

Berlin, 07.09.2006

Comments of the Federation of German Consumer Organisations (vzbv) on the Market Efficiency Report (July 2006)

We are grateful for the opportunity to comment on the report of the expert group on Market Efficiency respecting UCITS. We will not cover all issues but concentrate on those issues that seem most relevant to consumers or investors.

1. Authorization and notification

We do not object to the introduction of time limits on authorization for the sale of UCITS in the home Member State or on notification for marketing in other Member States.

But the time limit would of course require the regulator to come to a good decision, not as the expert group seems to say, to approve the application. From our point of view the notification can not just be seen as an annoying double-check by the host Competent Authority. In the host state the notification has to guarantee that marketing and distribution of the fund is compatible to the marketing and distribution rules of the host State.

Concerning the definition of what an appropriate limit time would be, we recommend input from the regulators or CESR. As there is no time limit for authorization but an average of two to four months and for notification a time limit of two months¹ the experts group's suggestion for limits (20 business days for authorization, 3 days for notification) appears too short.

We support time limits but the supported limit must guarantee and ensure that consumer protection is not jeopardized.

2. Simplified prospectus

The simplified prospectus is already a difficult document for consumers to understand, especially as this document often is too long, not standardized and intransparent.

Therefore we strongly disagree with the expert group's view that for the decision on liability of a provider a defective simplified prospectus should be read together with the full prospectus. This suggestion is undesirable. To argue that the consumer's right respecting redress for a defective simplified prospectus could be removed because of an incomprehensible and often not assigned full prospectus is unacceptable.

At least under German law consumers the right of liability² if the simplified prospectus is false. We demand that consumers pan-European must rely on the information of the simplified prospectus. This must lead to their right of a liability claim.

¹ Artikel 46 OGAW-RL, 85/611/EWG

² § 127 Investmentgesetz (Prospekthaftung)

For a better understanding and appraisal of funds we ask for standardization of the simplified prospectus and not like the expert group for a flexible format. The consumer must get transparent, brief, standardized, coherent and comparable information compressed on rather few pages. The information must be given in the consumer's national language (see below). As we already asked for in our response to the UCITS Green Paper the information must include details respecting the underlying financial instruments and its risks, a standardized calculated TER (that is containing the costs of transactions also), fees of selling share in a fund, understandable description of the portfolio strategy and references to the detailed information in the full prospectuses.

In order to develop a commonly accepted standard of a simplified prospectus we suggest to consultate the involved parties, like UCITS industry, consumer protectors, marketing experts and sales and distribution experts. The developing of a suitable standard should be completed by pre-tests.

3. Language

We disagree with the expert's group opinion and therefore also with the rule of article 44 of the UCITS-directive that allows UCITS not to translate the simplified prospectus to the host states language in the case of cross-border selling. From our point of view the understanding of the simplified prospectus is much harder if it is not written in the native tongue. But the understanding of the simplified prospectus is important in the context of the decision for an investment.

We also disagree with the expert group's suggestion that the translation of the simplified prospectus should not be pre-checked by the host Competent Authority. The motivation of the pre-check is not to delay the selling of the fund. But it is important to ensure in advance of selling that the translation of the prospectus is clear and accurate.

From our point of view consumer protection must be seen as a preventive instrument. Therefore the simplified prospectus should be translated in the language of the host state and the Competent Authorities should have to check the translated simplified prospectus before the fund can be sold.

4. Mergers

We agree with the identification that the European UCITS industry is characterized by a high degree of fragmentation (the size of EU-UCITS are at an average 1/3 to 1/5 of USA-UCITS). Suboptimal sizes of funds lead to relatively high costs of management and administration. For this reason we support mergers provided that consumer and investor rights are respected.

Therefore consumers must be given adequate information regarding the merger, for example changes of costs, changes of tax treatment and changes of the portfolio strategy. This information must be given in good time before the merger. Consumers must also be given the right to leave the merged fund without penalty.

Another very important point concerning fund mergers is to avoid adverse tax consequences for consumers. It must be impossible that cross border mergers trigger adverse tax consequences to consumers. So, if there is legislation to facilitate mergers, it should be accompanied by a taxation directive protecting consumers from adverse consequences.

Last but not least, funds that are going to be merged must give evidence towards their Competent Authority that the merger leads to a greater efficiency and cost advantages for the investors.

5. Pooling

As stated by the UCITS industry pooling the administration of different but similar funds lead to returns of scales. This instrument can already be used nationally. But with respect to cross-border pooling we see problems for example caused by different tax-treatments or different requirements as to the different national law.

For this reason we demand that pooling could only be accepted under reserve consumer protection is guaranteed (e.g. prevention of disadvantages of rising costs, of rising tax-payments, of changing portfolio strategies not wanted).

6. Depositary freedoms

We are very reserved to any idea of a *depositary passport*, as is the Expert Group and as we already stated in our position to Commission's Green paper on UCITS.

From our point of view it is a very important precondition that both the fund management and the depositary bank are under the control of the same Competent Authority. But a splitting of the fund management and the depositary bank to two different Member States at the same time with a distribution of the control to two different Competent Authorities is not acceptable. This would lead to damage of efficiency (e.g. by different administrative procedures) and uncertainty of investors. There are wide differences between the Member States regarding the control, function and responsibility of the depositary bank. For this reason a depositary passport could lead to custody-arbitrage and therefore to a damage of consumer protection and confidence.

Fore this reason we strictly refuse the idea of splitting the control of the fund provider and the depositary bank. We demand to keep the present system of a lead supervisor that is located in the home state of the fund provider.