European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken

EACB answer on CESR's technical advice to the European Commission on the level 2 measures related to the UCITS management company passport

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General remarks

1. The European Association of Co-operative Banks (EACB) would like to thank the Committee of European Securities Regulators (CESR) for the opportunity to comment on its technical advice addressed to the European Commission related to the level 2 measures on the UCITS management company passport.

2. European co-operative banks consider the management company passport as an important milestone towards the creation of a single European market for investment funds that allows the provision of portfolio management services on a cross-border basis and that will considerably raise market efficiency.

3. In the following outlines the EACB would like to point out comments on single parts of the consultation paper and to answer to selected questions raised by CESR.

Section I

CESR's technical advice to the European Commission on the implementing measures on organisational requirements and conflicts of interest for management companies (Articles 12(3) and 14(2) (a) and (c) of the UCITS Directive).

Page 11 - Definitions

4. On page 11, the investor is defined as any unitholder or potential unitholder. The scope of protection under the UCITS regime includes existing unitholders, but also potentially prospective unitholders.

5. While this definition seems to be reasonable from an investor protective point of view, it risks creating disproportionate burden to the management company, e.g. regarding the duty to give disclosures not just to existing unitholders but also to potential unitholders in connection with the risk management of a UCITS.

Question 2: In your view, does aligning the organisational requirements for UCITS management companies with the relevant MiFID requirements (…) impose additional costs on UCITS management companies? If so, please specify which areas are affected. If possible, please provide quantitative cost estimates of the additional costs for UCITS management companies.

Question 3: In your view, what are the benefits of aligning the organisational requirements for UCITS management companies with the relevant MiFID requirements?

6. From our point of view, aligning the organizational requirements for UCITS management companies with the relevant MiFID requirements in the mentioned areas will not impose high additional costs on these UCITS management companies, which already provide the investment services of reception and transmission of orders or portfolio management, as a lot of requirements were already implemented within the scope of implementing the MiFID provisions.

7. The benefits of aligning the organizational requirements for UCITS management companies with the relevant MiFID requirements will be the achievement of a level playing field for comparable activities.

Page 15 – General organisational procedures and arrangements for management companies (Box 1)

8. We agree with CESR's view on general organisational procedures and arrangement for management companies. We appreciate that CESR took the nature, scale and complexity of the business of the management company as well as the nature, the range of services and activities undertaken in the course of that business into account.

Question 6: Do you agree with the above CESR proposal on the remuneration policy of management companies? If not, please suggest alternatives.

Question 7: In your view, should the requirements set out above in relation to senior management be extended to cover all employees of UCITS management companies?

9. From our point of view, each company should be free to decide, whether respectively how far she is willing to make the remuneration policy internally transparent. For the avoidance of conflicts of interests, it should be sufficient that the senior management implemented a sound remuneration policy. To what extend the publication of the remuneration policy can lead to avoiding conflicts of interest, is irreproducible for us.

Question 10: Do you agree with the CESR's proposal on complaints handling procedures for management companies? If not, please suggest alternatives.

10. According to the information contained in box 6, an investor should be able to file a compliant free of charge and in an official language of his member state. This is specified to that effect, that this should be applicable in the event that the management company is authorized in a member state different from the UCITS home member state.

11. This requirement can lead to a burden to management companies, which operate in several member states, but is generally understandable from an investor protection point of view.

Question 12: Do you agree with CESR's proposals on electronic data processing and recordkeeping requirements? If not, please suggest alternatives.

12. Management companies are advised to record in electronic form the subscription and redemption orders from investors and the relevant terms and conditions immediately after receipt of any such order. It should be considered that in some countries the processing of subscription and redemption orders is not performed by the management company, but by the depositary.

13. The content of the recording should include a specific identification of the investor and the relevant UCITS. We would appreciate if it would be defined in more detail, how this process should be shaped. We would appreciate too, if it would be clearly defined which party is responsible for the fulfillment of the anti money laundering requirements (e.g. the identification of the investor).

Page 31 – UCITS accounting principles

14. It should be considered that in some countries the accounting of UCITS is not performed by the management company, but by the depositary.

Page 32 – Implementation of strategies for the exercise of voting rights

15. The need for establishing a strategy for the exercise of voting rights (e.g. establishing procedures to monitor relevant corporate events) may lead to an administrative burden, especially for smaller management companies.

16. It is sufficient, that only such corporate events are monitored, which the management company considers as significant. Furthermore, it is suggested that an updated summary description of these strategies and of the way they were actually implemented should be made available to the investors.

17. In this context, it would be helpful to define, that this information should be made available to just the interested investors (on their request). Another possibility could be to publish the principles of the strategy e.g. in the prospectus.

Section II

CESR's technical advice on possible implementing measures of Article 14(2) (b) of the UCITS Directive (Rules of conduct for management companies).

Page 65 – Due diligence requirements

18. We would very much appreciate if it could be defined more precisely how the due diligence policies and procedures could be formulated. In this context, the proportionality between the selected investments and the due diligence process should play an important role.

Page 69 – Handling of subscription and redemption orders of investors

19. It is unclear, what is meant by the phrase "in accordance with the relevant provisions of the fund rules or the instruments of incorporation and/of the prospectus". We would appreciate if this could be defined more precisely.

Section III

CESR's technical advice to the European Commission on measures to be taken by a depositary in order to fulfil its duties regarding a UCITS managed by a management company situated in another Member State, including the particulars that need to be included in the standard agreements to be used by the depositary and the management company (Articles 22 and 23 of the UCITS Directive).

Question 1: Do you agree that no additional requirements should be imposed on a depositary when the management company is situated in another Member State?

20. EACB fully agrees with the view of CESR that no additional requirements should be imposed to a depositary when the management company is situated in another Member State.

21. We share CESR's assessment that a written agreement also in domestic situations between the management company and the depositary that governs their relationship would ensure a level playing field for depositaries. EACB has no objections against the introduction of a respective requirement.

Question 3: Are the proposed requirements appropriate?

22. We welcome CESR's confirmation that depositaries have to be provided with all necessary information by the management company in order to enable them to meet their tasks. We furthermore welcome that CESR does not prescribe detailed Service Level Agreements (SLA's) but only general SLA descriptions. The respective SLA's are already in place and have to be in accordance to the current market conditions.

23. In case that both sides of a SLA are credit institutions we consider a further mutual transparency as not sufficient since the related organisational arrangements are already outlined in the MiFID. Taking the costs of the respective information disclosures into account we would like to suggest an exception under which EU regulated credit institutions would not fall in the scope of this information disclosures.

24. We would like to suggest the same for the verification of measures against money laundering.

Question 4: Are the information flows exchanged in relation to the outsourcing of activities by the management company or the depositary relevant?

25. For depositaries the information flow regarding the operations of the management company that touch the tasks of the depositaries is important. An example is the choice of a sub custodian for the custody of assets out of the sphere of influence of the depositary.

Question 5: Is it appropriate to indicate in the written agreement that each party may request from the other information on the criteria used to select delegates? In particular, is it appropriate that the parties may agree that the depositary should provide information on such criteria to the management company?

26. In case information obligations are introduced to enhance transparency those should be valid for both, the depositary and the management company.

Question 6: Is the split between suggestions for level 2 measures and envisaged level 3 guidelines appropriate?

27. We agree in distinguishing between the two levels with respect to the detailedness if the obligations. Because of the very technical character of the SLA's we do not see a need for regulation on level 3.

Question 7: Do you see a need for level 2 measures in this area or are the level 1 provisions sufficiently clear and precise?

28. From our perspective the level 1 provisions are already detailed enough. According to paragraph 25 we would welcome information obligations for the management company regarding information that is important for the business of depositaries.

Question 8: Do you consider that the proposed standard arrangements and particulars of the agreement are detailed enough?

29. See paragraph 27.

Question 9: What are the benefits of such a standardisation in terms of harmonisation, clarity, legal certainty etc.?

30. As already outlined we see only a limited benefit. Respective SLA's are already available.

Question 10: What are the costs for depositaries and management companies associated with the proposed provisions?

31. The proposed provisions can lead to additional costs for depositaries and management companies.

Question 11: Do you agree that the agreement between the management company the depositary should be governed by the national law of the UCITS?

32. We agree.

Question 15: Do you agree with CESR's proposal that equivalent rules should apply to domestic and crossborder situations? In particular, do you agree that depositaries should enter into a written agreement with the management company irrespective of where the latter is situated?

33. We do not see a problem for a written agreement in case of domestic situations between depositaries and a management company.

Question 17: What would be the benefits of such an extension in terms of harmonisation of rules across Europe? What would be the costs of extending rules designed for cross-border situations to purely domestic situations? In particular, would a provision stating that the management company and the UCITS depositary have to enter into a written agreement irrespective of their location add burdensome requirements to the asset management sector?

34. The mentioned transparency obligations would lead to enormous costs for the asset management sector.

Contact:

The EACB trusts that its comments will be taken into account. For further information or questions on this paper, please contact:

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