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PRESS RELEASE

CESR reviews the extent of supervisory convergence in the implementation of the European Commission's two 2004 UCITS Recommendations

CESR publishes today the results of a survey (Ref. CESR/05-302b) which reviews the implementation of two European Commission Recommendations, which deal with the use of financial derivative instruments for UCITS and some of the key contents requirements for the simplified prospectus of UCITS.

These two Recommendations, published by the European Commission on 30th April 2004, provide guidance to Member State authorities on the implementation of the most significant sets of changes to the UCITS legislation brought about by the two so-called UCITS III Directives (2001/107/EC and 2001/108/EC). The Recommendations were developed in response to concerns regarding potential inconsistencies in implementation between Member States.

In the autumn of 2004 the European Securities Committee discussions confirmed the continued importance of transparency regarding the steps taken by Member States' authorities to give effect to the Commission Recommendations if the UCITS III Directive were to be effectively implemented and its single market benefits fully realized. The European Commission therefore asked CESR to conduct a detailed survey on the implementation of the Recommendations.

The report concludes that overall implementation of the Recommendations is generally satisfactory across Member States (as illustrated in the synthesis tables in Annex VI and Annex VII of the survey (Ref. CESR/05-302b)) with a number of Member States having implemented the Recommendations into their national rules almost on a word for word basis. Most of the other Member States have implemented the Recommendations with some adaptation to wording but providing a high degree of consistency. Nevertheless, a group of several Member States can be identified, which have indicated the implementation of the Recommendations is still underway, 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 improve further by the end of 2005 when these processes are completed.

When analysing the responses, it has to be noted, that the Commission's recommendations fall into two types of category: those aimed to ensure a high level of investor protection in the investment activity of a UCITS and its disclosure and, a second category of recommendations aimed to allow within the limits of the UCITS Directive some flexibility in the activity and investments of a UCITS. The level of implementation and therefore the extent to which these two types of objectives are achieved varies considerably between different sections of the Recommendations, as analysed in more detail in the report. For instance, regarding the Recommendation on the simplified prospectus, the key recommendations on the presentation of the objectives and the investment policy of a UCITS have been implemented by the great majority of Member States. In contrast, the level of implementation on disclosure of costs and fees has not been as effectively achieved particularly in relation to the indication of the existence of fee-sharing arrangements and soft commissions.

The report will be transmitted to the European Commission and the European Securities Committee, as a basis for further discussion.



Notes for Editors:

1. The preparation of this report has been undertaken by the CESR Expert Group on Investment Management, which is chaired by Mr Lamberto Cardia, Chairman of the Italian securities regulator, the Commissione nazionale per le società e la Borsa (CONSOB). A permanent member of the CESR Secretariat, Mr Jarkko Syyrilä assists the Chairman and acts as Rapporteur of the Expert Group.
2. 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 in the domestic laws or regulations not 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 the 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 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).
3. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to:
 - Improve co-ordination among securities regulators;
 - Act as an advisory group to assist the EU Commission, in particular in its preparation of draft implementing measures in the field of securities;
 - Work to ensure more consistent and timely day to day implementation of community legislation in the member states.
 - The Committee was established under the terms of the European Commission's decision of 6 June 2001 (2001/1501/EC). It is one of the two committees envisaged in the Final Report of the group of Wise Men on the regulation of European securities markets. Baron Alexandre Lamfalussy chaired this group. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on the CESR website.
4. Each Member State of the European Union has one member on the Committee. The members are nominated by the Member States and are the Heads of the national public authorities competent in the field of securities. The European Commission has nominated the Director General of the DG Market, as its representative. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level.
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