REPORT

Peer Review of the Implementation of CESR’s Guidelines to simplify the notification procedure of UCITS
IMPORTANT NOTICE

In the interest of transparency and in order to inform interested parties, CESR is publishing this document regarding the Review Panel’s assessment of CESR Members’ implementation of CESR Guidelines to simplify the notification procedure of UCITS, together with a synthesis table of the review for ease of reference.

The information provided by the Members of CESR for the purposes of this review was produced within the constraints of and solely for the purpose of the CESR Review Panel process of monitoring the status of implementation of the CESR Guidelines to simplify the notification procedure of UCITS.

This document and its annexes 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 and its annexes cannot and should not be relied upon for any purpose other than the one they were prepared for. 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 purpose of the supervision or enforcement of the CESR Guidelines to simplify the notification procedure of UCITS.
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1. **Introduction**

1. The CESR’s Guidelines to simplify the notification procedure of UCITS\(^1\) (CESR/06-120b), published in June 2006, pursue the following main objectives:

   a) Simplifying the notification and ongoing process and thus facilitating cross-border fund distribution;

   b) Providing proportionate investor protection;

   c) Reducing costs for investors and fund management companies;

   d) Eliminating barriers to the single market on investment funds in Europe;

   e) Furthering a level playing field between different investment products.

2. In 2006, CESR announced that the progress on the implementation of the Guidelines would have been subject to review by CESR within two years. In particular, it was stated that review should consider: (i) whether the authorities have implemented the Guidelines; (ii) whether UCITS passportability has objectively improved, including in respect to the length of time it takes to complete the notification process; and (iii) what steps can be taken to improve further their freedom of movement.

3. The CESR Review Panel decided to carry out a peer review on the application of the Guidelines, in accordance with previous commitment. An ad-hoc group, coordinated by Ms Nicoletta Giusto from the Italian Consob, was set up by the Review Panel to conduct the peer review with the assistance of the CESR Secretariat.

4. The peer review was carried out in accordance with the Protocol of the Review Panel (CESR/07-070b) and the Methodology for Self-assessment and Peer Review Tool (CESR/07-071b).

5. A summary of the self-assessments conducted by CESR Members on the implementation of the Guidelines was published on April 1\(^{st}\), 2008 on CESR website (CESR/08-113).

6. This report describes the findings of the peer review conducted by the peers, which reflect some changes in the conclusions drawn by CESR Members within the framework of their self-assessments.

7. The report shows the level of application of the Guidelines at the date when the review started (April 1\(^{st}\), 2008). National implementing measures formally adopted only after the date when the review started\(^2\), as well as national implementing measures in the process of being drawn up and already in a concrete stage as of November 2009, are reflected in the report by way of footnotes, but are not taken into consideration for the purposes of individual and overall

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\(^1\) Hereinafter, the “Guidelines”.

\(^2\) In Cyprus, the following directives regarding the implementation of the CESR Guidelines have been issued by the competent authority:

(i) DI200-2004-05 (Regarding the marketing of foreign harmonised UCITS in the Republic of Cyprus) - published in the official Gazette of the Republic of Cyprus in 13th of February 2009;


In Poland, amendments to the Act on Investment Funds have been adopted in December 2008.

benchmarks, in accordance with Articles 19 and 22 of the Methodology for Self-assessment and Peer Review Tool3.


9. The revised notification procedure is based on improved communication between the competent authorities of the Member States. More in details, Chapter XI of the UCITS IV Directive provide that:

- The home Member State competent authority must verify the completeness of the notification documents and transmit them to the host Member State competent authority no later than ten (10) working days from the receipt of complete notification.
- Upon transmission of the documentation to the host Member State competent authority, the home Member State competent authority must immediately notify the UCITS about the transmission. The UCITS may access the market of the host MS as of the date of this notification.
- Following transmission of a complete notification file by the competent authority of the home Member State, the host Member State cannot oppose access to its market by a UCITS established in another Member State or challenge the authorisation given by that other Member State.
- The host Member State competent authority maintains the right to take (ex post) actions against the UCITS if it infringes the laws, regulations and administrative provisions in force on its territory and falling outside the field governed by the Directive or the requirements set out in Articles 92 and 94.

10. The UCITS IV Directive incorporates some of the simplifications to the notification procedure envisaged by CESR in the Guidelines, such as those regarding the electronic filing of the notification documents and the language regime of the notification letter and of the attestation by the home competent authority. Moreover, the European Commission is empowered to adopt implementing measures in the following areas, which are partly covered by the Guidelines:

- The scope of the information required to be published by each Member State concerning its domestic laws and regulations establishing the marketing regime applicable to UCITS;
- How a Host State’s access to a UCITS’ notification letter and documentation might be facilitated;
- The form and content of standard letters of notification by a UCITS and attestation by the home Member State competent authority;
- Procedures for competent authorities’ exchange of information and use of electronic communication.

11. CESR is currently working on the technical advice on the possible L2 measures concerning the notification procedure according to the provisional request issued by the European Commission on February 13, 2009. CESR’s draft advice was published for consultation on September 17, 2009. The technical advice is expected to be finalised by the end of 2009.

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3 Article 19 of the Methodology states “If a national implementing measure is not in force but has already been formally adopted and a concrete date of its coming into force is stated in the correspondence table, it will be assessed as if it had been in force at the time of the review, provided that the national implementing measure comes into force within a reasonable period of time after the review process has started. This period of time will be established before the commencement of each exercise”.

Article 22 provides that: “If a national implementing measure relating to the provision under review is in the process of being drawn up, this has to be stated, provided that the implementing measure is already in a concrete stage (e.g. a proposal to Parliament or publication of a consultation paper)”.

12. As noted by the Commission in its corresponding mandate to CESR, the 2006 Guidelines can serve as an inspiration for advice on suitable level 2 measures, with the aim of finding balanced solutions that will ensure that supervisors can discharge their duties, without prejudice to the objectives of the reform of the notification procedure.

2. **Summary of the findings of the peer review**

13. All CESR Members contributed to the peer review exercise. The country codes and acronyms of competent authorities are listed in the following table.

<table>
<thead>
<tr>
<th>Member States</th>
<th>CESR Member (CA)</th>
<th>Abbreviation</th>
<th>Country code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Financial Market Authority</td>
<td>FMA</td>
<td>AT</td>
</tr>
<tr>
<td>Belgium</td>
<td>Commission Bancaire, Financière et des Assurances / Commissie voor het Bank, Financiën Assurantiewezen</td>
<td>CBFA</td>
<td>BE</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Financial Supervision Commission</td>
<td>FSC</td>
<td>BG</td>
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<td>Cyprus Securities and Exchanges Commission</td>
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<td>CY</td>
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<td>Czech National Bank</td>
<td>CNB</td>
<td>CZ</td>
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<td>Denmark</td>
<td>Finanstilsynet</td>
<td>Finanstilsynet</td>
<td>DK</td>
</tr>
<tr>
<td>Estonia</td>
<td>Estonian Financial Supervision Authority</td>
<td>EFSA</td>
<td>EE</td>
</tr>
<tr>
<td>Finland</td>
<td>Finanssvvalvonta</td>
<td>Finanssvvalvonta</td>
<td>FI</td>
</tr>
<tr>
<td>France</td>
<td>Autorité des Marchés Financiers</td>
<td>AMF</td>
<td>FR</td>
</tr>
<tr>
<td>Germany</td>
<td>Bundesanstalt für Finanzdienstleistungsaufsicht</td>
<td>BaFin</td>
<td>DE</td>
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<td>Greece</td>
<td>Capital Market Commission</td>
<td>HCMC</td>
<td>EL</td>
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<td>Hungary</td>
<td>Hungarian Financial Supervisory Authority</td>
<td>HFSAs</td>
<td>HU</td>
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<td>Financial Regulator</td>
<td>FR</td>
<td>IE</td>
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<td>Iceland</td>
<td>Financial Supervisory Authority</td>
<td>FME</td>
<td>IS</td>
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<td>Italy</td>
<td>Commissione Nazionale per le Società e la Borsa</td>
<td>Consob</td>
<td>IT</td>
</tr>
<tr>
<td>Latvia</td>
<td>Financial and Capital Markets Commission</td>
<td>FCMC</td>
<td>LV</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Lithuanian Securities Commission</td>
<td>LSC</td>
<td>LT</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Commission de Surveillance du Secteur Financier</td>
<td>CSSF</td>
<td>LU</td>
</tr>
<tr>
<td>Malta</td>
<td>Malta Financial Services Authority</td>
<td>MFSAs</td>
<td>MT</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Autoriteit Financiële Markten</td>
<td>AFM</td>
<td>NL</td>
</tr>
<tr>
<td>Norway</td>
<td>Kredittilsynet</td>
<td>Kredittilsynet</td>
<td>NO</td>
</tr>
<tr>
<td>Poland</td>
<td>Polish Financial Supervision Authority</td>
<td>PFSA</td>
<td>PL</td>
</tr>
<tr>
<td>Portugal</td>
<td>Comissão do Mercado de Valores Mobiliários</td>
<td>CMVM</td>
<td>PT</td>
</tr>
<tr>
<td>Romania</td>
<td>Romanian National Securities Commission</td>
<td>CNVMR</td>
<td>RO</td>
</tr>
<tr>
<td>Slovakia</td>
<td>National Bank of Slovakia</td>
<td>NBS</td>
<td>SK</td>
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<td>Slovenia</td>
<td>Securities Market Agency</td>
<td>SMA</td>
<td>SI</td>
</tr>
<tr>
<td>Spain</td>
<td>Comision Nacional del Mercado de Valores</td>
<td>CNMV</td>
<td>ES</td>
</tr>
<tr>
<td>Sweden</td>
<td>Finansinspektionen</td>
<td>Finansinspektionen</td>
<td>SE</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Financial Services Authority</td>
<td>FSA</td>
<td>UK</td>
</tr>
</tbody>
</table>
14. The level of application of the Guidelines has been assessed on the basis of the individual and overall benchmarks approved by the Review Panel as set out in the Self-Assessment Report published on CESR website.

15. In order to establish the overall benchmark, the Guidelines have been divided into two groups, the Key Guidelines and the Non Key Guidelines, as follows:
   - Key Guidelines: 1,2,4,5,7,9 and 10;
   - Non-key Guidelines: 3,6,8,11,12 and 13.

16. The Key Guidelines cover the following aspects of the notification procedure which are classified as “major improvements” to the UCITS passportability in the Guidelines:
   (i) Language regime of the notification letter
   (ii) Checking completeness of the notification letter
   (iii) Shortening of the two-month period
   (iv) Certification of documents
   (v) Treatment of umbrella funds.

   The following aspects are also covered by Key Guidelines, since they are considered by the Review Panel as fundamental in terms of simplifying the notification procedure for UCITS:
   (vi) Electronic submission of documents
   (vii) Standard notification letter,

17. The Non-Key Guidelines are not deemed to be as fundamental for the purposes of simplifying the notification process. As such CESR considers that a Member can be considered as fully applying the spirit of the Guidelines and achieving the objective of simplifying the notification procedure, even if the Non-Key Guidelines are not complied with as the non application of these Guidelines does not prohibit the passporting of UCITS.

18. A summary table with tick boxes showing the application of the Guidelines across all Members is provided below.
19. In summary, the peer review shows that:

- Full application of the Guidelines has occurred in 5 Member States (BE, BG, IT, LU, NO). An overall benchmark of “full application” of the Guidelines by a Member requires that at least all the Key Guidelines (1, 2, 4, 5, 7, 9 and 10) are fully applied.

- Partial application of the Guidelines has occurred in 4 Member States (HU, PT, RO, SE). An overall benchmark of “partial application” of the Guidelines by a Member requires that any of the Key Guidelines is partially applied.

- 20 Member States (AT, CY, CZ, DE, DK, FI, FR, EE, EL, ES, IE, IS, LT, LV, MT, NL, PL, SI, SK, UK) have not applied at least one Key Guideline. According to the overall benchmark, this implies an overall benchmark of “non-application” of the Guidelines.

20. Considering that the overall benchmark is focused only on the application of the Key Guidelines, the information above has to be read jointly with the information provided in Tables no. 5 and 6 with respect to individual ratings achieved by Member States for all Guidelines, including non-Key Guidelines. A general overview of the application of the Guidelines is provided in Section 5 of this report.

21. The tables with tick boxes showing the application of individual key questions in each Member’s jurisdiction are appended under Annex I. The table below shows the percentage of Members that fully/partially apply or do not apply each of the Guidelines:

![Table 2 - Summary table showing the application of the Guidelines across all Members](image-url)
### Table 3 – Percentage of Member States applying each Guideline

<table>
<thead>
<tr>
<th>Guideline</th>
<th>Full application</th>
<th>Percentage of Members</th>
<th>Non application</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Percentage of Members</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Partial application</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Non application</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>59% (17: AT, BE, BG, CZ, DK, EE, ES, IE, IS, IT, LU, LV, MT, NL, NO, PT, SE)</td>
<td>7% (2: HU, RO)</td>
<td>34% (10: CY, DE, FI, FR, EL, LT, PL, SI, SK, UK)</td>
</tr>
<tr>
<td>2</td>
<td>100% (29: AT, BE, BG, CY, CZ, DE, DK, FI, FR, EE, EL, ES, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, SE, UK)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>93% (27: AT, BE, BG, CY, DE, DK, FI, FR, EE, EL, ES, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PT, RO, SE, SI)</td>
<td>7% (2: CZ, MT)</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>69% (20: BE, BG, CY, CZ, DE, FR, EE, EL, ES, IS, IT, LT, LU, LV, MT, NL, NO, PT, RO, SE, UK)</td>
<td>31% (9: AT, DK, FI, HU, IS, NL, PL, SI, SK)</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>86% (25: BE, BG, CY, CZ, DE, DK, FI, FR, EL, ES, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PT, RO, SE, SI)</td>
<td>3% (1: AT)</td>
<td>10% (3: EE, PL, UK)</td>
</tr>
<tr>
<td>6</td>
<td>76% (22: AT, BE, CY, DE, DK, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, SE, UK)</td>
<td>17% (5: BG, CZ, EE, LV, PL)</td>
<td>7% (2: SK, UK)</td>
</tr>
<tr>
<td>7</td>
<td>93% (27: AT, BE, BG, CY, DE, DK, FI, FR, EE, EL, ES, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PT, RO, SI, SK, SE, UK)</td>
<td>7% (2: CZ, ES)</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>62% (18: AT, BE, CY, DE, DK, FI, HU, IE, IS, IT, LT, LU, MT, NL, NO, PT, SE, UK)</td>
<td>21% (6: BG, CZ, ES, PL, SI, SK)</td>
<td>17% (5: FR, EE, EL, LV, RO)</td>
</tr>
<tr>
<td>9</td>
<td>100% (29: AT, BE, BG, CY, CZ, DE, DK, FI, FR, EE, EL, ES, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, SE, UK)</td>
<td>21% (6: BG, CZ, ES, PL, SI, SK)</td>
<td>17% (5: FR, EE, EL, LV, RO)</td>
</tr>
<tr>
<td>10</td>
<td>52% (15: BE, BG, CY, DE, FI, EL, ES, HU, IT, LT, LU, NO, RO, SI, UK)</td>
<td>10% (3: PL, PT, SE)</td>
<td>38% (11: AT, CZ, DK, FR, EE, IE, IS, LV, MT, NL, SI, SK)</td>
</tr>
<tr>
<td>11</td>
<td>79% (23: AT, BG, CY, DE, FI, FR, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, MT, NL, NO, PL, PT, RO, SI, SK, SE, UK)</td>
<td>21% (6: BE, CZ, DK, ES, IE, LV)</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>90% (26: AT, BE, BG, CY, DE, FI, FR, EL, ES, HU, IE, IS, IT, LT, LU, MT, NO, PL, PT, RO, SI, SK, SE, UK)</td>
<td>10% (3: CZ, DK, EE)</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>90% (26: AT, BE, BG, CY, CZ, DE, DK, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, MT, NO, PL, PT, RO, SI, SK, SE, UK)</td>
<td>10% (3: EE, LV, NL)</td>
<td></td>
</tr>
</tbody>
</table>
22. The individual rating for the Key and non-Key Guidelines as set out in the Self-Assessment Report are indicated in the table below:

Table 4 – Individual rating

<table>
<thead>
<tr>
<th>Individual rating</th>
<th>All Key Guidelines</th>
<th>All Non-Key Guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fully applied</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Partially applied</td>
<td>1, 7, 10</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>2, 4, 5, 9</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>All Non-Key Guidelines</td>
<td>3</td>
</tr>
<tr>
<td>Not applied</td>
<td>All</td>
<td>0</td>
</tr>
</tbody>
</table>

23. Hence, the individual ratings achieved by each Member in relation to each of the Key and Non-Key Guidelines are the following:

Table 5 – Individual rating achieved by each Member State

<table>
<thead>
<tr>
<th>CESR Member</th>
<th>Key Guidelines</th>
<th>Non-Key Guidelines</th>
<th>Individual rating of each Member – Application of all Guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1  2  4  5  7  9</td>
<td>10  3  6  8  11  13</td>
<td></td>
</tr>
<tr>
<td>Austria</td>
<td>10 10 1 1</td>
<td>10 10 0 5</td>
<td>5 5 5 5 5</td>
</tr>
<tr>
<td>Belgium</td>
<td>10 10 10 10 10 10</td>
<td>10 5 5</td>
<td>5 0 5 5</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>10 10 10 10 10 10</td>
<td>10 5 3 3 5 5</td>
<td>96</td>
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<tr>
<td>Cyprus</td>
<td>0 10 10 10 10 10</td>
<td>10 5 5 5 5 5</td>
<td>90</td>
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<tr>
<td>Chech Republic</td>
<td>10 10 10 10 10 10</td>
<td>10 0 3 3 0 0 5</td>
<td>61</td>
</tr>
<tr>
<td>Denmark</td>
<td>10 10 1</td>
<td>10 10 10</td>
<td>0 5 5 5 0 0 5</td>
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<tr>
<td>Estonia</td>
<td>10 10 10</td>
<td>10 10</td>
<td>0 5 3</td>
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<tr>
<td>Finland</td>
<td>0 10 1</td>
<td>10 10 10 10</td>
<td>10 5 5 5 5 5</td>
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<tr>
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<td>0 10 10</td>
<td>10 10 10</td>
<td>0 5 5 0 5 5</td>
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<td>Germany</td>
<td>0 10 10</td>
<td>10 10 10 10</td>
<td>10 5 5 5 5</td>
</tr>
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<td>Greece</td>
<td>0 10 10</td>
<td>10 10 10 10</td>
<td>10 5 5 0 5 5</td>
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<td>Hungary</td>
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<td>10 10 10 10</td>
<td>10 5 5 5 5</td>
</tr>
</tbody>
</table>
24. The overall rating is calculated by adding the individual rating achieved by the Member for each of the Key and Non-Key Guidelines. Applying the overall benchmark, the peer review shows that:

Table 6 – Overview of individual ratings achieved by Member States

<table>
<thead>
<tr>
<th>Number of Members</th>
<th>Who</th>
<th>Individual rating achieved</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>IT, LU, NO</td>
<td>100</td>
</tr>
<tr>
<td>7</td>
<td>BE, BG, CY, DE, LT, PT, SE</td>
<td>Between 90 and 99</td>
</tr>
<tr>
<td>8</td>
<td>EL, ES, FI, HU, IE, IS, MT, RO</td>
<td>Between 80 and 89</td>
</tr>
<tr>
<td>8</td>
<td>AT, DK, FR, LV, NL, PT, SI, UK</td>
<td>Between 70 and 79</td>
</tr>
<tr>
<td>4</td>
<td>CZ, EE, PL, SK</td>
<td>Between 60 and 69</td>
</tr>
</tbody>
</table>

3. References to unwritten internal procedures and practices

25. According to the Article 14 of the Methodology for Self-assessment and Peer Review Tool, “In order to be considered sufficient for the purposes of CESR peer reviews, national implementing measures would, in particular cover, laws (i.e. acts of Parliament) and regulations (i.e. decrees of ministries or rule books of regulators), guidelines and circulars of regulators (provided that non-compliance with these guidelines and circulars should trigger enforcement action by the regulator concerned), rules of self-regulatory organisations, such as regulated markets or industry associations (where applied by a significant part of the industry in a specific Member State and provided that non-compliance with those rules triggers enforcement action by the self-
regulatory organisation concerned or by the regulator), and relevant case law. Internal procedures followed by regulators that do not trigger enforcement action are also classified as implementing measures for these purposes”.

26. In order to be treated as a sufficient implementing measure for the purposes of the peer review, unwritten internal procedures and practices must be evidenced.

27. Considering that many of the Guidelines reflect working procedures that competent authorities are expected to follow in their day-to-day activity, and bearing in mind the differences in national legal systems and approaches in transposing level 3 measures, the Review Panel considered that different types of evidence could be accepted. Those evidences need to be assessed on a case by case basis, taking account of the specificity of the question which they relate to.

28. In general terms, a brief description of that unwritten procedure or practice in the overview of national marketing rules or on the CESR Member’s website can be treated as a sufficient evidence, since the authority is publicly committed to follow that procedure or practice.

29. In the case that no evidence is available on the website, the Review Panel considered that the authority should at least provide a description of the alleged practice and unwritten internal procedure and possible additional information to show that it is committed to follow that practice.

30. It is noted that, for certain parts of the Guidelines, there is however an expectation that the implementing measure be a provision incorporated in the domestic laws and regulations, for instance for those parts of the Guidelines that reflect provisions of the UCITS Directive or refer to specific obligations of the UCITS.

4. Level of implementation of individual Guidelines

31. This part of the report is aimed at describing the level of implementation of individual Guidelines and showing the problems encountered by CESR Members.

4.1. Guideline 1

4.1.a Standard notification letter

32. Guideline 1 provides that, “For the notification procedure – as far as the harmonized part is concerned – a standardized notification letter which is drafted according to the standard model letter in Annex II should be used by the UCITS”.

33. The role of the home competent authority in this respect is to recommend, rather than to require, the use of the standard notification letter, its acceptance depending on the host competent authority.

34. 27 CESR Members (all except SK, UK) reported that, when acting as home State, they recommend/advise the UCITS to use the standard notification letter set out in Annex II of the Guidelines by the notifying UCITS.

35. 2 Member States (SK, UK) do not comply with this part of Guideline 1. SK and UK mentioned that they do not provide this recommendation to the UCITS.

36. All CESR Members reported that, when acting as host State, they accept notifications submitted in accordance with the model notification letter set out in Annex II of the Guidelines. It is however noted that not all Member States ensure that the model notification letter set out

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According to the amendments to the Slovakian legislation (entered into force after the date when the peer review started), the use of the model notification letter is recommended.
in Annex II of the Guidelines is available on the competent authority’s website.

37. Pursuant to the UCITS IV Directive (Article 95(2)(a)), the Commission may adopt implementing measures specifying the form and content of a standard model of notification letter to be used by a UCITS for the purpose of notification.

4.1.b Language regime of the notification letter

38. In order to reduce the burdens and costs for the applicant, Guideline 1 provides that “The notification letter may be submitted in a language common in the sphere of international finance or in the or one of the official languages of the host Member State if it is not contrary to domestic legislation or regulations of the host Member State”. Where submitting an English notification letter is contrary to domestic legislation or regulations, steps should have been taken to promote the necessary changes.

39. The peer review shows that all CESR Members but 1 (PL) do accept the notification letter submitted in English.

40. In PL notification letters in English are acceptable only following the amendments introduced after the date when the peer review started.

41. According to Article 93(4) of the UCITS IV Directive, “Member States shall ensure that the notification letter … and the attestation … are provided in a language customary in the sphere of international finance, unless the UCITS home Member State and the UCITS host Member State agree to the notification letter … and the attestation … being provided in an official language of both Member States”.

4.1.c Electronic filing of the notification documents

42. According to Guideline 1, “CESR Members agree to facilitate electronic filing of documents”. As stated in the Explanatory Text, “It is aimed by the Member States that the notification letter as well as all other documents and information required in the notification procedure may also be submitted electronically. Where the notification documents are provided in electronic form it shall not be necessary to submit hard copies”.

43. The electronic submission of documents is governed by national regulation. However, fax or emails are mentioned in Annex III of the Guidelines as examples of electronic submission of documents. Both fax and e-mail have therefore been considered as acceptable electronic means for the purposes of the peer review exercise. In case of e-mails, an electronic signature was not deemed necessary since it is not required by the Guidelines. In addition, the Review Panel considered that electronic filing of documents may not be deemed as facilitated where the possibility of electronic submission is restricted to certain notification documents or to the additional information on marketing arrangements eventually requested in the processing of notification.

44. The peer review shows that 18 CESR Members (AT, BE, BG, CZ, DK, EE, ES, IE, IS, IT, LU, LV, MT, NL, NO, PT, SE, UK) accept electronic submission of documents and do not require hard copies to be submitted. The means accepted for electronic submission vary across Members. In particular:

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* NL states that they accept the standard notification letter. It is however noted that the application form available on the competent authority’s website is not in the format set out in Annex II of CESR Guidelines.

* According to the Act on Investment Funds amended on 29th December 2008, PFSA does accept notification letters submitted in English language, without requiring the notifying entities to provide translations into Polish.
- 11 CESR Members (BE, BG, CZ, DK, EE, IE, IS, LU, LV\(^8\), MT, SE) accept electronic submission by e-mail but not by fax, and 3 of them (BG, EP\(^9\), CZ) only with electronic signature;
- 4 CESR Members (AT, NO, PT, UK) accept the notification letters as well as the other documents and information required in the notification procedure submitted by the notifying UCITS by both fax and email;
- 1 CESR Member (IT) accepts electronic submission by fax but not e-mail.

45. 11 CESR Members (CY, DE, EL, FI, FR, HU, LT, PL, RO, SI, SK) are considered as not fully applying this part of Guideline 1. In particular:

- in RO the attestation by the home competent authority shall be submitted on paper\(^{10}\);
- HU and PL accept notifications submitted electronically (by fax in PL), and the date of obtaining such electronic notification marks the beginning of the two-month period, but then hard copies are to be submitted;
- FI requires the notification letter to be submitted by mail with original signature;
- in EL electronic submission of the documents was accepted only after the date when the peer review started;
- FR accepts that the additional information concerning the marketing arrangements that may be eventually requested in the course of the proceedings may be submitted by email or fax, but requires the notification to be submitted by mail\(^{11}\);
- in CY only the additional information requested by the authority in the case of an incomplete notification can be submitted by fax\(^{12}\);
- in SK the notification letter and the other notification documents cannot be submitted electronically\(^{13}\);
- in SI electronic submission of the notification documents was not yet available at the time when the peer review started\(^{14}\);
- in DE the notification is to be made in writing\(^{15}\);
- LT does not accept any form of electronic filing of documents.

46. The UCITS IV Directive (Article 93(5)) provides that “Member States shall ensure that the electronic transmission and filing of the documents referred to in [Article 93] paragraph 3 is accepted by their competent authorities”. Moreover, “The UCITS home Member State shall ensure that the competent authorities of the UCITS host Member State have access, by electronic

\(^{8}\) It is noted however that in LV the acceptance of the original notification letter and enclosed documents by email is not reflected in the overview of national marketing rules, where it is only stated that amendments to the documents and information submitted to the Commission may also be submitted electronically.

\(^{9}\) In EE, for the purpose of notification, the competent authority accepts the relevant documentation both in physical and electronic form. The notification letter and the confirmation of the financial supervision authority of the home State should be presented with original signatures. The competent authority retains the right to inquire physical copies of all electronic documents submitted if it is deemed necessary for true verification of the documents. It is noted however that the aforesaid requirements have been reflected in the overview of national marketing rules after the date when the peer review started.

\(^{10}\) The other notification documents can be submitted electronically (via email with appropriate signature) and the two-month period starts from the date of receipt of the electronic notification.

\(^{11}\) Only with regard to those additional documents related to the marketing, UCITS are not required to send any hard copy to the AMF.

\(^{12}\) In Cyprus the possibility to accept electronic submission would require an amendment of the general law, which is not in the jurisdiction of the competent authority.

\(^{13}\) According to the amendments to the Slovakian legislation (entered into force after the date when the peer review started), the competent authority accepts electronic filing of the notification documents but the notification letter has still to be submitted in the original or hard copy.

\(^{14}\) After the date when the peer review started, the Slovenian competent authority has informed that technical solution has been developed. The exact date of beginning of electronic submission of the notification documents will be published on the competent authority’s website.

\(^{15}\) Sec. 3 of the German Administrative Procedure Act says that electronic filing of documents is accepted, if a sufficient access has been provided by the government agency. Also, in case there is the requirement of written form as an element of trust, the electronic filing has to be in accordance with the Act of electronic signatures, that means the electronic submission has to be accompanied by a qualified electronic signature, if these cases are applicable. The authority reported that it was analysing the feasibility and practical implementation of electronic submission of documents in collaboration with the market when the peer review started.
means, to the documents referred to in paragraph 2 and, if applicable, to any translations thereof. It shall ensure that the UCITS keeps those documents and translations up to date. The UCITS shall notify any amendments to the documents referred to in paragraph 2 to the competent authority of the UCITS host Member State and indicate where these documents can be obtained electronically” (Article 93(7)). Article 95 empowers the Commission to adopt implementing measures specifying the facilitation of access for the competent authorities of the UCITS host Member States to the notification documents as well as the procedure for the exchange of information and the use of electronic communication between competent authorities.

4.2. **Guideline 2**

4.2.a **Possible grounds to refuse notifications**

47. Pursuant to the UCITS Directive, the host Member State authority’s competences are confined to refusing the marketing of a foreign UCITS on its territory in case the marketing arrangements do not comply with the provisions referred to in Art. 44(1) and Art. 45 of the Directive. Accordingly, Guideline 2 provides that other reasons, for instance those deriving from divergent interpretations on whether a UCITS complies with the Directive, cannot be used as a ground to refuse the passport, and that the passport should always be respected if the marketing arrangements comply with the provisions referred to in Art. 44(1) and Art. 45.

48. The peer review shows that all CESR Members comply with Guideline 2, since:

- no CESR Member refuses passports for any reason differing from non-compliance of marketing arrangements adopted by the notifying UCITS, and in particular for any reason deriving from divergent interpretations on whether the UCITS complies with the Directive;

- all CESR Members ensure that the passport is accepted in case of compliance of marketing arrangements adopted by the notifying UCITS.

49. As indicated above, under the UCITS IV Directive, the host Member State competent authority is no longer required to carry out ex ante controls about the marketing arrangements intended to be adopted by the UCITS. This is without prejudice to the power of the host Member State competent authority to take (ex post) action against the UCITS in case of non-compliance to the provisions falling outside the field governed by the Directive and the requirements set out in Articles 92 and 94.

4.3. **Guideline 3**

4.3.a **The two month-period**

50. According to Guideline 3, “An investment company or a management company may begin to market the units of UCITS in the host Member State two months after it has completed the notification by submitting the required information and documents to the competent host State authority, unless the host Member State establishes in a reasoned decision taken before the expiry of that period of two months, that the marketing arrangements do not comply with the provisions referred to in Art. 44(1) and Art. 45”.

51. 29 CESR Members provide that the marketing in their territory may begin two months after the notification has been completed, unless a reasoned decision is taken before the expiry of that period. In IT, LV, NO, the aforesaid two-month period is reduced to one month.

52. 29 CESR Members ensure that any decision preventing the marketing can exclusively be grounded on non-compliance of the marketing arrangements with the provisions referred to in
Art. 44(1) and Art. 45 of the UCITS Directive.

4.3.b **Right of appeal against a decision to deny the passport**

53. Guideline 3 provides that, like any other decisions taken in respect of a UCITS, the decision preventing the UCITS from starting the marketing should be reasoned and should be subject to the right to apply to the Court (see Article 51(2) of the UCITS Directive, as replaced by Article 107(2) of the UCITS IV Directive).

54. In case that a decision preventing the UCITS from starting the marketing is taken, 29 CESR Members communicate the reasons for such decision to the notifying UCITS.

55. In 27 Member States (all but CZ, MT), the decision preventing the start of the marketing is subject to the right of appeal. In CZ, an appeal against the decision to deny the passport is not possible. In MT no formal appeal process exists for a refusal of the passport; nonetheless the competent authority would request and consider representations before arriving at a final decision\(^\text{16}\).

4.4 **Guideline 4**

4.4.a **Starting the two-month period from receipt of complete notification**

56. According to Guideline 4, the two-month period does not start until competent authorities are confident that all documents and information have been provided and a preliminary assessment on the contents of those documents gives assurance to them that all information is at their disposal.

57. All CESR Members provide that the two-month period - or, for those jurisdictions where the maximum term for checking notifications is one month, the one-month period - starts only when the notification submitted by the UCITS is complete.

58. Moreover, all CESR Members provide that the notification is complete when all information and documents as provided for in the UCITS Directive and the Guidelines have been received.

59. All Member States are considered as having implemented the part of Guideline 4 which requires a preliminary assessment of the notification documents, since they should, within one month, either confirm receipt of complete notification or require the missing information and documents, as elaborated below.

60. 19 CESR Members (BE, BG, CY, CZ, DE, EE, EL, FR\(^\text{17}\), IT, LT, LU, LV, NO, NL, MT, PT, SE, UK\(^\text{18}\)) confirm receipt of complete notification within one month. In IT, LV, NO this is ensured by the fact that one-month is the maximum term available to the authority to grant/deny the passport.

61. 8 CESR Members (AT, DK, FI, HU, IS, PL, SI, SK\(^\text{19}\)) do not always expressly confirm receipt of notification within one month. In particular, FI\(^\text{20}\), IS, PL send a confirmation of receipt of the

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\(^{16}\) MT reported that, to date, they have never refused the passport to a foreign UCITS.  
\(^{17}\) In IE, applicants are in practice advised within 3 working days whether the application is complete or incomplete.  
\(^{18}\) UK reported in the overview that they aim to acknowledge receipt of notification within 5 working days.  
\(^{19}\) According to the amendments to the Slovakian legislation (entered into force after the date when the peer review started), receipt of complete notification is confirmed.  
\(^{20}\) The Finnish competent authority reported that they have shortened the period of checking the notification to one month, therefore “it seems quite irrelevant to confirm receipt of the notification in cases when we provide the final response within the same time period”. However, according to Art 128 of the Act on Common Funds, a two-month period formally applies to the notification of new sub-funds.
notification only upon request of the notifying UCITS; HU and SI\(^{21}\) provide only communication about incompleteness of the notification. AT does not automatically and explicitly confirm receipt; there is only an indirect confirmation through the publication on the competent authority’s website.

62. RO and ES confirm receipt of the notification, but there is not an express confirmation about receipt of complete notification. In case of incompleteness of the notification documents, the UCITS is informed within one month.

63. 13 CESR Members (BE, CY, CZ, DE, EE\(^{22}\), ES, FR, HU, LT, LU, PT, SE, UK) always additionally inform the UCITS regarding the date of start of the two-month period\(^{23}\). This communication is included in the communication of receipt of complete notification or, in any case, is provided at the latest within one month after receipt of complete notification in accordance with Guideline 4.

64. As outlined above, the UCITS IV Directive (Article 93) designs a new procedure for the notification of cross-border marketing, according to which the completeness of the notification must be verified by the competent authority of the home Member State, rather than by the competent authority of the host Member State.

4.4.b Information about incompleteness of the notification; Timing for submitting the missing information

65. According to Guideline 4, if the notification is incomplete, the host State authority shall inform the UCITS about the incompleteness and the missing information and documents as soon as possible and, in any case, within one month from the date of receipt of the incomplete notification. Guideline 4 does not fix a timeframe within which the requested information has to be provided, therefore the provisions of national law do apply. However, it is stated that a term of six months may be considered as an “appropriate time period” to avoid a notification process to be held open for a long time period and to help directing the resources of authorities to applications that are still in the ‘active phase’.

66. In all Member States, the competent authority is required to inform the notifying UCITS about the incompleteness and the missing information and documents as soon as possible and, in any case, within one month from receipt of the incomplete notification\(^{24}\).

67. Some CESR Members provided additional details about the time period within which missing information and documents are requested. In IE the missing information and documents must be requested within 2 weeks from receipt but, according to internal procedures, the applicant is advised within 3 working days. In HU, PT and UK missing information is usually requested within 5 working days from receipt, and in PL within one week. In ES missing information is usually requested within 2 weeks and in FR within 1 week. In IT, LV, NO, one month is the maximum period for checking notifications.

68. 17 CESR Members (AT, BE, BG, CY, CZ, DK, EE, FI, IE, IS, LT, LU, LV, NO, PT, SI, SK) do not establish a time limit within which the missing information and documents should be

\(^{21}\) The Slovenian competent authority considers that, in day-to-day practice, the confirmation about completeness of notification and informing about beginning of the two-month period increase administrative work of the competent authority's employees and represent a heavy additional administrative burden. If within one month from the date of the receipt of the notification no request to complete the notification is given, it can be presumed that the documentation is complete and that the two-month period is commenced.

\(^{22}\) The current Estonian overview no longer mentions that the letter of reply indicates the date of the start of the two-month period. The EFSA confirmed that this requirement still applies.

\(^{23}\) According to the amendments to the Slovakian legislation (entered into force after the date when the peer review started), the UCITS is informed about the start of the two-month period.

\(^{24}\) In EE, the current overview mentions that the EFSA will inform the UCITS about incompleteness within one month, but the overview published on the website as of the date when the peer review started did not. EFSA confirmed that it was committed to follow that practice even before April 1, 2008. Also the previous overview mentioned that receipt of complete notification is to be confirmed within one month.
Therefore, the relevant part of Guideline 4 is not applicable.

69. 10 CESR Members (EL, ES, FR, DE, HU, IT, MT, PL, RO, SE, UK) do establish a time limit, which is no longer than 6 months as required by Guideline 4. In particular, the maximum submission term is: 10 working days in ES, usually 2 weeks in SE, 30 working days in MT, 2 months in FR and HU, 6 months in DE, EL, RO, UK.

70. NL did not provide sufficient information to make an assessment in this respect. The overview states that a time limit to provide missing information is established, but it does not state what term; it is therefore unclear whether this term is no longer than 6 months.

4.4c Presumption of completeness of the notification in case of no requests within one month

71. According to Guideline 4, if all the information and documents are complete and the latter contain all information, the two-month period starts from the date of the receipt of the notification. If there is no communication after one month by the competent authority of the host Member State to the UCITS, it is assumed that the notification is complete since the date of the receipt by the host Member State authority.

72. All CESR Members comply with the part of Guideline 4 which requires that, if there is no communication within one month, the notification is considered as complete since the date of the receipt.

73. All CESR Members provide that, if there is no communication to the UCITS after two months (or, where applicable, one-month) of the delivery of the complete notification, the UCITS may, upon expiry of that period, start to market its units.

4.5 Guideline 5

4.5.a Maximum period to check notifications (two months)

74. According to Guideline 5, the two-month period is the maximum period available for the host State competent authority to check the notification.

75. All CESR Members comply with this part of Guideline 5 and cannot extend the two-month period. In IT, LV, NO, the maximum period available for the host authority to check notifications is one month in lieu of two months.

76. As indicated above, according to the UCITS IV Directive (Article 93), the two-month period does not apply. The home Member State competent authority should check completeness of the notification within one month. The UCITS may access the market of the host Member State as of the date of receipt of the notification about the transmission of the complete documentation from the home Member State competent authority to the host Member State competent authority.

4.5.b Shortening the two-month period

77. Guideline 5 provides that the two-month period should be shortened whenever possible. In this case, the competent authority should as soon as it has checked the notification inform the UCITS that it can start the marketing in the host State immediately.

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25 In CZ, since July 2009, missing information and documents must be provided within 30 days.

26 In PL, missing information is to be submitted before the expiring of the two-month period (ie no suspension of the two-month period applies).
78. In 8 Member States (BE, IE, IT, LU, LV, MT, NO, PT) the competent authority is required by law or by written internal procedures to process the notification in a term lower than two-months; it is therefore ensured that the two-month period is shortened. The UCITS is informed as soon as the scrutiny is completed. In particular:

- In LU the competent authority shall inform the UCITS that the marketing of units may commence without delay within 1 week after receipt of complete notification;
- In IE complete notification will be processed within 2 weeks;
- In IT, LV, NO, the regulation provides that two-month period is reduced to one-month;
- In MT the overview states that the competent authority is committed to process notifications of UCITS as quickly as possible and will aim to notify the UCITS that it may market its units in Malta, as far as possible, in advance of the two-month time limit stipulated in the UCITS Regulations;
- In BE there is a commitment (in the Circular) to authorise the UCITS to start marketing of its units in advance of the two-month period;
- In PT the Internal Procedural Manual settles a chain of checking procedures to be completed, whenever possible, in a short period (1 month in average).

79. In 15 Member States (BG, CY, CZ, DE, DK, EL, ES, FI, FR, HU, IS, LT, NL, RO, SE, SK), whilst there is not an express obligation for the competent authority to shorten the two-month period, there is an indication in the legislation, in the overview of domestic regulations or on the competent authority’s website that the two-month period may be shortened. Those CESR Members declare that, in practice, they shorten the two-month period whenever possible in their respective day-to-day activity and that they inform the UCITS that it can start the marketing immediately as soon as they have checked the notification. They are therefore considered as having applied this part of Guideline 5.

80. Certain authorities provided details of the average period within which the notification is checked, as follows: (i) 10 days in SK, (ii) 1 to 14 days in FI, (iii) 15 days in LV, (iv) 1 month in EL, RO.

81. In 2 Member States (AT\(^{27}\), SI\(^{28}\)), the authority is allowed to shorten the two-month period. However, there is no “direct notification” to the UCITS but only an indirect notification though a publication on the competent authority’s website.

82. In 3 Member States (EE\(^{29}\), PL\(^{30}\), UK), the authority is not allowed to shorten the two-month period. Therefore, they are considered as not having implemented this part of Guideline 5.

4.6 Guideline 6

4.6.a Power to ask for clarification within the two-month period

83. All CESR Members have the power to ask for clarification from the UCITS in the two-month period (or in the one-month period in IT, LV, NO) in order to check compliance of the marketing

\(^{27}\) Art. 37(1) of the Austrian Investment Fund Act states that “If a two month period has elapsed without the FMA having prohibited the commencement of marketing activities and after receiving the complete notice the marketing of units of EEA investment funds may commence after two month. Commencement of marketing activities before expiring of this period is permissible if the investment fund is included in the list of foreign investment funds published on the website of the FMA.”

\(^{28}\) In SI, the average period to process notification in 2009 was about 45 days.

\(^{29}\) In EE, following the amendments entered into force on February 27, 2009, the two-month period may be shortened. The UCITS can be offered after receiving the letter of reply from the competent authority. According to the up-to-dated overview, in case the notification is complete, the letter of reply will be sent to the applicant within one month after receiving the notice.

\(^{30}\) It is noted however that, in Poland, according to the Act on Investment Funds amended on 29th December 2008, it is now possible that the competent authority shortens the 2 months period in which the notifying UCITS is informed (as UCITS is informed about its early introduction to the competent authority’s registry of foreign funds). The UCITS is duly informed about the fact of being included in the registry of foreign UCITS admitted to Polish market.
arrangements, as stated in Guideline 6.

84. All CESR Members ensure that no clarification is asked for other purposes.

4.6b Graduated approach

85. Guideline 6 defines a graduate approach to be used by host competent authorities to seek clarification regarding the notification and its supporting documents when, despite a request for clarification, they are not satisfied that the applicant complies with Art. 44(1) and Art. 45 of the Directive, but they can nevertheless assume that there is a realistic prospect that such compliance can be achieved from the applicant’s side without the need for a reasoned decision. In particular, Guideline 6 provides that:

- the host competent authority should inform the UCITS as soon as possible, in a written and duly motivated communication, that there are convincing arguments to believe that the requirements to issue a reasoned decision are fulfilled, unless the authority receives the required information within the two-month period;

- the communication suspends the expiring of the two-month period and the remaining part of the two-month period starts running again at the date of the reception of the requested clarification. Guideline 6 is considered as not having being applied when the authority is not allowed to suspend the expiring of the two-month period.

86. 22 CESR Members (AT, BE, CY, DE, DK, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, MT, NL, NO, PT, RO, SE, SI) apply in full the graduated approach set out in Guideline 6.

87. 7 CESR Members (BG, CZ, EE, LV, PL, SK, UK) do not apply in full the graduated approach, since there is no suspension of the two-month period (or one-month period for LV).

4.7 Guideline 7

4.7.a Requirement to submit the latest version of the notification documents

88. All CESR Members but 1 (CZ) require that the notification documents should always be the latest versions of the documents as approved or filed with the home State authority, as set out in Guideline 7.

89. In 1 CESR Member (CZ), it appears that this requirement is not specifically incorporated in the regulation.

4.7.b Certification of documents

90. To simplify the practices and reduce costs for the applicants, Guideline 7 provides that the host competent authority should not request certification of the documents related to the notification procedure by the home State authorities, but should rely on self-certification by the notifying UCITS (or by a third person empowered by written mandate to act on behalf of the notifying UCITS). The use of the Hague-Apostille for certification of document is not required.

91. All CESR Members but 1 (ES) accept a self-certification by the notifying UCITS (or a third person empowered by written mandate to act on behalf of the notifying UCITS) – as set out in the standard notification letter to attest that the notification documents are the latest.

31 The Slovenian competent authority reported that they suspend the two-month period when there are some serious incorrectness in the received documentation.

32 Paragraph 12 of the CESR model notification letter states that “A self certification by the UCITS authorised directors or a third person empowered by written mandate to act on behalf of the UCITS will be accepted. The certification must state that the versions of the documents that have been attached to the notification letter are the latest ones which have been approved by or
version. They do not require a certification by the home State authorities.

92. ES requires a certification of the notification documents by the home State (in relation to the full and simplified prospectus and fund rules or instruments of incorporation submitted for the purposes of the initial inscription of the UCITS). ES is therefore considered as not having implemented this part of Guideline 7.

4.8 Guideline 8

4.8.a Language requirements

93. All CESR Members but 1 (EE) provide that the notification documents must be sent in the original language and translated into the or one of the official languages of the host Member State, except for the UCITS attestation and the standard notification letter, in accordance with Guideline 8.

94. 10 CESR Members accept the use of another language than (one of) their official languages:
   - BG, CY, HU, IS: English;
   - NL: English (for the prospectus, fund rules, annual and half-yearly report and information on marketing arrangements);
   - DK: English, Norwegian and Swedish;
   - FI: English, Finnish or Swedish for the simplified prospectus;
   - LU: English, French, German;
   - NO: Danish, Swedish and English (if an individual exemption is granted by the competent authority);
   - BE: the competent authority may accept that the full prospectus as well as the annual and half-yearly reports be distributed in a language in current use in financial affairs in Belgium;
   - SE: English, Norwegian or Danish.

95. In EE there are no specific provisions in the regulation which state that documents other than the simplified prospectus are to be translated if they are not in Estonian or English.

96. According to Article 93(4) of the UCITS IV Directive, Member States shall ensure that the notification letter and the attestation by the home Member State authority are provided in English, unless the home and host Member States agree to those documents being provided in an official language of both Member States. The documents enclosed to the notification letter (fund rules or instruments of incorporation, prospectus, latest annual report and subsequent half-yearly report, key investor information) must be translated into the (or one of the) official language of the host Member State or into a language approved by the competent authority of the UCITS host Member State, at the choice of the UCITS. As an alternative, the documents attached to the notification letter can be translated in English, with the exception of the key investor information (Art. 93(2) of the UCITS IV Directive).

4.8.b No need for sworn translations

97. According to Guideline 8, host competent authorities should not require that translations are sworn as true by a court, notary or similar public agent.

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33 In Norway, an individual exemption may be granted for Swedish and Danish. An individual exemption may also be granted for English if the fund has either a minimum subscription requirement equivalent to approximately 625,000 Euro or if the fund according to the Norwegian marketing-plan only will be marketed toward institutional investors or an individual basis without advertising.

34 After the date when the peer review started, the overview of national marketing rules has been amended to clarify the translation requirements.
98. 21 CESR Members (AT, BE, CY, DE, DK, EE, EL, FI, FR, HU, IE, IS, IT, LT, LU, MT, NL, NO, PT, SE, UK) apply this part of Guideline 8.

99. On the contrary, 8 CESR Members (BG\textsuperscript{35}, CZ\textsuperscript{36}, ES\textsuperscript{37}, LV, PL\textsuperscript{38}, RO, SI\textsuperscript{39}, SK\textsuperscript{40}) require the translations of certain or all notification documents to be sworn as true by a court, a notary or similar public agent.

4.8.c Disclosure of information about language requirements

100. At the date when the peer review started, all CESR Members but 5 (EE, EL, FR, LV, RO) ensured that information on the accepted languages and on the documents which have to be translated was included in the overview of the non-harmonised national marketing rules and other specific national regulations.

101. 5 CESR Members (EE, EL, FR, LV, RO) are considered as not applying this part of Guideline 8, because, at the date when the peer review started, the overview of national marketing rules published on the competent authority’s website did not provide full information about the accepted language or translation requirements. In particular, it was not expressly mentioned that English was accepted (EE\textsuperscript{41}) or that the notification letter (FR\textsuperscript{42}, RO) or the original attestation (EL\textsuperscript{43}) could be provided in English. In LV the overview makes a general reference to the applicable law but does not contain itself information on the accepted languages and translation requirements.

4.9 Guideline 9

4.9.a Marketing of only part of the umbrella fund

102. All CESR Members comply with Guideline 9 and accept that only those sub-funds which are to be marketed actively in their territory should be notified\textsuperscript{44}.

103. Compliance with Guideline 9 is also supported by the acceptance of the CESR model notification letter, where the applicant is required to specify (para. 5) “the sub-fund(s) to be marketed in the host Member State”.

\textsuperscript{35} In BG translations are required to be sworn by a sworn translator.
\textsuperscript{36} In CZ, since July 2009, provided the submitted documentation is in English, the CNB requires only the contract with the bank pursuant to the Art. 43 para 2 of the Act on Collective Investment to be translated into Czech sworn as true.
\textsuperscript{37} In Spain the competent authority sent to the Ministry of Economy a proposal for a new regulation according to which the translations do not need to be sworn.
\textsuperscript{38} It is noted, however, that in Poland, according to the Act on Investment Funds amended on 29th December 2008, there is no obligation on foreign UCITS to provide the competent authority with sworn translation of documents.
\textsuperscript{39} In Slovenia, the regulation requires sworn translation, but does not indicate by whom the translations must be sworn. However, the competent authority reported that usually the translations are sworn by public agents – the court interpreter, which has an authorisation from the Ministry of Justice of the Republic of Slovenia.
\textsuperscript{40} According to the amendments to the Slovakian legislation (entered into force after the date when the peer review started), sworn translations are no longer required.
\textsuperscript{41} It is noted however that in EE, after the date when the peer review started, the overview of national marketing rules published on the competent authority’s website has been amended to reflect the competent authority accepts documents in either English or Estonian (with the exception of the simplified prospectus which must be in Estonian).
\textsuperscript{42} Whilst the competent authority indicated that the acceptance of the notification letter in English is a current and long-standing practice (which results into a positive assessment for FR in para 4.1.b above), the overview of national marketing rules is not precise enough on this point. The overview indicates the need to submit the notification letter but it does not expressly mention that it may be submitted in English. A reference is made to the model in Annex IIA of the AMF 2005 Instruction which is in French. Only for the attestation by the home State authority it is expressly mentioned that it may be submitted in English. However, it is noted that, after the date when the peer review started, the overview of national marketing rules published on the competent authority’s website has been amended to reflect the practice regarding the accepted language or translation requirements. In particular, it has been expressly mentioned that the notification letter can be provided in English.
\textsuperscript{43} It is noted however that, after the date when the peer review started, the overview of national marketing rules published on the competent authority’s website has been amended to reflect the current practice to accept the original attestation in English.
\textsuperscript{44} It is noted that, in EE, this has been reflected in the overview of national marketing rules only after the date when the peer review started.
4.10 **Guideline 10**

4.10.a *Single notification letter for several sub-funds*

104. All CESR Members allow UCITS to submit a single notification letter for the sub-funds notified simultaneously, in accordance with Guideline 10\(^45\). This applies to all types of UCITS (ie in both contractual and corporate form).

105. As mentioned above, this is also supported by the acceptance of the CESR model notification letter, which allows (paragraph 5) to submit a single communication for all “sub-fund(s) to be marketed in the host Member State”.

4.10.b *Cross-reference*

106. All CESR Members declare that they permit cross-reference to documents previously submitted to the host authority which have remained unchanged, as set out in Guideline 10. This applies to all types of UCITS (ie in both contractual and corporate form).

107. The acceptance of cross-reference is also supported by the acceptance of the CESR model notification letter, where it is stated (paragraph 12) that “The notification letter may refer to documents that have already been sent to the host Member State competent authority, if still valid. The attestation from the home Member State competent authority must be sent in any case”.

4.10.c *Application of the notification procedure to new sub-funds; shortening of the two-month period*

108. Guideline 10 admits that some host authorities do not consider it necessary to apply the two-month period in case of notification of new sub-funds. However, where the notification procedure does apply, this should be mentioned in the overview of national marketing rules published in the host authority’s website in order to facilitate transparency. Moreover, given that the most of the notification material e.g. the marketing arrangements will likely be already familiar to the host authority, the necessary time for check by the host authority is expected to be significantly less than the regular two-month period.

109. The peer review shows that all CESR Members but 2 (IE, DK) do apply the notification procedure if new sub-funds are intended to be marketed in their territory.

110. In IE the formal notification procedure does not apply, but the authority requires nevertheless to be notified with certain documents (a revised attestation, the standardised notification letter and a revised full and simplified prospectus). Marketing can start immediately upon this filing. DK did not provide sufficient information to assess whether the notification procedure and the two-month period apply to the notification of new sub-funds.

111. Concerning the aforesaid 27 CESR Members where the notification procedure applies, the peer review shows that, in 25 cases (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FR, HU, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK), the maximum period to check the notification is no longer than two months. In LT, the two-month period does not apply if the sub-fund was already referred to in the attestation by the home Member State authority. In FI and UK new sub-funds added to existing umbrella fund are subject to the notification procedure, but the marketing may start immediately after the notification.

112. Out of the aforesaid 25 CESR Members (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FR, HU, IS, IT, \(^45\) In EE, this has been reflected in the overview of national marketing rules only after the date when the peer review started.
LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK) that apply the two-month period to the notification of new sub-funds, the peer review shows that 23 Member States (all the aforesaid CESR Members except EE and PL) do apply the part of Guideline 10 according to which that period is expected to be shortened. On the contrary, in EE\textsuperscript{46} and PL\textsuperscript{47}, there were no provisions at the time when the peer review started which allow the competent authority to shorten the two-month period; therefore, this part of Guideline 10 is not applied\textsuperscript{48}.

113. In particular it is noted that:

- In 8 CESR Members (BE, IT, LU, LV, MT, NL, NO, SE), the competent authority is required (or committed according to the regulation or internal procedure) to process the notification for new sub-funds in a term lower than two months, and namely in (i) one week in LU; (ii) two weeks in NL; (iii) twenty days in IT; (iv) one month in LV, NO and SE;

- In 15 CESR Members (AT\textsuperscript{49}, BG, CY, CZ, DE, EL, ES, FR, HU, IS, LT, PT, RO, SI\textsuperscript{50}, SK) the competent authority is not obliged to shorten the two-month period, but there is an indication in the law or in the overview of national marketing rules on the competent authority’s website that the two-month period may be shortened. The competent authority declared that the period to check the notification is actually shortened whenever possible. Some authorities provided additional details and declared that notifications for new sub-funds are usually processed within: (i) 3 weeks in EL, (ii) 4-6 weeks in FR.

114. Guideline 10 provides that “To facilitate transparency of the requirements to the UCITS, the jurisdictions that will apply the two-month period should indicate the requirement on their websites among the requirements on national marketing rules as stated in Annex III”. However, 7 CESR Members (AT, EE\textsuperscript{51}, FR\textsuperscript{52}, IS, LV, MT\textsuperscript{53}, NL) do not expressly state in the overview of national marketing rules published on their own website that the two-month period applies to the notification of new sub-funds. According to the benchmark, this implies that Guideline 10 is not applied.

4.10.d Other simplifications

115. The following additional simplifications should be applied to the cross-marketing of umbrella funds according to Guideline 10:

- The home Member State should recommend that a single full prospectus is provided if the umbrella-fund intends to notify its units within another Member State, and the host Member State should accept a single full prospectus for all sub-funds.

\textsuperscript{46} In EE, following the amendments entered into force on February 27, 2009, the two-month period has been made shorter. The UCITS can be offered after receiving the letter of reply from the competent authority. According to the up-to-dated overview, in case the notification is complete, the letter of reply will be sent to the applicant within one month after receiving the notice. 

\textsuperscript{47} It is noted however that in Poland, based on the Act on Investment Funds amended on 29th December 2008, it is possible that competent authority shortens the 2 month period in relation to the notification of sub-funds.

\textsuperscript{48} In FI, UK, as mentioned above, the two-month period does not apply since marketing of new sub-funds may immediately start after notification. In IE, the UCITS may begin to market the additional sub-funds immediately.

\textsuperscript{49} However, in AT there is no direct notification by the competent authority to the notifying umbrella UCIT but a publication on the website.

\textsuperscript{50} However, in SI there is no direct notification by the competent authority to the notifying umbrella UCIT but a publication on the website.

\textsuperscript{51} In EE, this information has been added to the overview of national marketing rules after the date when the peer review started.

\textsuperscript{52} It is however noted that, after the date when the peer review started, the overview of national marketing rules published on the French competent authority’s website has been amended to expressly mention the application of the two-month period for new compartment of UCITS authorized for marketing in France.

\textsuperscript{53} In MT, this information has been added to the overview of national marketing rules after the date when the peer review started.
- In case of separate full prospectuses for each sub-fund, UCITS should self-certify that the information on the marketing arrangements in the host State is the same in each prospectus or indicate where it is different.
- The umbrella UCITS should notify the host competent authority the new share classes added to sub-funds, and disclose the objective criteria (e.g. the amount of subscription, fees/expenses) on which they are based. However, the two-month period does not apply, the marketing of the new share classes being possible immediately after the notification.

116. When acting as home Member State, 12 CESR Members (DE, CY, FR, HU, IS, IT, LU, NL, PL, PT, RO, UK) recommend that only one full prospectus is provided for the purposes of notification in the host Member State.

117. 4 CESR Members (DK, IE, LV and MT) stated that, when acting as home Member State, they do not expressly recommend that only one full prospectus is provided; therefore, they are considered as not having implemented this part of Guideline 10.

118. In 12 CESR Members (AT, BG, CZ, EE, EL, ES, FI, LT, NO, SE, SI, SK) this part of Guideline 10 is not applicable, since, at the date when the peer review started, no domestic umbrella funds could be authorised.

119. When acting as host Member State, all CESR Members accept that only one full prospectus is necessary for the purposes of the notification of umbrella funds. This is also supported by the acceptance of a single standard notification letter for the different sub-funds, taking account that the standard notification letter requires a “full prospectus” to be provided even when several sub-funds are covered in the same notification letter.

120. If the notifying UCITS provides a separate full prospectus for each sub-fund, all CESR Members declared that they accept the UCITS’ authorised directors (or a third person empowered by written mandate to act on behalf of the notifying UCITS) to self-certify that the information on the marketing arrangements in the host State is the same in each prospectus or indicate where it is different.

121. All CESR Members but 3 (CZ, DK, SK) ensure that, if new shares classes are added to the sub-funds of an umbrella fund, the new share classes are notified by the UCITS to the competent authority. Moreover:

- 24 (AT, BE, BG, CY, DE, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, RO, SI, UK) out of those 26 Member States require the UCITS to disclose the objective criteria (e.g. the amount of subscription, fees/expenses) on which the new share classes are based. In PT and SE this requirement is not expressly reflected in the regulation;

- 25 Member States (all but NL) ensure that the two-month period (or, as the case may be, the one month period) does not apply, the marketing of the new share classes being possible immediately after the notification. In NL for the purposes of the notification new share classes are treated the same as sub-funds.

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The Slovenian competent authority has pointed out that, after the adoption of Act amending the Investment Funds and Management Companies Act in 2007 several umbrella funds were established in 2009 (ie after the date when the peer review started), and all of them have one full prospectus.

This is however without prejudice to the need for such jurisdictions, in their capacity of host Member State, to provide full application of the relevant parts of Guidelines 9, 10 and 11 which are aimed at facilitating the notification procedure for umbrella funds from other Member States (notification of the sole sub-funds that are intended to be marketed actively in the host Member State; acceptance of only one notification letter; full prospectus and annual and half-yearly report for all the sub-funds; possibility to make cross-references and self-certifications; expected shortening of the two-month period).

According to the amendments to the Slovakian legislation (entered into force after the date when the peer review started), new share classes added to umbrella funds are to be notified by the UCITS. The two-month period does not apply.

FR indicated that the criteria on which share classes are based are to be disclosed through the prospectus. After the date when the peer review started, this requirement has been expressly mentioned in the overview of national marketing rules published on the competent authority’s website.
122. CZ and SK do not apply the part of Guideline 10 on the notification of new share classes. Namely, in CZ the notification of new share classes is not required under the legislation, even if foreign UCITS usually provide such notification. SK does not have a regular system to ensure whether the new classes added to the umbrella fund are notified by the UCITS to the competent authority. Moreover, DK did not provide sufficient information to assess whether the new share classes added to the umbrella fund are to be notified to the competent authority.

123. According to the new Directive (Art. 93.8), in the event of a change regarding share classes to be marketed, the UCITS shall give a written notice of this change to the competent authorities of the host Member State before implementing the change.

4.11 Guideline 11

4.11.a Content of the file

124. All CESR Members but 1 (CZ) provide that the UCITS proposing to market its units in their territory must submit all documents set out in Guideline 11, and ensure that no other information must be notified.

125. CZ requires the UCITS to transmit the valid original attestation; it does not accept that, as an alternative, a copy of the original attestation accompanied by a self-certification may be provided.

4.11.b Model attestation and other simplifications

- Competent authority acting as home Member State

126. When acting as home Member State, all CESR Members use the model attestation set out in Annex 1 of the Guidelines.

127. 13 CESR Members (CY, DE, FR, HU, IS, IT, LU, MT, NL, PL, PT, RO, UK) recommend that a single annual and half-yearly report dealing with all sub-funds is provided if the umbrella-fund intends to notify its units within another Member State.

128. 4 CESR Members (BE, DK, IE, LV) declared in their self-assessment that they do not provide any recommendation to domestic UCITS in this respect and are therefore considered as not applying this part of Guideline 11.

129. This part of Guideline 11 is considered as not applicable in the 12 Member States (AT, BG, CZ, EE, EL, ES, FI, LT, NO, SE, SI, SK) where there were no domestic umbrella funds at the date when the peer review started.

- Competent authority acting as host Member State

130. Where acting as host Member State, all CESR Members except 2 (CZ, LV) accept the original attestation in English without asking for a translation. 2 Member States (CZ\textsuperscript{58}, LV) provide that, if the attestation is provided in English, a sworn translation is necessary.

131. All CESR Members accept that the latest up-to-date fund rules or instruments of incorporation (and any amendments thereto) do not need to be submitted separately if they are included in the full prospectus and the latter is indicated by the notifying UCITS (or a third person

\textsuperscript{58} Since July 2009, CZ does not longer require a sworn translation of the English attestation.
empowered by written mandate to act on behalf of the notifying UCITS).

132. All CESR Members accept that umbrella funds provide a single annual and half-yearly report dealing for all sub-funds.

133. If separate annual and half-yearly reports are provided for each sub-funds, all CESR Members accept that the UCITS self-certifies that the information on the marketing arrangements in the host State is the same in each prospectus or indicate where it is different.

134. 1 CESR Member (ES) does not accept that the UCITS provides self-certification as to all the documents submitted, since self-certification is not accepted for initial inscription.

4.12 Guideline 12

4.12a Updating of the notification documents

- Amendments to the fund rules or instruments of incorporation

135. 26 CESR Members (all except CZ, DK, EE) require foreign UCITS to provide the competent authority with any amendments to the fund rules or instruments of incorporation, but in 1 Member State (ES) only upon request from the competent authority.

136. In DK and EE, the domestic laws and regulations do not expressly require the amendments to the fund rules to be provided by the UCITS to the competent authority, even if the amended fund rules must be published.

137. In CZ the domestic laws and regulations do not expressly require the amendments to the fund rules to be provided by the UCITS to the competent authority.

- Addition of new classes of shares

138. 28 CESR Members (all but CZ) require foreign UCITS to provide the competent authority with information on the addition of new share classes.

139. In CZ the domestic laws and regulations do not expressly require information on the addition of new classes of shares to be provided by the UCITS to the competent authority.

- Amendments to the full prospectus

140. 27 CESR Members (all but CZ, DK) require foreign UCITS to provide the competent authority with any amendments to the full prospectus, but in 1 CESR Member (ES) only upon request from the competent authority.

141. In DK the amendments to the full prospectuses are to be published but it is not expressly stated that they have to be provided to the competent authority.

142. In CZ the domestic laws and regulations do not expressly require the amendments to the full prospectus to be provided by the UCITS to the competent authority.

- Amendments to the simplified prospectus

143. 27 CESR Members (all but CZ, DK) require foreign UCITS to provide the competent authority with any amendments to the simplified prospectus.
144. In DK the amendments to the simplified prospectuses are to be published but it is not expressly stated that they have to be provided to the competent authority.

145. In CZ the domestic laws and regulations do not expressly require the amendments to the simplified prospectus to be provided by the UCITS to the competent authority.

- New full prospectus

146. 27 CESR Members require foreign UCITS to provide the competent authority with any new full prospectus, but in 1 CESR Member (ES) only upon request from the competent authority.

147. In DK new full prospectuses are to be published but it is not expressly stated that they have to be provided to the competent authority.

148. In CZ the domestic laws and regulations do not expressly require new full prospectuses to be provided by the UCITS to the competent authority.

- New simplified prospectus

149. 27 CESR Members require foreign UCITS to provide the competent authority with any new simplified prospectus.

150. In DK new simplified prospectuses are to be published but it is not expressly stated that they have to be provided to the competent authority.

151. In CZ the domestic laws and regulations do not expressly require new simplified prospectuses to be provided by the UCITS to the competent authority.

- Latest published annual report and any subsequent half-yearly report

152. 27 CESR Members (all but CZ, DK) provide that any amendment must be submitted “without delay” after the documents and information have been made the first time available in the home Member State, in accordance with Guideline 12.

153. In DK the latest published annual report and any subsequent half-yearly report are to be published but it is not expressly stated that they have to be provided to the competent authority.

154. In CZ the domestic laws and regulations do not expressly require the aforesaid documents to be provided by the UCITS to the competent authority.

- Time limit for submission to the authority

155. 22 CESR Members (AT, BE, BG, CY, DE, EL, FI, FR, HU, IE, IS, IT, LU, MT, NL, NO, PL, PT, SE, SI, SK, UK) provide that any amendment must be submitted “without delay” after the documents and information have been made the first time available in the home Member State, in accordance with Guideline 12.

156. 4 Member States (ES, LT, LV, RO) require submission with a defined number of days: (i) 3 days

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59 The competent authority reported that the regulation is to be interpreted as requiring the amendments to be notified to the same competent authority “without delay”; in case of any litigation, the responsibility of the management company and/or centralised agent could be raised if it appeared that the information to disclose has not been updated and disseminated in a reasonable time. After the date when the peer review started, this requirement has been also expressly stated in the overview.
in LT, (ii) 7 days in LV; (iii) 15 days in RO, (iv) 1 month in ES. These Member States are also considered as applying this part of Guideline 12^60.

157. EE and DK do not fully comply with this part of Guideline 12, since as mentioned above not all the documents mentioned by Guideline 12 have to be submitted to the competent authority without delay. Similarly, in CZ, the domestic laws and regulations do not expressly require the aforesaid documents to be provided by the UCITS to the competent authority.

158. Pursuant to Article 93(7) of the UCITS IV Directive, the UCITS must notify any amendment to the documents enclosed to the notification letter to the competent authority of the UCITS host Member State and indicate where these documents can be obtained electronically.

4.13 Guideline 13

4.13a Overview of national marketing rules and other specific national regulations

159. To simplify the access to information for UCITS, the host State authority is required by Guideline 13 to publish on its website and keep up-to-date a standardised overview of its non-harmonised national provisions which related to the application of the UCITS Directive. Details of the relevant website are to be submitted to CESR.

160. The peer review shows that all CESR Members publish an overview of the non-harmonised national marketing rules on their website.

161. 3 CESR Members (EE^61, LV^62, NL^63) are considered as not ensuring that the overview is kept updated since, at the date when the peer review started, certain practices indicated by the competent authority – on aspects other than those already covered by paragraphs 4.8.c and 4.10.c above (ie information about language or translation requirements^64; application of the two-month period to the notification of new sub-funds^65) - were not reflected in.

162. All CESR Members reported that they have submitted to CESR the details of their website where the overview is published.

163. The contents of Guideline 13 are largely reflected in the UCITS IV Directive. Namely, Article

^60 In DK certain amendments have to be notified with 14 days in DK.
^61 The Estonian overview did not reflect some practices that, according to the information provided in the self-assessment, the authority was committed to follow before the date when the peer review started, such as the acceptance of the copy of the original attestation and the acceptance of electronically signed documents and pdf files. This information has been included in the overview as of November 2009.
^62 The Latvian overview does not include, among other, information relating to shortening of the two-month period, confirmation of receipt of complete notification, maximum submission period. In addition, it does not indicate that also the original notification letter and enclosed documents can be submitted by email.
^63 In the Dutch overview, it is not mentioned whether the standard notification letter is accepted.
^64 As mentioned in paragraph 4.8.c. above, in EE, EL, FR, RO, LV, the following information about language or translation requirements were not clearly described in the overview of national marketing rules published on the competent authority’s website: acceptance of documents other than the simplified prospectus in English (EE); acceptance of the notification letter in English (FR, RO); acceptance of the original attestation in English (EL); information on the accepted languages and translation requirements (LV). For EE, EL and FR, the aforesaid practices have been reflected in the overview only after the date when the peer review started.
^65 The above is not considered for the purposes of the benchmark relating to Guideline 13, being already reflected in the benchmark assigned to Guideline 8.

As indicated in paragraph 4.10.c above, at the date when the peer review started, 7 CESR Members (AT, EE, FR, IS, LV, MT, NL) did not expressly state in the overview of national marketing rules published on their own website that the two-month period applies to the notification of new sub-funds. In EE, FR, MT this information has been added to the overview of national marketing rules after the date when the peer review started.

The above is not considered for the purposes of the benchmark relating to Guideline 13, being already reflected in the benchmark assigned to Guideline 10.
91(3) requires Member States to ensure that complete and up-to-date information on the laws, regulations and administrative provisions which do not fall within the field governed by the Directive and which are specifically relevant to the arrangements made for the marketing of units of UCITS, established in another Member State within their territories, is easily accessible at distance and by electronic means. It is worth noting that according to Article 91(3) of the UCITS IV Directive this information is to be made available in a language customary in the sphere of international finance.

5. **Whether UCITS passportability has objectively improved**

164. The peer review shows that, as of April 1st 2008, the percentage of application of Key Guidelines (Guidelines 1,2,4,5,7,9,10) across the Member States is the following:

- Guideline 1: full application 59%; partial application 7%; non-application 34%;
- Guideline 2: full application 100%;
- Guideline 4: full application 69%; partial application 31%;
- Guideline 5: full application 86%; partial application 3%; non-application 10%;
- Guideline 7: full application 93%; non-application 7%;
- Guideline 9: full application 100%;
- Guideline 10: full application 52%; partial application 10%; non-application 38%.

165. The percentage of application of the non-Key Guidelines (Guidelines 3,6,8,11,12,13) across the Member States is the following:

- Guideline 3: full application 93%; non-application 7%;
- Guideline 6: full application 76%; partial application 17%; non-application 7%;
- Guideline 8: full application 62%; partial application 21%; non-application 17%;
- Guideline 11: full application 79%; non-application 21%;
- Guideline 12: full application 90%; non-application 10%;
- Guideline 13: full application 90%; non-application 10%.

166. The individual ratings achieved by each Member State are shown in table no. 5. As indicated in table no. 6, all Member States have achieved an individual rating of at least 60%.

167. The main issues in the application of the Guidelines pertain to Guidelines 1 and 10, that have not been implemented by about one third of Member States (respectively, 34% and 38%), and Guideline 11, that has not been implemented by about a fifth (21%) of Member States.

168. In particular, the peer review shows that, as of April 1st 2008:

- 38% of Member States do not accept nor facilitate electronic submission of the notification documents as required by Guideline 1;
- 28% of Member States require translations to be sworn as true by a court, notary or similar public agent contrarily to Guideline 8;
- 24% of Member States do not apply in full the graduated approach referred to in Guideline 6 since they do not allow a suspension of the two-month period;
- 24% of Member States do not expressly mention in their overview of national marketing rules that the two-month period applies to the notification of new sub-funds as required by Guideline 10;
- 17% of Member States do not ensure that the overview of national marketing rules contains full information about the accepted language or translation requirements as required by Guideline 8;
- 10% of Member States are not allowed to shorten the two-month period contrarily to Guideline 5;
- 7% of Member States do not recognize a right of appeal against the decision of the competent authority to deny the passport as required by Guideline 3;
10% of Member States do not ensure that the overview of national marketing rules contains all information required by Annex III of the Guidelines (other than those already mentioned above) as required by Guideline 13.

Moreover, when acting as home Member State, 14% of Member States do not recommend domestic umbrella funds to submit one full prospectus for all sub-funds and to submit a single annual and half-yearly report dealing with all sub-funds as required by Guidelines 10 and 11.

It is worth noting that a number of Member States have introduced amendments to their legislation after the date when the peer review started, as indicated in the footnotes of this report. Currently the legal framework is substantially different from the outcomes emerging by the self-assessment, which are crystallised as of April 1, 2008.

6. What steps can be taken to improve further the UCITS passportability

The UCITS IV Directive (Directive 2009/65/EC) have introduced in its Chapter XI significant amendments to the notification procedure as designed by Directive 85/611/EC and the CESR Guidelines. Details about those amendments have been provided in Section 4 of the report as per each Guideline.

The UCITS IV Directive incorporates some of the simplifications to the notification procedure envisaged by CESR in the Guidelines, such as those regarding the electronic filing of the notification documents and the language regime of the notification letter and of the attestation by the home competent authority.

Chapter XI of the UCITS IV Directive enters into force on December 7, 2009. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the relevant provisions by 30 June 2011.

CESR is mandated to provide advice on the possible L2 measures concerning the notification procedure for cross-border marketing of UCITS and the Investment Management Expert Group (IMEG) is currently working on this subject. The CESR’s draft advice was published for consultation on September 17, 2009. The technical advice is expected to be finalised by the end of 2009.

In light of the above, the Review Panel considered not appropriate to elaborate further on the steps that can be taken to improve further the UCITS passportability.