Directive and the individual investment policy of the UCITS as set out under point 7.5 been implemented?

CESR

ANNEX V

Date: November 2004
Ref: CESR/04-605

QUESTIONNAIRE ADDRESSED TO CESR MEMBERS
REGARDING COMMISSION RECOMMENDATION 2004/384/EC
on some contents of the simplified prospectus

In responding to the following questionnaire, CESR members are invited to comment exhaustively on the extent to which the guidance provided in the Recommendation has been implemented in their jurisdiction. The answers should not only indicate, whether or not the relevant part of the Recommendation has been implemented, but provide detailed information on how this has been done, i.e. what are the implementing measures and whether the level of detail of each implementing measure is equivalent to the level of detail of the Recommendation. If part of the Recommendation has not been implemented, the reason for this should be explained.

Where relevant, it should also be indicated whether the options foreseen by the Recommendation have been used and which option has been retained.

1. UCITS' objectives

Has the recommendation on the interpretation of 'a short definition of UCITS' objectives' as set out under point 1.1 been implemented?

2. UCITS' investment policy

2.1 Has the recommendation on the interpretation of 'the unit trust's/common fund's or the investment company's investment policy' as set out under point 1.2 been implemented?

2.2 Is it allowed to set out the information regarding the short definition of UCITS' objectives, the unit trust's/common fund's and the investment company's investment policy as a single item in the simplified prospectus as set out under point 1.3?

3. UCITS' risk profile

3.1 Has the recommendation on the interpretation of 'a brief assessment of the fund's risk profile' as set out under point 1.4 been implemented?

3.2 How are the 'Specific risks' and 'Horizontal risks factors' mentioned under points 1.4.2.1 & 1.4.2.2 dealt with?

3.3 Is the prioritisation of the information as set out under point 1.4.2.3 required?

3.4 Has the option to require a synthetic indicator of risk based on the UCITS' volatility as mentioned under point 1.4.3 been chosen? Has the recommendation on the calculation method been implemented?

4. UCITS' historical performance

4.1 Has the recommendation on disclosure of past performance as set out under point 1.5 been implemented? Which option has been chosen with respect to benchmark comparison?

4.2 Which option(s) have been chosen with respect to disclosure of cumulative (average) performance as set out under point 1.5.2?

4.3 Which option and which form of presentation has been chosen regarding the inclusion of subscription and redemption fees into the calculation of the past performance (point 1.5.3)?

4.4 Has the option of disclosing a benchmark as set out under point 1.5.4 been chosen?

5. Tax regime

Has the recommendation on the interpretation of the 'tax regime' as set out under point 2.1 been implemented?

6. Entry and exit commissions and other possible expenses or fees

6.1 Has the recommendation on the interpretation of 'the entry and exit commissions' and 'other possible expenses or fees' as set out under point 2.2.1 been implemented?

6.2 Is the disclosure of the TER calculated as indicated under Annex I required? Have the recommendations on the calculation method as set out under Annex I been implemented?

6.3 Is the disclosure of the expected cost-structure on an ex-ante basis required?

6.4 Is the indication of all the other costs not included in the TER including transaction costs required?

6.5 Is the indication of the portfolio turnover-rate calculated as shown under Annex II required? Has the recommendation on the calculation method as set out under Annex II been implemented?

6.6 Is the indication of the existence of fee-sharing agreements and soft-commissions required?

6.7 To what extent are UCITS required to consider whether fee-sharing agreements and comparable fee-arrangements are for the exclusive benefit of the UCITS as mentioned under 2.2.1 second sub-paragraph?

6.8 Does the simplified prospectus make a reference to the full prospectus for detailed information on fee-sharing and comparable agreements?

7. "Fee-sharing agreements" and "soft commissions"

7.1 Has the recommendation on the identification and classification of fee-sharing agreements as set out under point 2.2.2.1 been implemented?

7.2 Has the recommendation on the identification of 'soft commissions' as recommended under point 2.2.2.2 been implemented?

8. Presentation of TER and portfolio turnover rate

Which option has been chosen with respect to the 'presentation of TER and portfolio turnover rate' as set out under point 2.2.3?

Annex VI
"Synthesis Table" on the CESR questionnaire on the derivatives Recommendation

Article >> COMMISSION RECOMMENDATION 2004/383/EC

All

Not Implemented : ✗ Partially Implemented : O Implemented : ✓

Elements	B	CZ	DK	D	EE	EL	E	F	IRL	IS	I	CY	LV	LT	L	HU	MT	NL	NO	A	PL	P	SI	SK	FIN	SV	UK
Question 1.	✓ 1	✓ 2	✓ 3	✓ 4	✓	✗ 5	✓ 6	✓ 7	✓ 8	O 9	✓ 10	✗	O	✓ 11	✓ 12	✓ 13	O 14	✗ 15	✓	✓ 16	✓ 17	✓ 18	✓	✓	✓ 19	✓ 20	✓ 21
Question 2.1.	✓ 1	✓ 2	✓ 3	✓	✓	✗ 4	✓ 5	✓ 6	✓	O 7	✓ 8	✗	✓	✓ 9	✓ 10	✓ 11	✓ 12	✗ 13	✓	✓ 14	✓ 15	✓ 16	✓	✓ 17	✓ 18	✓ 19	✓ 20
Question 2.2.	✓ 1	✓	✓ 2	✓	✓	✗ 3	✓	✓ 4	✓ 5	O 6	✓ 7	✗	✓	✓	✓ 8	✓ 9	✗ 10	✗ 11	✓	✓ 12	✓ 13	✓ 14	✓	✓ 15	✓ 16	✓ 17	✓ 18
Question 2.3.	✓	✓ 1	✓	✓ 2	✗ 3	✗ 4	✓	✓ 5	✓	✗ 6	✓ 7	✗	O 8	✓	✓ 9	✓ 10	✗ 11	✗ 12	O	✓ 13	✓ 14	✓ 15	✗ 16	✗	✗ 17	✓ 18	✓ 19
Question 3.1.	✓ 1	✗ 2	✓ 3	✓ 4	✗ 5	✗ 6	✗ 7	✗ 8	✓	✗ 9	✓ 10	✗	O 11	✓ 12	✓ 13	✗ 14	✗ 15	✗ 16	✗	✓ 17	O 18	✓ 19	✗ 20	✓ 21	✓ 22	✓ 23	✓ 24
Question 3.2.	✓	✓ 1	✓ 2	✓ 3	✗ 4	✗ 5	✓ 6	✓ 7	✓	✗ 8	✓ 9	✗	✓	✓ 10	✓ 11	✓ 12	✗ 13	✗ 14	✓	✓ 15	✓ 16	✓ 17	✗ 18	✗ 19	✓ 20	✓ 21	✓ 22
Question 3.3.	✗ 1	✗ 2	✗ 3	✓ 4	✗ 5	✗ 6	✗	✗ 7	✗	✗ 8	✗ 9	✗	✗	✗ 10	✗ 11	✗ 12	✗ 13	✗ 14	✗	✗ 15	✗ 16	✓ 17	✗ 18	✗ 19	✗ 20	✗ 21	✗ 22
Question 3.4.	✓ 1	O 2	✓ 3	✓	✗ 4	✗ 5	O 6	✗ 7	✓	✗ 8	✓ 9	✗	✗ 10	✓ 11	✓ 12	✗ 13	✗ 14	✗ 15	✗	✓ 16	✗ 17	✓ 18	✗ 19	✓ 20	✓ 21	✓ 22	✓ 23
Question 3.5.	✓ 1	✓ 2	✓ 3	✓ 4	✗ 5	✗ 6	O 7	O 8	O 9	✗ 10	✓ 11	✗	✗ 12	✓ 13	✓ 14	✗	✗ 15	✗ 16	✗	✓ 17	✗	✓ 18	✗ 19	✓	✗ 20	✓ 21	✓ 22
Question 3.6.	✓ 1	✓ 2	✓ 3	✓ 4	✗ 5	✗ 6	O 7	✓ 8	O	✗ 9	✓ 10	✗	✗ 11	✓ 12	✓ 13	✗ 14	✗	✗ 15	✗	✓ 16	✗ 17	✓ 18	✗ 19	✓ 20	✗ 21	✗ 22	✓ 23
Question 4.1.	✗ 1	✗ 2	✓ 3	O 4	✗ 5	✗ 6	✗ 7	✗ 8	✓	✗ 9	✓ 10	✗	✗ 11	✓ 12	O 13	✗ 14	✗ 15	✗ 16	✗	O 17	✗ 18	✓ 19	✗ 20	✗ 21	✗ 22	O 23	✓ 24
Question 4.2.	O 1	✓ 2	✓ 3	✓	✗ 4	✗ 5	✓ 6	✗ 7	✓	✗ 8	✓ 9	✗	✓	✓ 10	O 11	✓ 12	✗ 13	✗ 14	✗	✓ 15	O 16	✓ 17	✗ 18	✗	✓ 19	✓ 20	✓ 21
Question 4.3.	✗ 1	✗ 2	✗ 3	✓ 4	✗ 5	✗ 6	✗ 7	✗ 8	✗	✗ 9	O 10	✗	✗ 11	✓ 12	✓ 13	✗ 14	✗	✗ 15	✗	✓ 16	✗ 17	✓ 18	✗ 19	✗ 20	✗ 21	✗ 22	✓ 23
Question 5.1.	✓	✓ 1	O	✓ 2	✗ 3	✗ 4	✓	✓	O 5	✗ 6	✓ 7	✗	✗ 8	✓	✓ 9	✓ 10	✗	✗ 11	✓	✓ 12	✗ 13	✓ 14	✗ 15	✓	✗ 16	✓ 17	✓
Question 5.2.	✓ 1	✓ 2	✓ 3	✓ 4	✗ 5	✗ 6	✗ 7	✓	✓	✗ 8	✓ 9	✗	✗ 10	✓	✓ 11	✗ 12	✓	✗ 13	✗	✓ 14	✓ 15	✓ 16	✗ 17	✓	O 18	✗ 19	✓ 20
Question 5.3.	✓	✓ 1	✓ 2	✓ 3	✗ 4	✗ 5	✗ 6	✓ 7	✓	✗ 8	✓ 9	✗	✗ 10	✓	✓ 11	O 12	✗ 13	✗ 14	✓	✓ 15	✗	✓ 16	✗ 17	✓	O 18	✗ 19	✓
Question 5.4.	✓	✓ 1	O 2	✓	✗ 3	✗ 4	✓ 5	✓ 6	✓ 7	✗ 8	✓ 9	✗	✗ 10	✓	✓ 11	✗ 12	✗	✗ 13	✗	✓ 14	✓ 15	✓ 16	✗ 17	O 18	O 19	✗ 20	✓
Question 5.5.	✓ 1	✓	✓ 2	✓	✓ 3	✗ 4	✓ 5	✓	✓	✗ 6	✓ 7	✗	✓	✓	✓ 8	✓ 9	✓	✗ 10	✓	✓ 11	✓ 12	✓ 13	✓	✓	✓ 14	✓ 15	✓
Question 5.6.	✓	✓ 1	✓ 2	✓	✗ 3	✗ 4	✓ 5	✓	✓	✗ 6	✓ 7	✗	✗ 8	✓	✓ 9	✓ 10	✗	✗ 11	✓	✓ 12	✓ 13	✗ 14	✗ 15	✓ 16	O 17	✗ 18	✓
Question 6.1.	✗ 1	✓ 2	✓ 3	✓ 4	✗ 5	✗ 6	✗ 7	✓	✓	✗ 8	✓ 9	✗	✗ 10	✓ 11	✓ 12	O 13	✗ 14	✗ 15	✗	✓ 16	✗ 17	✓ 18	✗ 19	✓ 20	✓ 21	O 22	✓ 23
Question 6.2.	✓ 1	✓ 2	✗	✓ 3	✗ 4	✗ 5	✗ 6	✓	✓	✗ 7	✓ 8	✗	✗ 9	✗	✓ 10	✗	✓	✗ 11	✓	✓ 12	✓ 13	✓ 14	✗ 15	✓	✓ 16	✗ 17	✓ 18
Question 6.3.	✓ 1	✓ 2	✗	✓ 3	✗ 4	✗ 5	✗ 6	✓	O 7	✗ 8	✓ 9	✗	✗ 10	✗	✓ 11	✗	✓	✗ 12	✗	✓ 13	✓ 14	✓ 15	✗ 16	✓ 17	✓ 18	✓ 19	✓ 20
Question 6.4.	✓ 1	✓ 2	✗	✓ 3	✗ 4	✗ 5	✓ 6	✓	✓	✗ 7	✓ 8	✗	✓	✓	✓ 9	✗	✗	✗ 10	✓	✓ 11	✓ 12	✓ 13	✓	✓	✓ 14	✓ 15	✓ 16
Question 7.1.	✓	✓ 1	✗ 2	✓ 3	✗ 4	✗ 5	✓ 6	✗ 7	✓	✗ 8	✓ 9	✗	✗ 10	✓ 11	✓ 12	✗ 13	✗	✗ 14	✗ 15	✓ 16	✓ 17	✗	✗ 18	✗	O 19	✓ 20	✓ 21
Question 7.2.	✓	✓ 1	✗ 2	✓	✗ 3	✗ 4	✓ 5	✗ 6	✓	✗ 7	✓ 8	✗	✗	✓ 9	✓ 10	✗	✗	✗ 11	✗ 12	✗ 13	✗ 14	✓ 15	✗ 16	✗	✗ 17	✗ 18	✓
Question 7.3.	✓	✓ 1	✓ 2	✓	✗ 3	✗ 4	✓ 5	✗ 6	✓	✗ 7	✓ 8	✗	✗ 9	✓ 10	✓ 11	✓ 12	✓	✗ 13	✗ 14	✓ 15	✓ 16	✓ 17	✗ 18	✗	✗ 19	✓ 20	✓
Question 7.4.	✓	✗ 1	✓ 2	✓	✗ 3	✗ 4	✗ 5	✗ 6	✓	✗ 7	✓ 8	✗	✗ 9	✓ 10	✓ 11	✓	✗	✗ 12	✗ 13	O 14	O 15	✓ 16	✗ 17	✗	✗ 18	✓ 19	✓ 20
Question 7.5.	✓ 1	✓ 2	✓ 3	✓	✗ 4	✗ 5	✓ 6	✓ 7	✓ 8	✗ 9	✓ 10	✗	✓	✓ 11	✓ 12	✓ 13	✗	✗ 14	✗ 15	✓ 16	✓ 17	✓ 18	✗ 19	✓	✓ 20	✓ 21	✓ 22

CESR

Annex VII
"Synthesis Table" on the CESR questionnaire on the simplified prospectus Recommendation

Article >> COMMISSION RECOMMENDATION 2004/384/EC

All

Not Implemented : ✗ Partially Implemented : ○ Implemented : ✔

Elements	B	CZ	DK	D	EE	EL	E	F	IRL	IS	I	CY
Question 1.	✔ 1	✔ 2	✔ 3	○ 4	✔ 5	✔ 6	✔ 7	✔ 8	✔ 9	✔ 10	✔ 11	✗
Question 2.1.	✔ 1	✔ 2	✔ 3	✔ 4	✔ 5	✔	✔ 6	✔ 7	✔ 8	✔ 9	✔ 10	✗
Question 2.2.	✔	✔ 1	✔ 2	✔ 3	✔ 4	✔	✔ 5	✗ 6	✗ 7	✔ 8	○ 9	✗
Question 3.1.	✔ 1	✔	✔ 2	✔ 3	✔ 4	✔	✔ 5	✔ 6	✔ 7	✔ 8	○ 9	✗
Question 3.2.	✔	✔ 1	○ 2	✔ 3	✔ 4	✔ 5	✔ 6	✔ 7	✔ 8	✔ 9	○ 10	✗
Question 3.3.	✔	○ 1	✗ 2	○ 3	✔ 4	✔ 5	✔ 6	✔ 7	✔ 8	✔ 9	✔ 10	✗
Question 3.4.	✔ 1	○ 2	✗ 3	○ 4	○ 5	○ 6	○ 7	✗ 8	✗ 9	○ 10	✔ 11	✗
Question 4.1.	✔ 1	✔ 2	○ 3	✔ 4	✔ 5	✔ 6	○ 7	✔ 8	✔ 9	✔ 10	✔ 11	✗
Question 4.2.	✔	✗ 1	✗ 2	✔ 3	✔ 4	✔ 5	✗ 6	✔	✔ 7	✔ 8	○ 9	✗
Question 4.3.	✔ 1	✔ 2	○ 3	✗ 4	○ 5	○ 6	✗ 7	○ 8	✔ 9	✔ 10	✔ 11	✗
Question 4.4.	✗ 1	✗ 2	✗ 3	✗	✗	✔ 4	✗ 5	✔ 6	✗ 7	✗ 8	✔ 9	✗
Question 5.	✔	✔ 1	✔ 2	✔	✔ 3	✔	✔ 4	✔ 5	✔ 6	✔ 7	✔ 8	✗
Question 6.1.	✔	✔ 1	○ 2	○ 3	○ 4	✔ 5	○ 6	✔ 7	✔ 8	✔ 9	✔ 10	✗
Question 6.2.	○ 1	✔ 2	✗ 3	○ 4	✗ 5	✔ 6	○ 7	✔ 8	✔ 9	✔ 10	✔ 11	✗
Question 6.3.	✔	✔ 1	○ 2	✗ 3	✔ 4	✔ 5	✔ 6	✔ 7	✔ 8	✔ 9	✔ 10	✗
Question 6.4.	✔	✔ 1	✗	○ 2	✗ 3	✔ 4	✗ 5	✔ 6	○ 7	✔ 8	○ 9	✗
Question 6.5.	✔ 1	✔ 2	✗	✗	✗ 3	✔ 4	✗ 5	✔ 6	✔ 7	✔ 8	✔ 9	✗
Question 6.6.	✔ 1	✗ 2	✗	✗ 3	✔ 4	✗	○ 5	✔ 6	✔ 7	✔ 8	✔ 9	✗
Question 6.7.	✔ 1	✗ 2	✔ 3	○ 4	✔ 5	✗	✗ 6	✔ 7	✔ 8	✔ 9	○ 10	✗
Question 6.8.	✔	✗ 1	○ 2	✔ 3	✔ 4	✔ 5	✗ 6	✔ 7	✔ 8	✔ 9	✔ 10	✗
Question 7.1.	✔ 1	✗ 2	✗	✔ 3	✔ 4	✗	✗ 5	✔ 6	✔ 7	✔ 8	✔ 9	✗
Question 7.2.	✔ 1	✗ 2	✗	✔ 3	✔ 4	✗	✗ 5	✔ 6	✔ 7	✔ 8	✔ 9	✗
Question 8.	✔	✔ 1	✗	○ 2	✗ 3	✗	○ 4	✗ 5	✔ 6	✗ 7	✗ 8	✗

Elements	LV	LT	L	HU	MT	NL	NO	A	PL	P	SI	SK	FIN	SV	UK
Question 1.	○ 12	✔ 13	✔ 14	✔ 15	✔ 16	✗ 17	✗ 18	✔ 19	✔ 20	✔ 21	✔ 22	✔	✔ 23	✔ 24	✔ 25
Question 2.1.	○ 11	✔ 12	✔ 13	✔ 14	○ 15	✗ 16	✗ 17	✔ 18	✔ 19	✔ 20	○ 21	✔	✔ 22	○ 23	✔ 24
Question 2.2.	✔ 10	✔ 11	✔ 12	✔ 13	✔ 14	✗ 15	✗ 16	✔ 17	✔ 18	✔ 19	✔ 20	✔	✔ 21	✔ 22	✔ 23
Question 3.1.	✗ 10	✔ 11	✔ 12	○ 13	✔ 14	✗ 15	✗ 16	✔ 17	✔ 18	✔ 19	○ 20	✔	✔ 21	○ 22	✔ 23
Question 3.2.	✗ 11	✔ 12	✔ 13	✗ 14	○ 15	✗ 16	✗ 17	✔ 18	✔ 19	✔ 20	○	✔	○ 21	○ 22	✔ 23
Question 3.3.	✗ 11	✔ 12	✗ 13	✗ 14	○	✗ 15	✗ 16	✔ 17	✗ 18	✔ 19	✔ 20	✔	✔ 21	✔ 22	✔ 23
Question 3.4.	✗ 12	○ 13	✗ 14	○ 15	○	✗ 16	✗ 17	✗ 18	✔ 19	✔ 20	✗ 21	✔	○ 22	✗	✗ 23
Question 4.1.	✗ 12	✔ 13	○ 14	○ 15	○	✗ 16	✗ 17	✔ 18	✔ 19	✔ 20	○ 21	✔	✔ 22	✔ 23	✔ 24
Question 4.2.	✗ 10	✔ 11	✗ 12	✔ 13	○	✗ 14	✗ 15	✔ 16	✔ 17	✔ 18	✗ 19	✔	✗ 20	✔ 21	✔ 22
Question 4.3.	✗ 12	✔ 13	○ 14	✔ 15	✔ 16	✗ 17	✗ 18	✔ 19	○ 20	✔ 21	✔ 22	✔	✔ 23	✔ 24	✔ 25
Question 4.4.	✗ 10	○ 11	○ 12	✗ 13	✗ 14	✗ 15	✗ 16	✗	✗ 17	✗ 18	○ 19	✗	✗ 20	✗	✗ 21
Question 5.	✗ 9	✔ 10	✔ 11	✔ 12	○	✗ 13	✗ 14	✔ 15	✔ 16	✔ 17	✔	✔	○ 18	✔ 19	✔ 20
Question 6.1.	✗ 11	✔ 12	✔ 13	○ 14	✔ 15	✗ 16	✗ 17	✔ 18	✔ 19	✔ 20	○ 21	✔	○ 22	✔ 23	✔ 24
Question 6.2.	✗ 12	✔ 13	○ 14	✗ 15	✔ 16	✗ 17	✗ 18	✔ 19	✔ 20	✔ 21	✔ 22	✔	✔ 23	✗ 24	✔ 25
Question 6.3.	✗ 11	✔ 12	✔ 13	✔ 14	✔ 15	✗ 16	✗ 17	✔ 18	✔ 19	✔ 20	✔ 21	✔	✔ 22	✗	✔ 23
Question 6.4.	✗ 10	✔ 11	○ 12	✔ 13	✔ 14	✗ 15	✗ 16	✔ 17	✔ 18	✔ 19	✔ 20	✔	✗ 21	✔ 22	✔ 23
Question 6.5.	✗ 10	✔ 11	○ 12	✗ 13	✔ 14	✗ 15	✗ 16	✔ 17	✔ 18	○ 19	✔ 20	✔	✔ 21	✗	✔ 22
Question 6.6.	✗ 10	✔ 11	✗ 12	✗ 13	✔ 14	✗ 15	✗ 16	✔ 17	✔ 18	✔ 19	✗ 20	✗	✔ 21	✗	✔ 22
Question 6.7.	✗ 11	✔ 12	✔ 13	✗ 14	✗ 15	✗ 16	✗ 17	✔ 18	✔ 19	✔ 20	✗ 21	✗	✗ 22	✗	✔ 23
Question 6.8.	✗ 11	✔ 12	✗ 13	✗ 14	✔ 15	✗ 16	✗ 17	✔ 18	✔ 19	✔ 20	✗ 21	✗	✗ 22	✗	✔ 23
Question 7.1.	✗ 10	✔ 11	○ 12	✗ 13	✔ 14	✗ 15	✗ 16	✔ 17	✔ 18	✔ 19	✗ 20	✗	✔ 21	✗	✔ 22
Question 7.2.	✗ 10	✔ 11	○ 12	✗ 13	✔ 14	✗ 15	✗ 16	✔ 17	✔ 18	✔ 19	✗ 20	✗	✔ 21	✗	✔ 22
Question 8.	✗ 9	✗ 10	✔ 11	✗ 12	✔ 13	✗ 14	✗ 15	✗ 16	✔ 17	✗ 18	✗ 19	✗	✔ 20	✔	✔ 21