

# **GERMAN RESPONSE TO THE REPORTS OF THE EXPERT GROUPS ON INVESTMENT FUND MARKET EFFICIENCY AND ALTERNATIVE INVESTMENTS**

In its response to the Green Paper on the Enhancement of the EU Framework for Investment Funds Germany supported the Commission's assessment that much progress can be achieved under the existing legislative framework and that the overriding goal must be to protect the progress towards a single market. In a recently submitted joint paper the United Kingdom, France and Germany identified some priority areas where this framework could be improved. With these priorities in mind Germany has some further comments on the reports of the expert groups:

### **Domestic Authorisation**

1. Germany considers that the authorisation of plain vanilla products should generally be given within a maximum period of four weeks. In practice, the major part of German funds is authorised within this time frame. This is also largely consistent with the Expert Group's call for home states to authorise UCITS funds within 20 business days, which is inspired by the Prospectus Directive. However, we have to consider that a mechanical transfer of the Prospectus regime might not be entirely compatible with its character of a regulated product. Considering that UCITS get increasingly complex, such a delay may lead to difficulties with such products. Therefore, we recommend a longer maximum period for authorisations. The maximum period should be calculated under the assumption that the time while the regulator is awaiting the UCITS' response to requests for information or documents may not be included in the calculation of this period.

### **Notification Procedures**

2. The Expert Group report recommends that the existing notification process be replaced with a regulator-to-regulator process, with an obligation on the home regulator to send notification to the host regulator within 3 days. It is our understanding that Host member State competences regarding the control of marketing arrangements shall be de facto abolished including the right to prevent the fund marketing in case of deficient marketing arrangements.
3. The aim of the UCITS directive was that home state authorisation should remove a 'double authorisation' by the host state. Up to now the empirical evidence suggests that this fundamental goal has not yet been fully achieved. CESR work to streamline the existing notification procedures which will bring about improvements has recently been concluded. Implementation is under way. It is therefore too early to fully judge its impact. However, CESR could only operate on the existing system of notification conceived by the Directive. To go further, a legislative change needs to be considered.
4. We therefore broadly support a simple regulator-to-regulator notification. However, removing any right of veto or a de facto abolition of Host member State competences to control marketing arrangements might not be in the interest of consumers or the industry itself, e.g. if control of marketing arrangements would only be reduced to an ex-post control once marketing has started. These questions require further analysis. Nonetheless, these problems need to be

weighed against the considerable benefits a further simplification of the notification procedure will bring to the UCITS industry.

### **Management Company Passport**

5. In our joint paper with France and the United Kingdom we set out our strong support for making the management company passport work properly. However, we do believe that concerns over split supervision require further analysis. In practice, such an approach requires a high degree of smooth cooperation between supervisors. A more consistent implementation of the rules applicable to the management company would be an important element to achieve this aim. One solution that could be also explored to overcome practical problems is the appointment of a lead supervisor.
6. Any perceived difficulties in establishing a working Management Company Passport must be seen against the potential benefits which a properly functioning management company passport would entail. Germany thinks that the potential benefits outweigh the costs.

### **Pooling**

7. We note the Expert Group's support for the idea of pooling. We support the group's recommendation that CESR should be asked to clarify issues around the operation of virtual pooling with the aim of facilitating it within the existing terms of the Directive. We are also open minded regarding entity pooling although we believe that further analysis how this should work in practice – particularly as regards entity pooling with more than one master - is necessary.

### **Alternative Investments, Private Placement and MiFID**

8. We maintain our support for a harmonised private placement regime.
9. Germany already expressed concerns about the interpretation of MiFID according to which Member States would be prevented from imposing investor protection rules to non-harmonised funds, their managers or the sale of such funds. In our view MiFID should not force Member States to allow the marketing of non-harmonised funds to retail investors. In addition, we believe that such an approach would seriously undermine the UCITS regime. It seems unlikely that firms would go to the trouble to structure and distribute a product as a UCITS, if they could easily sell unharmonised investment funds both domestically and cross-border through MiFiD. In our view allowing greater cross-border freedoms to non-harmonised funds should be achieved through the establishment of a cross-border private placement regime with a focus on qualified or institutional investors.
10. In the medium term Germany suggests a European harmonization of Hedge Funds to prevent a regulatory fragmentation in Europe.