

European Commission

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Re: Commission Expert Reports

The Bank and Insurance Department of the Austrian Federal Economic Chamber, representing all Austrian Credit Institutions, welcomes the opportunity to comment on EU Commission's Expert Report.

**Commission Expert Reports**

Following the discussion on the "*Green Paper on the Enhancement of the EU Framework for Investment Funds*" the Commission set up two Expert Groups, one on the efficiency of the industry, the other on alternative investments. The reports of these groups were published in early July 2006, followed by a Public Open Hearing mid of July. In addition to this, all parties interested, are invited to comment on these reports.

**I. Introduction**

Before going into details and being in line with our previous comments on the Green Paper, we would like to stress some general fundamentals that are of highest priority for the Austrian Industry:

- We regret the fact that the Expert Groups did not really take the conclusions set out in the Feedback Statement "*Enhancing the European Framework for Investment Funds*" into considerations which constitutes a lack of the expert reports.
- We are of the opinion that the interests of unit holders should in no way be diminished or minimized. When taking the high level of trust of the unit holders into account, this should be a matter of course.

- We want to stress the demand for safeguarding the continuance of the high level of quality and security of the products.
- It is most important to adapt the status quo of the market with its inherent heterogeneity, so that European legal framework for investment funds will become more efficient.
- The efficient implementation and utilisation of the current European legal framework for investment funds are of highest priority. This is in particular necessary due to the fact that cross-border transactions, in that respect such as cross-border fund merger, cross-border pooling techniques or cross-border activities of depositaries, will likely enforce the arbitrage among supervisory bodies because cross-border transactions will be carried out in two or more jurisdictions. However, any arbitrage among supervisory authorities should not be to the detriment of the efficiency of risk control mechanisms and in particular investor protection.
- Therefore we are against “levelling downwards”, which is to the detriment of the quality and the security of the products and will thereby have a negative impact on the reputation of the industry.
- In this regard, we emphasize the need for creating an effective “level playing field” including all stakeholders of the financial industry.

## II. Expert Reports in General

We welcome the open discussion of the broad issues stressed in the expert reports and in particular underline the necessity for action in the light of more efficiency and a significant reduction of costs in the following areas:

- Simplification of registration procedures;
- A final definition of a simple and harmonized format for the Simplified Prospectus;
- Level playing field with competing products
- Reshaping of the regulatory architecture to bring the UCITS Directive in line with the Lamfalussy framework;
- Modification of the product passport.

Furthermore and as already pointed out in our previous comments to the Green Paper, we believe that many of the issues discussed could be solved within the existing regulatory framework and therefore could be realized on a at least mid-term basis. Nevertheless, there are many issues raised that need to be considered carefully and discussed in more details in the long-term future.

Regarding hedge funds, we emphasize the importance of an approval of investment by UCITS into hedge funds (for funds of hedge funds) as well as a high disclosure level for risk specific to hedge funds and to the strategies pursued.

Moreover, real estate funds should be included in the White Paper since they are to a certain extent a mainstream household savings product in many countries.

### III. Expert Reports in Details

We welcome the Expert Groups' reports elaborations since they clarified many issues raised in the Green Paper. Nevertheless, it has to be stressed that the biggest lack of the reports is their neglect of the feedback statement to the Green Paper because therefore the Export Groups' reports cannot be considered as "the" industry position.

#### 3.1. Report on Investment Fund Market Efficiency

We are in favor to preserve the UCITS Directive as - the often proposed - "international gold standard" and encourage the Commission to further promote the UCITS quality label to third countries because UCITS are the most exported fund type globally and both the regulators and the industry have a clear interest in strengthening this position.

Furthermore and in particular in the light of the Markets in Financial Instruments Directive (MiFID), we suggest the creation of a fair level playing field.

The Expert Group identified five main inefficiencies being (i) lengthy procedures before getting new products to market, (ii) unexploited economies of scale, (iii) barriers to the cross-border provision of services, (iv) non-standardized fund order processing and (v) tax barriers to fund operations.

Basically we agree that these inefficiencies exist as well as on how to overcome these inefficiencies. Nevertheless, we would like to comment in details on certain issues since we have different opinions in this regard:

- *Lengthy procedures before getting new products to market*

The proposal to simplify and shorten both, authorization and notification procedures and to go for a regulator-to-regulator relationship is welcomed. In this context, we urge a final decision on how the simplified (summary) prospectus should look like. Since this document is intended to provide key information, it is necessary to fully harmonize it, so that it is comparable in all member states. Therefore, we suggest modelling this regulation analogously to the Prospectus Directive as pointed out by the experts regarding notification because the longer and complex the procedure, the more costly it is.

- *Unexploited economies of scale*

As already mentioned, in particular regarding the issue of unexploited economies of scale, we believe that the Expert Group did not enough take the Commission's feedback statement into consideration but tried to push the issues even further.

However, regarding fund mergers, we want to emphasize again the existing legal environment and the present legal frameworks within the EU are too different in order to realize cross-border fund merger in a useful manner. The main problem seems to be that the proponents of the cross-border fund merger have just the desired result - reduction of costs and still this is doubtful - in mind but no one has ever thought how a realistic procedure of such a cross border fund merger might look like. However, fact is that from a legal point of view, it is simply not possible to enable such a fund merger as proposed by the Expert Group. Additionally such merger legislation would have to be seen in a general legal framework and has to be consistent

with supranational as well as national merger legislation. Moreover, the various - at least theoretical - possibilities of how a fund can be merged have to be taken into consideration. In any case, the overall principle regarding fund merger has to be that a merger should never be to the detriment of a unit holder or diminish the quality and safety of the merging funds.

In terms of pooling, the initiatives of the Expert Group are welcomed but we want to stress again that the overriding principle has to be that the usage of cross-border pooling techniques should not be to the detriment of the high level of quality and security of the products. However, it has to be stressed that *virtual pooling* is already allowed under the current Directive and that generally no further legislation is needed. Nevertheless, many issues have to be clarified regarding pooling and therefore, we propose a combined approach of CESR and the Commission to find ways to enable pooling in a structured and consistent manner under the overriding principles of unit holder protection as well as keeping the high level of quality and security of the products. In this regard, we favour the idea of pooling in form of a *Master-Feeder*-structure.

In addition to this, we are rather skeptical towards the recommendations of the so-called *Designated Commingling Structures* because they go far beyond the proposals of the Green Paper and are far more complex compared to the much discussed *Master-Feeder Structure*. Since these recommendations are highly technical, they have to be discussed in more details to avoid a possible misunderstanding with funds of funds.

- *Barriers to the cross-border provision of services*

Regarding the barriers to cross-border provision of services, the Expert Group - in analogy to the Green Paper - stressed two passports, i.e. one for the management company and one for the depositary.

We want to point out that beforehand minimum union-wide standards have to be put in place. Therefore, the harmonization of capital requirements for depositaries is of highest priority for the Austrian investment fund industry. Moreover, we are of the opinion that the existing possibilities for delegation already offer a framework permitting initiatives mentioned in the Green Paper as well as in the expert report. As already shown in other core areas it is important that the efficient implementation and utilisation of the existing framework of law is given highest priority, since thereby some considerations and requirements concerning depositaries spelled out in the Green Paper would become obsolete. In this context, from an economic stand point we doubt if increased cross border activities of depositaries based on a passport really results in cost savings or if to the contrary, controlling costs would increase significantly.

Regarding the management company, we are of the opinion that in case of the adherence and realization of the fundamentals set out in the introduction above, the importance of the passport for the management company will significantly be reduced become obsolete because the intentions of the passport can already be realized by the implementation of the above mentioned preconditions. Nevertheless, Austrian Fund Industry is in favour of diminishing the existing legal barriers which however can significantly be reached by the utilisation of the existing legal framework.

### 3.2. Report on Alternative Investments

Austrian Fund Industry is of the opinion that the Expert Group's analysis of the hedge fund industry is useful and therefore draws a good picture of the current situation. Nevertheless, it believes that the experts neglected the current regulatory situation as well as the ongoing debates at IOSCO level. Industry agrees with IOSCO's view that valuation and clear, concise and effective disclosure of the features of the hedge fund is a key issue. Moreover, VÖIG is in line with the comments made by the consumers' representative at the Public Open Hearing in Brussels, who underlined that the overall principle before paving the way for easier retail access to hedge fund investing should be that regulators assure that investors are sufficiently protected. Nevertheless it is important that in particular funds of hedge funds within the UCITS framework should remain as an essential option regarding alternative investments.

Regarding the proposal by the Expert Group on private equity, we are of the opinion that it constitutes a useful starting point for the discussion of cross-border distribution of alternative investment funds across borders.

### 3.3. Real Estate Funds

As already mentioned above, a big shortcoming of the Expert Reports and the Green Paper is the lack of inclusion of real estate funds. We want to underline that there is no reason to deprive a product which exist as mainstream retail investor savings vehicle since decades and which is today in most European countries regulated and supervised as any other fund under the UCITS Directive of the possibility of the Single Market benefits.

## IV. Outlook

In order to reach the ambitious goal to create the "best regulatory framework - as Commissioner Charlie McCreevy stated at the Public Open Hearing in Brussels, it is important to choose a "step-by-step-approach". In this regard, we suggest to first implement those measures that can be done without any changes to the current Directive. Secondly, after carefully discussing the other issues, legislative changes should be made, where they do not be to the detriment of the UCITS as the "international gold standard" as well as guarantee a level playing field for all market participants.

Best regards

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