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Summary report of the Review Panel's Review of CESR Members Implementation of CESR's guidelines on the transitional provisions of the amending UCITS Directives

IMPORTANT NOTICE

In the interest of transparency and in order to inform interested parties, CESR is publishing this document and the individual responses of each CESR Member to a questionnaire regarding the implementation of CESR's guidelines on the transitional provisions of the amending UCITS Directives, together with a synthesis table of the self-assessments for ease of reference.

The Tables were produced by the Members of CESR within the constraints of and solely for the purposes of the CESR Review Panel process of monitoring the status of implementation of the CESR's guidelines on the transitional provisions of the amending UCITS Directives.

This document, its annexes and the self-assessments have no legal effect, they do not present or represent any interpretation of or definitive position regarding existing laws, regulations or other forms of legislation in any jurisdiction. This document its annexes and the self-assessments cannot and should not be relied upon for any purpose other than for the purposes 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 systems of any Member State or as a source of information for the purposes of the supervision or enforcement of the CESR's guidelines on the transitional provisions of the amending UCITS Directives.

The published self-assessments regarding a particular Member State has been prepared by the relevant CESR Member. The documents and the self-assessments provide a "snap shot" and therefore should and cannot be considered as a full representation of the regulatory provisions relating to the implementation of the CESR guidelines in any Member State.

Introduction

1. CESR adopted and subsequently published in February 2005 guidelines for supervisors regarding the transitional provisions of the amending UCITS Directives (Ref. CESR/04-434b) in relation to a number of questions that were raised about these transitional provisions.
2. The Review Panel was mandated to review the implementation of these guidelines according to the different deadlines included in the guidelines in order to contribute to their effective implementation in member jurisdictions.
3. The review was conducted in three separate phases in the order of the transitional provisions periods as follows:



- Implementation of the first transitional period - Simplified Prospectus (as set out in Section A Point IV) of the CESR guidelines which provides for the deadline of 30th September 2005 ;
- Implementation of the second transitional period - UCITS I funds of single fund structure authorised between 13th February 2002 and 13th February 2004 (Section A Point II Q. 1 of the CESR guidelines), and UCITS I umbrella funds¹ (Section A Point III Q. 1 of the CESR guidelines) with a deadline of 31st December, 2005.
- Implementation of the third transitional period - grandfathered UCITS I management companies managing “passportable” UCITS III funds (Section A Point I Q. 1 of the CER guidelines) with a deadline of 30th April 2006.

Review Process

4. For the purposes of the review, CESR Members were asked to self-assess their implementation of the guidelines by answering a number of questions that were aimed at establishing CESR Members implementation of the guidelines from the perspective of both the Home and the Host Member State (a summary of the results in table format is set out in Annex 1). As such, the results of the self-assessment as set out in this report make reference to both the Home and the Host Member States perspective.

Treatment of new Member States for purposes of assessing their implementation of the guidelines as home Member State

5. In relation to the new Member States, which became EU members on 1st May 2004 and therefore after the implementation deadline of the amending UCITS Directives (13th February 2004), for the purposes of the review and all the guidelines that were assessed, they were considered as having implemented the relevant guideline as home Member States, because they do not have grandfathered UCITS I funds in their jurisdiction.

Summary of the results of each phase of the review.

6. This document sets out a summary of the results of the three phases, and does not set out the detailed results of each Members answers to questions asked. For details of any one Members response to a particular question, – please see each Members response as set out in the published self –assessments.

A) Simplified Prospectus

7. The CESR guideline in relation to the question of whether or not a UCITS I must have a simplified prospectus available in order to maintain its registration, is as follows:

¹ This applies whether the umbrella fund was itself authorised before 13th February 2002 or between 13th February 2002 and 13th February 2004.



Extract from the guidelines (Ref. CESR/04-434b)

in CESR's view UCITS I funds (launched before 13th February 2004) and umbrella funds, also including the sub-funds launched after 13th February 2004 in a grandfathered UCITS I umbrella fund as explained under point A III 1, should have available a simplified prospectus as soon as possible and **no later than 30th September 2005**. In cases of exceeding this deadline host Member States are no longer obliged to accept UCITS I funds without simplified prospectuses.

In addition CESR strongly recommends, that funds marketed to host Member States, that already have implemented the UCITS regulations concerning the simplified prospectus in their national legislation, and which requires also foreign funds to provide a simplified prospectus, would provide information according to the requirements included into Schedule C of the Annex I of the UCITS Directive, concerning the contents of the simplified prospectus.

8. CESR members were asked two questions, one from the home Member State perspective and one from the host Member State perspective as follows:

Home Member State perspective:

Q:1 Are grandfathered domestic UCITS I funds, as provided for in Section A Point IV Q. 1 of CESR's guidelines for supervisors regarding the transitional provisions of the amending UCITS Directives (Ref. CESR/04-434b), required to have a simplified prospectus available no later than 30th September 2005?

Host Member State perspective:

Q:2 Are grandfathered foreign UCITS I funds, as provided for in Section A Point IV Q. 1 of CESR's guidelines, allowed to market their units in your jurisdiction without having a simplified prospectus available until 30th September 2005?

Results of the self- assessments:

Implementation of the guidelines from the Home Member State perspective – domestic UCITS I funds:

9. According to the self-assessments of Members all jurisdictions except *Germany*², *Norway* and *Sweden* have implemented this guideline from the home Member State perspective i.e. domestic UCITS I funds are required to have a simplified prospectus available no later than 30th September 2005.

Implementation of the guideline from the Host Member State Perspective – foreign UCITS I funds

10. According to the self-assessments of Members all jurisdictions except *Latvia*³, have implemented this guideline from the host Member State perspective, i.e. foreign UCITS I funds are allowed to market their units without having a simplified prospectus available until 30th September 2005.

² The report displays the circumstances at the time the self assessment was made (June 2005). In the meantime, BaFin has issued a circular and has made sure that the industry complies with the guidelines.

³ The report displays the circumstances at the time the self assessment was made (June 2005). Since then, this guideline has been complied with.



Conclusions of the Review Panel's review of Members self- assessments in relation to the CESR guidelines for Simplified Prospectuses

11. In conclusion, based on the self-assessments of Members the transitional guideline concerning the availability of a simplified prospectus has been implemented in almost all Member jurisdictions, with very few exceptions. Reasons for not having been able to implement related to difficulties in getting the national legislation amended in time in those jurisdictions where the implementation would require changes in legislation.
12. The Review Panel points out that many Members have not implemented this guideline (especially from the host Member State perspective) by issuing any specific regulatory measures. Instead, the implementation is being carried out by the regulator in the daily supervisory practices, i.e. the national regulations are interpreted according to the CESR guideline.
13. It is not possible for the Review Panel to objectively verify the effectiveness of this type of implementation.

B) UCITS I funds of single fund structure authorised between 13th February 2002 and 13th February 2004 (Section A Point II Q. 1 of the CESR guidelines), and UCITS I umbrella funds

14. The second phase of the review looked at the implementation by Members of two CESR guidelines. The first guideline deals with UCITS I funds of a single fund structure authorised between 13th February 2002 and 13th February 2004, the second deals with UCITS I umbrella funds authorized within the same period.
15. The summary of the review of the second phase is divided between these two guidelines as follows:
 - a) UCITS I funds (single fund structure);
 - b) UCITS I umbrella funds

a) UCITS I funds (single fund structure)

16. The CESR guideline in relation to the question :

“Can a UCITS 1 fund authorised between 13th February 2002 and 13th February 2004 and wishing to be marketed in another Member State obtain a UCITS 1-product passport and benefit from a grandfathering period until 13th February 2007 ? ” is as follows:

Extract from the guidelines (Ref. CESR/04-434b)

Considering the fact that the situation was unclear from the date of entry into force of the amended UCITS Directive, CESR Members provide for a period **until December 31st, 2005** for UCITS I funds authorised between 13th February 2002 and 13th February 2004 to be converted to the regime of the amended UCITS Directive. By this deadline the conversion must be approved by the competent home State authority. Until this deadline, these funds still may continue to be marketed on the basis of the UCITS I product passport.

This time limit will urge such UCITS to adapt to the amended UCITS Directive in the smoothest time frame that is practically conceivable. The competent authorities should treat the necessary approvals as priority cases. In cases of exceeding this time limit host Member State authorities will no longer accept those UCITS I – passports.

17. For the purposes of the review of this guideline, Members were asked two questions one for the home Member State perspective and one from the host Member State perspective as follows:



Host Member State perspective

Q3. Are domestic UCITS I funds, authorised between 13th February 2002 and 13th February 2004, required to be converted to the UCITS III regime by 31st December 2005, as provided for in Section A Point II Q. 1 of CESR's guidelines?

Home Member State perspective

Q4. Are foreign UCITS I funds, authorised between 13th February 2002 and 13th February 2004, allowed to market their units in your jurisdiction on the basis of the UCITS I product passport until 31st December 2005, as provided for in Section A Point II Q. 1 of CESR's guidelines?

Results of the self-assessments:

Home Member State perspective:

18. According to the self-assessments of Members all jurisdictions except *Germany*⁴ have implemented this guideline from the home Member State perspective, i.e. domestic UCITS I funds authorised between 13th February 2002 and 13th February 2004 are required to be converted to the UCITS III regime by 31st December 2005.
19. In *Germany* most domestic UCITS I funds are covered by Section 145 Para. 1 of the Investment Act. According to this provision the fund rules must be amended and the amended fund rules must come into force on 1st January 2006 at the latest. For those very few funds which are not covered by Section 145 Para. 1 of the Investment Act BaFin has indicated that a guideline will be issued to implement this provision of CESR's guidelines⁵.

Host Member State perspective:

20. According to the self-assessments of Members all jurisdictions have implemented this guideline from the host Member State perspective, i.e. foreign UCITS I funds authorised between 13th February 2002 and 13th February 2004 are allowed to market their units on the basis of the UCITS I product passport until 31st December 2005.
21. Most Members have not implemented this guideline by issuing a specific regulatory measure. Instead the implementation is carried out by the regulator in the daily supervisory practices, i.e. the national regulations are interpreted according to the CESR guidelines.

b) UCITS I umbrella funds

22. The CESR guideline in relation to the question:

“Can a passportable UCITS 1 sub-fund be launched in a grandfathered UCITS I umbrellas fund ?” is as follows:

Extract from the guidelines (Ref. CESR/04-434b)

It should be considered that the transitional treatment of UCITS I sub-funds was unclear from the date of entry into force of the amended UCITS Directive which lead to divergent approaches of several supervisory authorities.

⁴ The report displays the circumstances at the time the self assessment was made (June 2005). In the meantime, BaFin has issued a circular and has made sure that the industry complies with the guidelines.

⁵ See foregoing footnote.



Therefore, CESR members provide for a period **until December 31st, 2005** for UCITS I sub-funds to be launched in a grandfathered UCITS I umbrella fund. By that date, the overall UCITS I umbrella must be converted to UCITS III, i.e. the conversion must be approved by the competent home State authority. This applies whether the umbrella fund was itself authorised before 13th February 2002 or between 13th February 2002 and 13th February 2004.

This time limit will urge such UCITS I umbrella funds to adapt to the amended UCITS Directive within the smoothest time frame that is practically conceivable. The competent authorities should treat the necessary approvals as priority cases. In cases of exceeding this time limit host Member State authorities will no longer accept those UCITS I – sub-fund-passports.

Grandfathered UCITS I umbrella funds, which have not launched additional sub-funds since 13th February 2002, have until 13th February 2007 to convert to the UCITS III.

The deadline of December 31st, 2005 does not concern the closure of a sub-fund, nor the launch of new share classes in sub-funds. Therefore grandfathered UCITS I umbrella funds, which existed on 13th February 2002, can continue to launch new share classes in sub-funds, which already existed on 13th February 2002, until the end of the transitory period, 13th February 2007.

23. For the purposes of the review of the implementation of this guideline, Members were asked two questions one for the home Member State perspective and one from the host member state perspective as follows:

Home Member State perspective

Q5. Are domestic UCITS I umbrella funds, which have launched additional sub-funds after 13th February 2002, required to be converted to the UCITS III regime by 31st December 2005, as provided for in Section A Point III Q. 1 of CESR's guidelines?

Host Member State perspective

Q6. Are foreign UCITS I umbrella funds, which have launched additional sub-funds after 13th February 2002, allowed to market their units in your jurisdiction on the basis of the UCITS I product passport until 31st December 2005, as provided for in Section A Point III Q. 1 of CESR's guidelines?

Results of the self- assessments:

Home Member State perspective

24. According to the self-assessments of Members all jurisdictions have implemented this guideline from the home Member State perspective, i.e. domestic UCITS I umbrella funds which have launched additional sub-funds after 13th February 2002 are required to be converted to the UCITS III regime by 31st December 2005.
25. In those member jurisdictions where their legal system does not provide for the structure of umbrella funds, for the purposes of the review, they were considered to have implemented this CESR guideline.



Host Member State perspective

26. According to the self-assessments of Members all jurisdictions have implemented this guideline from the host Member State perspective, i.e. foreign UCITS I umbrella funds, which have launched additional sub-funds after 13th February 2002, are allowed to market their units on the basis of the UCITS I passport until 31st December 2005.
27. Most Members have not implemented this guideline by issuing a specific regulatory measure. Instead the implementation is carried out by the regulator in the daily supervisory practices, i.e. the national regulations are interpreted according to the CESR guidelines.

Conclusions of the Review Panel's review of Members self- assessments in relation to the CESR guidelines for UCITS I funds of single fund structure authorised between 13th February 2002 and 13th February 2004 (Section A Point II Q. 1 of the CESR guidelines), and UCITS I umbrella funds

28. In conclusion, based on the self-assessments of Members the transitional guidelines included in the second phase of the review process have been implemented in almost all Member jurisdictions, with very few exceptions. Reasons for not having been able to implement related to difficulties in getting the national legislation amended in time in those jurisdictions where the implementation would require changes in legislation.
29. However, many Members have not implemented the guidelines by issuing any specific regulatory measures. Instead the implementation is being carried out by the regulator in the daily supervisory practices, i.e. the national regulations are interpreted according to the CESR guidelines.
30. As in the case for the review of the first phase, it is not possible for the Review Panel to objectively verify the effectiveness of this type of implementation.
31. Therefore, whether the implementation by the home Member State authorities of the required conversions to UCITS III by 31st December 2005 as requested by the CESR guidelines is really effective in the actual fund level, will only be seen in practice after the deadline has been met.

C) Grandfathered UCITS I management companies managing “passportable” UCITS III funds (Section A Point I Q. 1 of the CER guidelines) with a deadline of 30th April 2006.

2 Implementation of the guidelines by CESR Members

32. The third and final phase of the review looked at the implementation by Members of a CESR guideline relating to UCITS I management companies.
33. The CESR guideline in relation to the following question:

“Can a grandfathered UCITS I management company i.e authorized before 13th February 2004, launch “passportable” UCITS III funds?” is as follows:

Extract from the guidelines (Ref. CESR/04-434b)

Taking into account these difficulties and in order to encourage progress towards compliance with UCITS III, CESR members agree that a grandfathered UCITS I management company is allowed to launch “passportable” UCITS III funds only until April 30th, 2006. By this deadline the conversion of the management company to UCITS III must be approved by the competent home State authority. To be able to avail of this possibility, a grandfathered UCITS I management company has in any case to comply with the requirements of Article 21 of the UCITS Directive as amended by Directive 2001/108/EC concerning an appropriate risk-management process. This has to be confirmed by a written attestation (see the Annex for the model attestation) by the competent authorities of the



home Member State of the management company, in order it to be allowed to launch “passportable” UCITS III funds in the host Member State until April 30th, 2006.

The deadline of 30th April 2006 applies whether the management company has launched UCITS III funds before the issue of these guidelines or will do it later. It is also applied to UCITS I management companies, the UCITS I funds managed by which have been/are converted to UCITS III.

Grandfathered UCITS I management companies which have not launched “passportable” UCITS III funds so far and will not launch them during the transitory period until 13th February 2007, are not affected by the deadline of 30th April 2006. These management companies can continue to operate their grandfathered UCITS I funds until 13th February 2007, taking however into account the necessary conversion to UCITS III by that date at the latest.

34. For the purposes of the review of the implementation of this guideline, Members were asked two questions one for the home Member State perspective and one from the host member state perspective as follows:

Home Member State perspective

Q7. Are domestic UCITS I management companies, which manage UCITS III funds, required to be converted to the UCITS III regime by 30th April 2006, as provided for in Section A Point I Q. 1 of CESR’s guidelines?

Host Member State perspective

Q8. Are the units of foreign UCITS III funds managed by UCITS I management companies allowed to be marketed in your jurisdiction until 30th April 2006, provided that the UCITS I management company has an appropriate risk-management process in place, as provided for in Section A Point I Q. 1 of CESR’s guidelines?

Results of the self-assessments

Implementation of the guideline from the home Member State Perspective

35. According to the self-assessments of Members all jurisdictions have implemented this guideline from the home Member State perspective, i.e. domestic UCITS I management companies, which manage UCITS III funds, are required to be converted to the UCITS III regime by 30th April 2006.
36. Most Members indicated the implementation to be based on a binding regulatory measure. However in *Luxembourg* the implementation is based on a recommendation by the regulator. Circular CSSF 05/186 emphasizes that it is highly recommended that the concerned investment funds apply the principles set out in CESR’s guidelines. In *Ireland* the implementation is based on a memorandum circulated to the industry by IFSRA and the time limits set in the memorandum. Completed applications from management companies for authorisation were required by 30th September 2005. In addition, applications for UCITS I management companies to launch UCITS III funds after this date were not accepted.



37. In the *UK* the FSA has drawn the attention of those firms affected by the guidelines to the relevant provisions, and has undertaken a review in January 2006 to establish the state of their compliance.

Implementation of the guideline from the host Member State Perspective

38. According to the self-assessments of Members all jurisdictions have implemented this guideline from the host Member State perspective, i.e. the units of foreign UCITS III funds managed by UCITS I management companies are allowed to be marketed until 30th April 2006.
39. Most Members have not implemented this guideline by issuing a specific regulatory measure. Instead the implementation is carried out by the regulator in the daily supervisory practices, i.e. the national regulations are interpreted according to the CESR guidelines.

Conclusions of the 3rd phase of the review

40. In conclusion, based on the self-assessments of Members the transitional guidelines included in the third phase of the review process have been implemented in all Member jurisdictions.
41. However, many Members have not implemented the guidelines by issuing any specific regulatory measures. Instead the implementation is being carried out by the regulator in the daily supervisory practices, i.e. the national regulations are interpreted according to the CESR guidelines. The effectiveness of this type of implementation can not be verified objectively by the Review Panel.
42. Therefore, whether the implementation by the home Member State authorities of the required conversions to UCITS III by 30th April 2006 as requested by the CESR guidelines is really effective in the actual fund level, will only be seen in practice after the deadline has been met.

Conclusions of the three phases of the review

43. In conclusion, following the self-assessment of the CESR guidelines in relation to the transitional provisions of the amending UCITS Directives, the Review Panel does not at this stage consider it necessary to conduct any further review of the said guidelines.
44. The Review Panel considers it important that the home Member State authorities make sure that taking into account the informality of the implementing measures in many jurisdictions the practical implementation in the actual fund level is yet effective, and has drawn to the attention of Investment Management Expert Group the need to follow up on the efficacy of the fund level implementation of the transitional guidelines.



Annex I

“Synthesis Table” on the self- assessments of CESR Members to the CESR questionnaire on the implementation of UCTIS guidelines

Key:
 Not implemented ✖
 Partially implemented ◯
 Implemented ✔

	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	✔	✔	✔	✖	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	◯	✔	✔	✔	✔	✔	✔	✔	✖	✔
Question 2	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	◯	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
Question 3	✔	✔	✔	✖	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
Question 4	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
Question 5	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
Question 6	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
Question 7	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
Question 8	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔