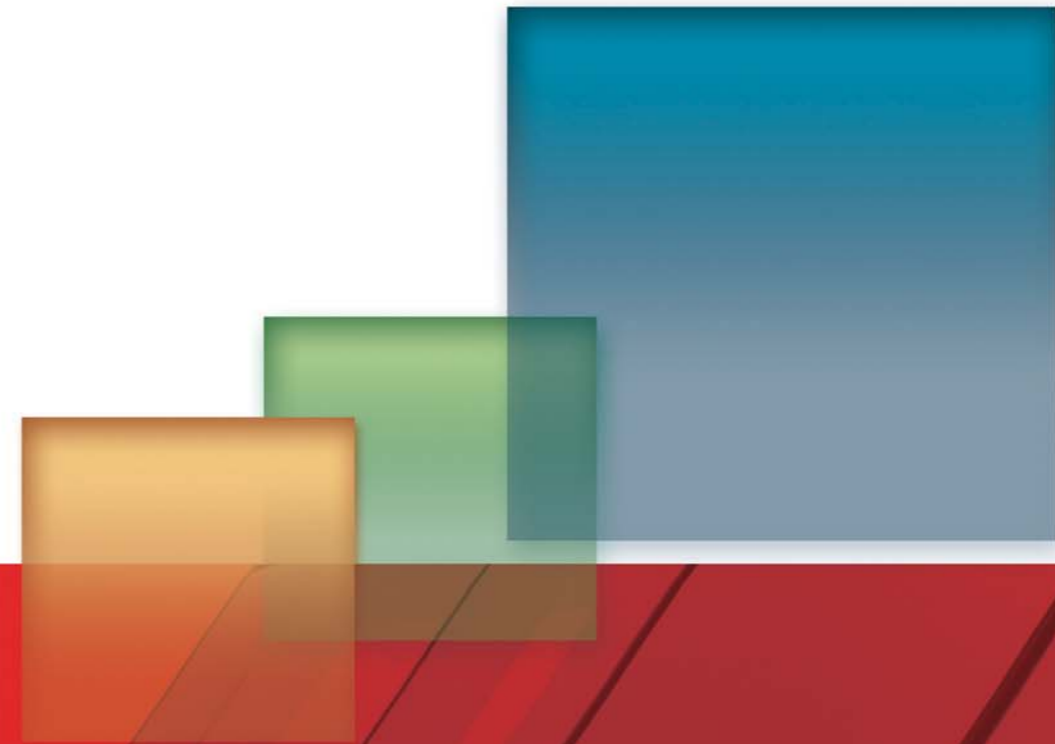


Expert group report

Open ended real estate funds



Internal Market and Services DG



March 13th 2008

**EXPERT GROUP REPORT
OPEN ENDED REAL ESTATE FUNDS**

March 2008

Foreword

This Expert Group («the Group») has been established to advise the Commission on European open ended real estate funds (hereafter «OEREF»). Several stakeholders have cited the lack of an EU passport for OEREFs as an unjustified obstacle to the evolution of this market.

This issue was raised in the European Commission's White Paper on enhancing the Single Market framework for investment funds¹. The White Paper cited OEREFs as an example of a nationally regulated product which fell outside the scope of the current European framework. The Commission announced in its White Paper the creation of an advisory group on real estate funds and has undertaken to complete a systematic analysis of the non-harmonised retail fund landscape and report to the European Parliament and to the Council in 2008. The report of this independent expert group will form an important part of this work. This Expert Group Report is the result of extensive discussions and exchange of views leading to widely shared views. However, when a common position among its members was not at reach, the report presents the majority views of the members.

Following an open call for expressions of interest to industry participants the Commission selected a group of experts from the 60 eligible applications that demonstrated the range of skills and experiences required in order to fulfil the group's terms of reference. The Group's objective has been to establish and communicate a report summarising its analysis and recommendations. This Group has been tasked with providing technical, commercial and market analysis that could serve as a basis for debate with Member States and other stakeholders. This Group has sought to determine whether EU-level action to facilitate the development of this business on a cross border basis would deliver meaningful benefits for industry and investors. It has explored different options for realising these perceived benefits and aims to contribute to discussions on the cost-effectiveness of any proposed actions.

The mandate of the Group has been:

To advise the Commission by submitting a report providing clearly evidenced analysis and recommendations in respect of the following issues:

- i) the risk and performance characteristics of open ended real estate funds;
- ii) the scale and scope of the perceived benefit for the industry and for investors of introducing an EU wide passporting mechanism for open ended real estate funds. In doing so the Group would provide: – a description of the European market for real estate funds, including open ended funds; – an analysis of the existing or likely future demand for providing OEREFs across borders; – an examination of the barriers to cross border development of OEREFs; – an evaluation of existing national regulatory (including tax) approaches in respect of open ended real estate funds;
- iii) cost effective options and solutions for an enabling Single Market framework for cross border marketing or management of open ended real estate funds.

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Executive Summary

Real estate assets represent an important part of a well diversified modern investment portfolio. Until relatively recently retail investors acquired real estate assets only through the purchase of their own homes and buy-to-let investments. Retail investors have not usually been able to build their own suitably diversified real estate portfolios. This situation has now changed considerably in many Member States.

OEREFs package real assets in the form of a traditional regulated investment fund. Over €110bn of assets is now managed by European OEREF managers that are primarily designed for retail investors. OEREFs respond to investor demand by offering investors a unique dual proposition: i) exposure to the real estate asset class with fund performance characteristics which are closely correlated with current real estate market values; as well as ii) the possibility to redeem their investments at regular intervals, with unit prices based on the underlying value of the real estate assets held within the portfolio. Real estate assets cannot be traded as easily and as cheaply as some other asset classes. Real estate is therefore generally viewed as a long term investment.

Twelve EU Member States now have national retail OEREF regimes. Within the EU it is usually impossible, in practice, to promote OEREFs across borders to retail investors. This is due to the absence of a formally recognised retail distribution channel for these products based on fund «passporting» arrangements. National rules have evolved independently, in the absence of harmonised rules at European level. These technical barriers deter and restrict managers from marketing funds to retail investors on a cross border basis.

Recommendation: This Group recommends EU policymakers to create a new regime for OEREFs, to facilitate the cross border offer of OEREFs to retail consumers. Only an EU passport can create a Single Market for OEREFs.

The OEREF industry calls on European policymakers to facilitate European integration through the introduction of a European OEREF regime. There are over 150² managers who offer real estate funds in Europe, yet only a small handful of those offer products cross border. Many are put off by the lack of a regulatory structure and the difficulties in cross border marketing. The end result is pent up demand, stagnant markets and missed opportunities for investors and for OEREF managers.

EU consumers would be better served if regulated OEREFs

could be sold effectively and efficiently across EU borders. This would increase fund choice for investors and drive down prices. If a pan EU regulated structure for OEREF existed, this Group is certain that many more of the existing managers would offer products for retail investors and those with existing retail distribution platforms would offer real estate as an asset class, thus increasing choice and driving competition.

This Group's overall objective is to obtain a European passport for OEREFs. This will make it possible to distribute OEREFs in all EU Member States, subject to authorisation only in their home Member State. It will enable efficient market access, overcome barriers created by national product rules, and minimise duplicative compliance costs.

The Group believes that the best way to achieve this outcome is to establish an EU wide passporting system based on common OEREF regulations. These rules could be implemented in all Member States. The Group recommends that this regulatory approval mechanism should be modelled on the UCITS Directive. The UCITS Directive is a shining example of what can be achieved through common EU rules for retail funds.

Recommendation: The new EU OEREF regime should be modelled to the extent possible on existing national frameworks. To build the framework on tested and common ground will also ease political negotiations and speed up the process.

The Group is primarily concerned by achieving this commercial outcome. How this is best achieved is not our area of expertise – and the Group defers to the judgement of EU policymakers. However, the Group believes that legal certainty can only be effectively achieved on the basis of a common set of EU rules. These rules should aim to ensure that consumers are provided with high levels of investor protection. In order to gain full acceptance, these rules should be constructed using existing best practices in Member States and European law.

Recommendation: Legislative action at European level is required in order to overcome existing regulatory barriers to the marketing of OEREFs across borders. Only a clear set of binding rules can bring about the legal certainty needed for opening the currently sealed off markets for the cross-border distribution of foreign OEREFs to retail investors. The development of an EU regime would allow asset managers and consumers in all 27 Member States to benefit from new investment and business opportunities.

2) INREV is the European Association for Investors in Non-Listed Real Estate Vehicles

Recommendation: The Group concluded that a modification of the UCITS Directive to provide a product passport for OEREFs would be the most efficient way to achieve cross border OEREF distribution to the retail market. This option would ensure that OEREFs could be readily marketable through existing distribution channels. The Group advises that all rules relating specifically to OEREFs should be drafted according to the Lamfalussy procedures, whereby high level principles be established, with detailed implementing measures undertaken at a second level in conjunction with Member State authorities. If such an approach cannot be delivered for technical or political reasons, the Group recommends a standalone Directive for OEREFs as a second best option.

We propose a set of key features which could form an effective regime for EU OEREFs. Our analysis of different national regimes and UCITS rules identifies strong arguments for adding OEREFs to the UCITS Directive. Most national regimes that have already integrated OEREFs into national regulations have done so in a similar manner to the implementation of UCITS. If this approach is not followed, a standalone OEREF Directive could also achieve the same investor protections and market opening outcomes.

Recommendation: This Group has undertaken a comprehensive comparison of existing national OEREF regimes. Based on the experiences from national regulatory regimes for OEREFs, this Group has developed a set of key features. The Group recommends using these key features as building blocks for the EU OEREF regime. Together, these key features should be seen as a complete package of regulatory safeguards and investor protection rules for EU OEREFs. The areas to be covered are presented in the annex to this report with information on how these issues could be effectively approached by the European legislator.

Recommendation: There are six key features without which OEREFs would not be able to effectively function, or without which investor protection would be insufficient. This group recommends the following

- (i) OEREFs should have the possibility to make full use of property **Special Purpose Vehicles** («SPVs»);
- (ii) OEREFs should be permitted to **borrow** up to 60% of

their real estate [including real estate SPV] assets;
 (iii) OEREFs should **redeem** units at investor request, which may be on a daily basis, but could be as infrequent as once in a quarter;

(iv) OEREFs should maintain a **minimum liquidity** of 10% of their assets and install a sophisticated liquidity management system appropriate to their subscription/redemption policy;

(v) Properties held within an OEREF portfolio should be subject to independent and regular **valuation** at least once per calendar year to determine a market value of the properties, based on international valuation standards;

(vi) OEREFs should fully **disclose** their pricing policies. They should also highlight to investors the long-term investment focus of OEREFs and that the redemption of units may be suspended under exceptional circumstances;

Recommendation: Foreign OEREFs are taxed in a discriminatory way compared to domestic OEREFs. While domestic OEREFs are usually tax exempt at fund level, tax authorities refuse to grant the same status to foreign OEREFs. Moreover, in several Member States, national tax law discriminates investors in foreign OEREFs over investors in domestic OEREFs. Both barriers result in distorted competition. Given this situation and the complexity to achieve a common tax framework the group recommends a pragmatic approach. In the light of the EU treaty freedoms, notably the free movement of capital, it reminds Member States of the prohibited discrimination of foreign OEREFs and invites the EU Commission, if need be, to enforce these freedoms.

This Group undertook its analysis during a period of heightened focus on the functioning and stability of financial markets – the robustness of national regulatory arrangements are in the spotlight. In this context, the Group paid particular attention to retail investor protection. Redeemable investments based on less liquid assets demands robust risk/liquidity management systems. OEREFs must comply with high standards of fund governance. OEREF activity is highly regulated in Member States where real estate investments are offered to retail consumers. The EU OEREF regime should adopt the same retail investor protection philosophy.

In rare circumstances, OEREF's asset/liability management systems can come under significant pressures. This can arise from new subscriptions (too much money to invest) or widespread redemptions (too many requests for fund withdrawals). Although in some jurisdictions OEREFs already exist for decades, the Group is aware of only very few occasions where OEREF liquidity management practices have been subjected to operational difficulties³. The individual circumstances of these situations are different. In each case it has been demonstrated that high levels of investor protection through product regulation are necessary to effectively overcome critical situations.

The time has now come to firmly agree on common ways to establish, operate and distribute OEREFs on an EU wide basis, giving retail investors a wider range of suitable investment options. At the same time this should

fulfil the highest EU level investor protection standards. This would:

- help to facilitate the future development of this important product category;
- build necessary confidence in OEREFs as a high quality retail product;
- allow Member States without their own national regimes to utilise common EU wide rules, rather than having to develop new OEREF legislation; and
- lead international standard setting for retail fund regulation in the area of OEREFs.

³ This Group is aware of five countries (Netherlands; Australia; Switzerland (all of them in the early 1990s); Germany (2005/2006) and the UK (2007/2008) in which real estate funds have suspended the redemption as a reaction to very large outflows of capital. In all cases investors withdrew money in anticipation of an expected decline of property prices (and thus unit prices); see also Bannier/Fecht/Tyrell, Open-End Real Estate Funds in Germany – Genesis and Crisis, May 2006, p. 3 ss.; Sebastian/Tyrell, Open End Real Estate Funds: Danger or Diamonds?, March 2006, 1 s.

1. Introduction

A wide range of different investment vehicles now exist to provide investors with exposure to the real estate asset class. This marks a positive step in the evolution and maturity of real estate markets in Europe.

This report focuses on how the portfolio diversification benefits and performance characteristics of real estate investments can be offered to retail investors. This can be organised in a way that investors enjoy a high level of investor protection, and retain regular possibilities to redeem their investments. Such investment is available to investors in many Member States in the form of «open ended real estate funds» (hereafter «OEREF»). For the purposes of this report, OEREFs refer only those open ended real estate funds which are meant to be marketed and distributed publicly⁴.

Given the limited liquidity inherent⁵ to the underlying asset - land and buildings - the OEREF product provides particular attractions for many investors. However, managing such a fund implies particular challenges for fund managers. It requires not only a prudent balancing of short term liabilities with assets whose liquidity is limited, but also responsible and effective risk management procedures. Such investments are now common in twelve Member States, although there is no corresponding EU level template. The result is that cross border opportunities for managers and investors is severely limited.

This report explains why the Group has focused on OEREFs, as opposed to other types of real estate investment. The report considers the range of different practical options⁶ available to investors for investing indirectly into real estate. The focus of this report on OEREF does not imply a negative judgement on other types of real estate fund structure. It is explained by the desire to create a fund

structure which is recognised by regulators across the EU as being suitable for retail investors – on a par with UCITS. The Group makes no presumption that one form of real estate investing is either superior or inferior to another – only that investors must select the most appropriate form of real estate investment product to meet their particular needs. This will depend on each investor's personal circumstances and objectives. This report concludes that each investment structure has their own specific characteristics, risks and benefits for investors.

National OEREFs play an important role in investor's portfolios and in particular those of retail investors. It highlights the frustrations on the part of OEREF industry that OEREFs recognised as suitable for retail public at national level cannot be sold across borders within the EU. As regulated products at national level this Group concludes that there should be no principal reasons why a flourishing cross border OEREF market should not be facilitated throughout the EU, in the same way as has been made possible for other retail investment funds⁷ and listed real estate companies⁸. On the contrary, the same Single Market opportunities should be available to OEREFs as to other types of retail fund. The Group calls on the EU Institutions to take all necessary steps to bring about these important changes. The Group notes the recent call from the European Parliament⁹ highlighting the need to carefully assess how such a regime could be created and implemented at EU level. This Group believes that cross border OEREF markets could develop significantly through the introduction of an EU passporting regime, based on common regulatory principles and administrative practices. This would benefit both the OEREF industry as well as investors throughout the EU.

4) In various Member States, open-ended real estate funds can be established also in the form of "private open-ended real estate funds", for which not all of the investor protection rules otherwise applicable for open-ended real estate funds should be applied.

5) With the exception of listed real estate securities, there is no public exchange for sale/purchase of real estate – deals must be privately brokered

6) The main options available to investors seeking to invest into real assets include: collective investment schemes, property companies, derivatives products, and insurance products. However, the degree to which these different products are available to different categories of investors (retail investors, institutional funds, and high net worth investors) differs widely across Europe.

7) UCITS

8) Subject to meeting requirements established by the Prospectus Directive

9) European Parliament Resolution on Asset Management 13 Dec 2007

2. Real Estate

2.1 Nature of Real Estate markets

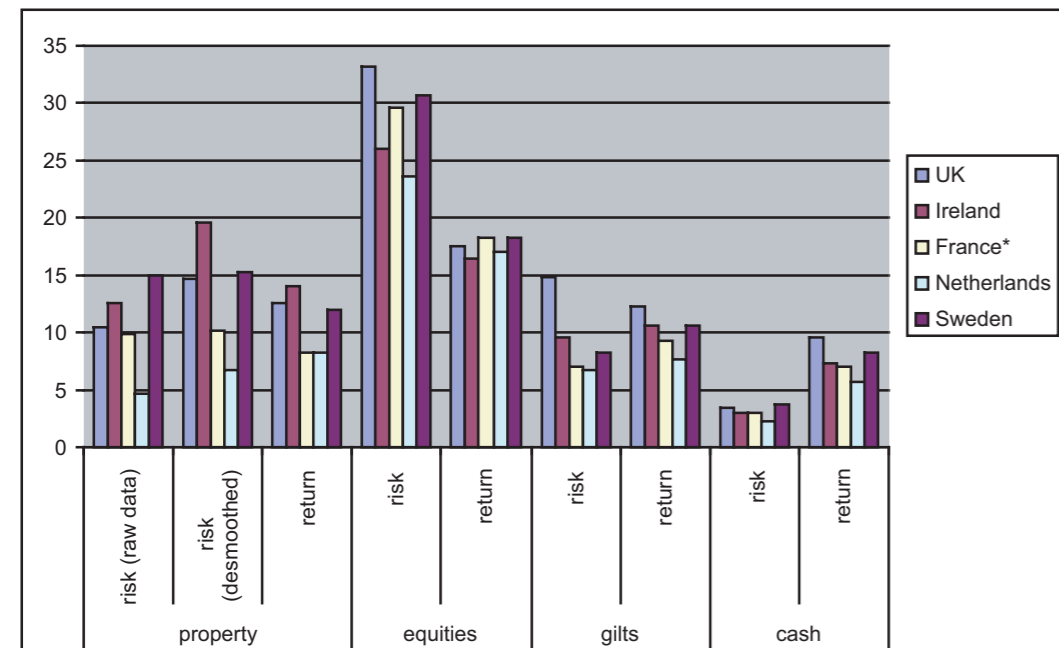
Real estate is a highly varied asset class comprising fixed land and buildings. Investment in real estate produces returns that combine a coupon-like income stream – in the form of rent payments by tenants, as well as stock-like components in that the capital value of property can fluctuate over time. Real estate, like other asset classes is subject to cyclical movements which reflect, to varying degrees, movements in the broader economy – real estate asset prices are determined by the underlying supply and demand for the use of individual properties by paying tenants (for instance, for residential housing, office space, retail, distribution, manufacturing and infrastructure facilities) as well as investor demand for the rental streams that these tenants pay. For the past five years, real estate markets in many European countries have seen dramatic growth. There has also been exceptional investment in Asian real estate. In recent months growth in Europe and

the US has started to plateau and in some Member States reverse. In other Member States real estate valuations continue to rise.

The performance of real estate investments is affected by business/asset cycles and other macroeconomic developments affecting growth, employment, interest rates and inflation. However, over the longer term, real estate is generally considered to provide stable rental income, long-run risk adjusted returns, provide excellent decorrelation characteristics, vis a vis other asset classes, and low price volatility¹⁰.

Chart 1 shows the risk and return associated with direct, unleveraged institutional real estate as measured by Investment Property Databank and its affiliates in the five European countries for which there is a sufficiently long run of data to allow valid conclusions to be drawn about risks and returns. Real estate turns out to have a return – and a risk – above that of cash and below that of equities. By comparison with government bonds, real estate generally has a higher risk/return profile, but this is not universally so.

Chart 1: % Risk and return of direct real estate compared to other assets



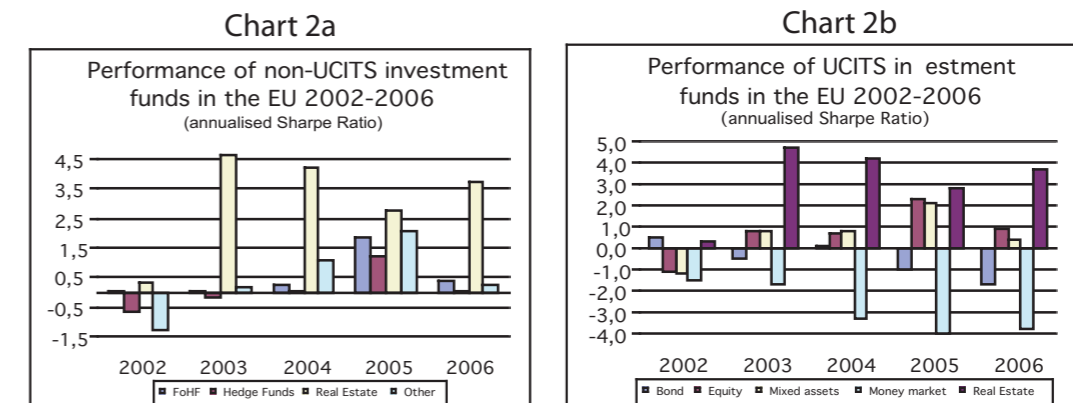
Source: IPD, ROZ, SFI, JPMorgan Asset Management (2005 Institutional White Paper); *offices only

10) For further analysis of risk and performance characteristics (risk/return, volatility, and correlation with other asset classes please see inter alia: JP Morgan «Institutional White Paper, 2005 – Real Estate...»; and Raimond Maurer, Frank Reiner, Ralph Rogalla, 2005 «Return and Risk of German Open-End Real Estate Funds»

Real estate assets performance can be measured by the Sharpe ratio of Real Estate funds and benchmarked against other alternative or mainstream investment classes. Chart 2a and Chart 2b below show the performance of real estate fund based on a sample of retail oriented funds, measured through the Sharpe Ratio relative to other types of funds. The higher the Sharpe

ratio the better, from the investor's perspective. The Sharpe ratio¹¹ characterizes how well the return of an asset compensates the investor for the risk taken over a given period. It must be noted however, that the real estate market performed¹² particularly well during the period under review, relative to other asset classes.

Chart2 : Sharpe ratios of Real Estate and other investments



Source: PwC, Feb 2008 « PwC, February 2008: «Investment Funds in the European Union: comparative analysis of investment powers, investment outcomes and related risk features in UCITS and non-harmonised funds»

2.2 Real Estate investment

While real estate investment in Europe continues to be dominated by direct holdings of real assets by companies and individuals; investment through specialist¹³ real estate vehicles, managed by a professional fund manager, has become increasingly common over the last 20 years. Of particular relevance is that assets managed by institutional and retail fund managers have risen dramatically since 1980, and over the last 10 years have grown more than threefold¹⁴. For investment managers across all spheres, including retail investors, property focused investments have become an integral part of a well balanced investment portfolio.

2.3 The size of the European real estate fund market

According to the European industry trade association Investors in Nonlisted Real Estate Vehicles («INREV»), European fund managers now manage over €224bn assets, mainly on behalf of institutional or sophisticated investors. According to the European Fund and Asset Management Association (EFAMA), a further €110bn is managed by European OREF managers (2006), principally constituting retail investor assets. EFAMA also estimates that a further €30bn of retail investor assets are invested in nationally regulated closed end real estate funds. Taken together, nonlisted property vehicles now account for c. 3% of the total European investment fund market¹⁵. The market value of listed property companies accounted for a further €327bn at the end of 2006¹⁶.

11) The Sharpe ratio provides the relation between the risk premium offered by an asset (return that exceeds the return of risk free assets like treasury bonds) and the volatility of the asset, which in turn is measured by the standard deviation of the risk premium over a given period of time.

12) The well acknowledged problem of appraisal smoothing is however known to produce a downward bias in real estate volatilities estimated from appraisal based indexes. This will in turn bias Sharpe ratios upward, so a note of caution is in place.

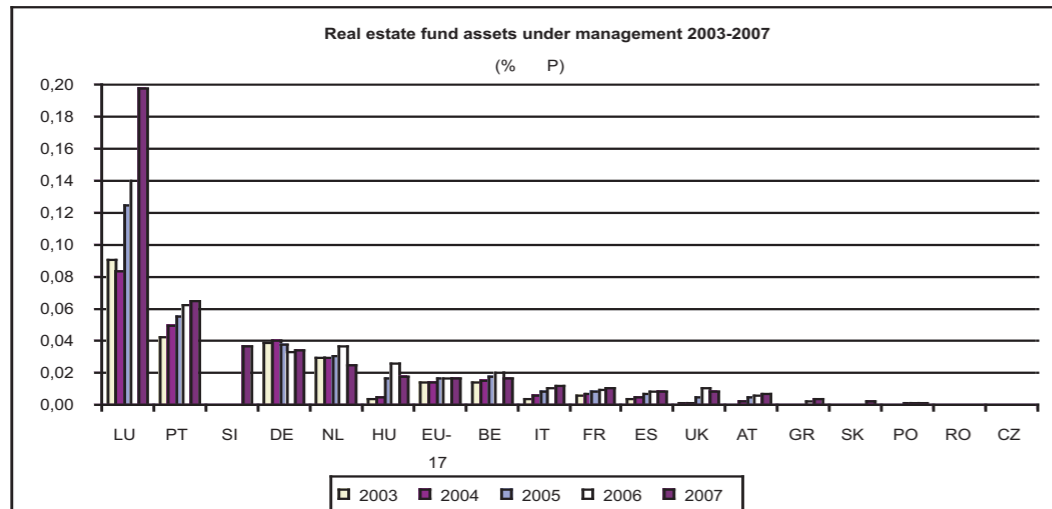
13) Professionally managed property specialists acquiring and managing property portfolios with a view to generating income from tenants and making a profit on an eventual sale of the property at a later date

14) Source: Edhec, 2007 citing INREV data

15) All private real estate vehicles/funds (excluding listed property companies, but including listed OREFs) as a % of all investment funds (including listed funds). Source for total private vehicles, INREV.

16) Source: Edhec research, 2007 «European Real Estate Investment and Risk Management Survey», citing data from EPRA; GPR; IEIF

Chart 3 below depicts the relative economic importance of real estate markets in the EU countries with active real estate markets.



Source: EFAMA, Ameco

2.4 Different types of «Funds»

«Real Estate Fund» is a broad term, potentially applicable to a wide range of different products, with underlying assets based on or linked to real estate assets. To varying degrees across Europe, retail investors are able to invest indirectly¹⁷ into real estate through a variety of professionally managed investment products. The most important ones are: (i) open-ended¹⁸ real estate funds (OEREF); (ii) closed-ended¹⁹ real estate funds (CEREF); (iii) Real Estate Investment Trusts («REITs» are property

companies with special tax treatment); and (iv) other property companies (for which there may or may not be an active secondary market). According to surveys undertaken by INREV, non-listed fund investment remains the most favoured route for increasing real estate exposure by institutional investors. This is evidenced by the growth in new fund launches over the last 12 years, rising from 86 funds in 1995 to 510 funds in 2007.

Chart 4: Market Growth, Funds by Launch year 1995-2007



Source²⁰: «INREV Vehicles Database Analysis»; INREV, IPD, July 2007 (page 19)

17) This report does not deal with direct investments into real estate whereby the investor becomes owner or co-owner of single properties.

18) Open ended funds continually issue and redeem units/shares according to the level of investor demand for new units or redemptions.

19) Closed end funds issue a fixed amount of share capital, and do not regularly permit investors to exit/redeem their investments, or issue additional capital. Investors can sell their units if there is an active secondary market for those units.

20) The INREV vehicles database includes vehicles with an institutional investor base. One exception to this rule is that vehicles with a focus on private investors ('retail-investor vehicles') will be included in the Database if those vehicles represent a substantial portion of the investment market at a country level. At the moment, the countries for which retail-investor vehicles are included are Germany, Italy, Portugal and Switzerland

In some Member States insurance related products can also be offered to retail consumers, with unit values based on the value of an underlying property portfolio. While there is an element²¹ of competition between real estate backed insurances and real estate funds at national level, unit linked life insurances are not commonly sold across border within the EU, they are subject to different form of regulatory and fiscal treatment. The fact that OEREFs exist under such insurance wrappers adds to the weight of evidence that retail customers have a demand for such funds. However, for the reasons outlined above, real estate based insurance products are not considered within the scope of this report.

Appendix 2 compares the key features of the four dominant indirect real estate investment products accessible for retail investors: i) closed-end real estate funds; ii) open-ended real estate funds; iii) real estate investment trusts (hereafter «REITs»); and iv) listed real estate companies (other than REITs). It clearly shows that although all of these products invest into the same underlying asset (real estate), they offer investors a different investment proposition. The most striking distinctions between OEREFs and the three other products are that: i) OEREF investors may withdraw their money at relatively short notice without being exposed to stock market risks (such as the higher volatility and the significantly higher correlation to equities); and that ii) OEREFs are a regulated retail investment product. The latter ensures a high level of investor protection safeguards which are not mandatory for competing products (such as diversification rules, appointment of depositary, valuation by independent appraiser based on international valuation standards, cap on borrowing, high level of reporting standards).

2.5 Why Open Ended Real Estate Funds («OEREF») have developed

Real Estate is a useful component in all retail investor's portfolios. Currently retail investors are not well served by the range of funds available to them. Real estate itself is not a liquid asset which can be freely transferable within short time frames. It can take between 3 to 6 months or more to complete the sale or purchase of real estate, even in normal market conditions. Traditionally, for this reason, most funds have been established as closed ended structures in most countries (both within the EU and outside). This locks investors into the fund for a fixed period of usually between 7-10 years, after which the fund is wound up and all monies are returned to investors. Most institutions and professional investors continue to invest on this basis through closed structures, as this

provides the maximum level of exposure to the real estate asset class and negates the need to hold reserves in other more liquid assets classes to meet investor redemption requests

However, many investors are attracted to real estate for its performance and risk characteristics, but still require the possibility for liquidity. These investors are either unable, or are simply not prepared, to have large sums of their money tied up for extended periods in illiquid investments (e.g. some pensions schemes, funds of real estate fund managers and most retail investors). This may be due to their investment mandate, due to legal or regulatory investment restrictions, or because they want to retain the possibility for unplanned withdrawals, due to changes in personal circumstances. Therefore, real estate fund managers have developed solutions in order to meet investors' requirements.

In several Member States REITs regimes have been introduced alongside, or as an alternative to OEREFs – partly to assist access to real estate by a wider investor base, which includes retail investors. However, REITs tend to display different performance characteristics from those of OEREFs and are subject to different levels of regulation and investor protection safeguards. They are often considered to be more closely correlated with equity market investments (particularly over short timeframes) than real estate or OEREFs (as measured by IPD/INREV benchmarks).

«Open ended» real estate were first introduced in Switzerland (1938) and Germany (1959), and are now available investments in twelve of European Member States. The Member States which have provided legal frameworks for the development of national OEREFs are: Austria, Czech Republic, Finland, France, Germany, Hungary, Ireland, Luxembourg, Portugal, Slovakia, Spain and the United Kingdom²². These twelve Member States accounted for over 70% EU GDP in 2007, and over 60% of EU population. Most of these frameworks have been enacted within the last two decades, with the exception of Germany²³. In all these Member States OEREF regulations have been designed so that funds can be offered to the public, as is also the case for UCITS funds and other nationally regulated retail funds. One important caveat is that these funds do not benefit from EU level passporting regime, as is the case for retail investment funds. It is therefore misleading to talk of an EU market at present – instead it is more accurate to describe the EU OEREF market as a collection of separate national OEREF markets.

21) For instance in the UK they compete side by side with OEREFs for retail investor custom

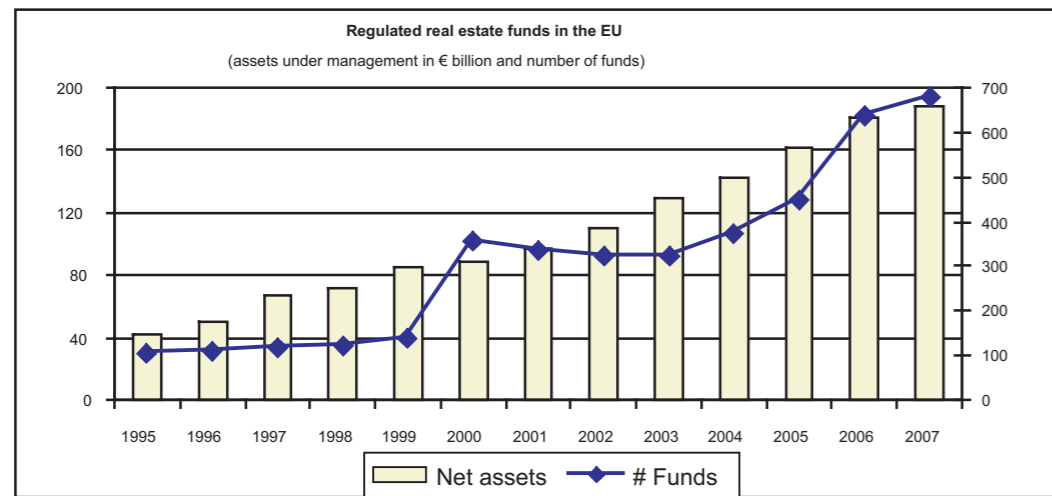
22) Furthermore, Ireland, Italy and Poland offer retail investors access to closed-ended real estate funds.

23) The first two German OEREF were created in 1959 and the legal framework dates back to 1969.

The most developed European OEREFs markets today are Germany, the United Kingdom, Spain and Portugal. In most OEREFs the majority of investors are retail investors²⁴

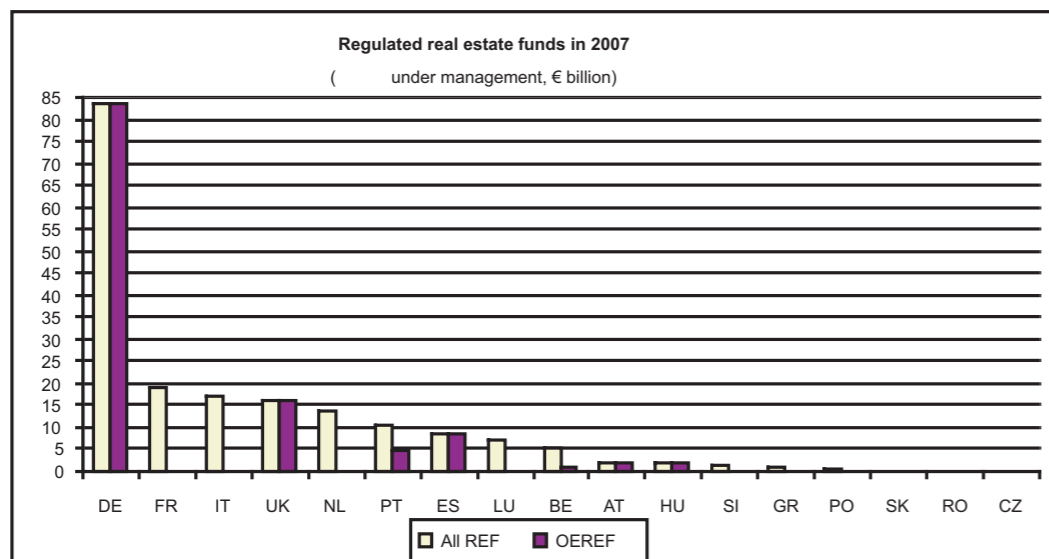
Retail OEREFs represented over €110bn²⁵, with a further €27.5 managed on behalf of institutional investors only. €30bn is also managed in regulated CEREFs (source: EFAMA).

Chart 5: European regulated real estate funds, assets under management end 2007.



Source: EFAMA, total European regulated retail funds 2007

Chart 6: Member States' regulated real estate funds, assets under management end 2007.



Source: EFAMA, total European regulated retail funds 2007

24) There are however some retail OEREFs with a high portion of institutional investors and certain OEREFs that are only sold to non-retail investors (such as German, Luxembourg and Austrian special funds).

25) Source: European Commission estimates, based on total AuM of €117bn (excludes open ended real estate funds which invest mainly into listed property companies, e.g. this removes c. €4bn UK assets). Primary sources include EFAMA (total EU open ended property fund assets reported to be €133bn at end 2007); ; Expert Group members citing national markets, funds which primarily manage «real» assets

In the Netherlands²⁶ retail investors invest through closed end funds and in Italy only a hybrid form of semi-open ended real estate funds is permitted by law. In France retail investors have traditionally invested in regulated closed end funds, which have been specifically designed for the retail market. However, in response to rising retail investor demand for real estate investments, coupled with the recognition that secondary markets for closed end fund assets are extremely limited, new rules for OEREFs in France were introduced in 2005²⁷.

3. The role and characteristics of OEREFs

3.1 What makes OEREFs different from other funds?

OEREFs combine investment characteristics of: i) direct real estate investing²⁸; with ii) the redeemability features²⁹ of traditional investment funds (e.g. UCITS). By maintaining a minimum proportion of their assets in more liquid instruments (typically between 10 and 20 %), OEREFs are able to manage the inherent asset/liability duration conflict between redeemable units and underlying assets whose liquidity is limited. OEREFs can be structured as nationally regulated investment funds³⁰. In these cases, they are subject to certain national investor protection rules and compliance requirements relating to [inter alia] fund investment policies, asset management activity and fund governance. This enhances their attractiveness as an investment product for many types of investor – and ensures that they can be marketed to retail investors. In all Member States which have developed a specific regime, they have treated OEREFs as suitable investments for public offer to all types of investors.

3.2 Medium to long term investment horizon for OEREFs

Investment into OEREFs can be made by contributing relatively small sums of money, relative to the asset in question (such as commercial or industrial properties). OEREF which are offered to retail investors typically invest the majority of their assets into the highest quality properties³¹. OEREF portfolios are structured as long term investments aimed at realizing a regular flow of income based primarily³² on real estate assets. This is partly because the liquidity of real estate itself is limited. Real estate investment gives rise to high operational costs. Equity and bond funds typically carry transaction costs of 0.20% and 1.00%, whereas similar costs for real estate can be as high as 4.00-7.50 %, depending on the country in which the fund is investing. These higher transaction costs are derived principally from higher stamp duty/ transfer taxes applied when properties are purchased. In addition there are other ongoing management costs (e.g. leasing, rent reviews, refurbishment etc) the costs of which are paid for out of the assets of the fund, making OEREFs less suitable for investors with short term investment horizons. Furthermore, the frontend fees investors typically have to pay discourage short-term investors from subscribing units in OEREFs³³. In recognition of this, investors typically remain invested in OEREFs for at least five years and in many cases far longer. OEREFs are often used as part of long-term saving plans.

3.3 What are their performance characteristics?

OEREFs display particular performance characteristics³⁴ which correspond more closely with the real estate markets than with other asset classes. OEREFs have a low correlation³⁵ with investments in other asset classes such as equities and bonds. On average, most funds aim to invest between 70% and 80% of their

26) In 1990, a rise of interest rates caused a high outflow of capital for one large Dutch real estate fund. This fund's portfolio was affected by a severe drop in real estate prices. For both reasons investors withdraw their investments in the fund. At that time the fund's properties were only valued simultaneously once at the end of the fiscal year. Investors could therefore predict that the redemption price was going to significantly decline at the end of 1990. A drop in asset prices was therefore anticipated and arbitrated by investors who sold their investments before the annual valuation with the intention of buying back their units at lower prices after the annual valuation. The fund manager reacted by suspending redemption and to transform the fund into a stock-listed closed end fund; see Bannier/Fecht/Tyrell 2006; Sebastian/Tyrell, 2006.

27) OPCI rules became operational in 2007.

28) exposure to the real estate asset class with fund performance characteristics which are closely correlated with current real estate market values

29) the possibility to redeem their investments at regular intervals under normal market conditions, with unit prices based on the underlying value of the [real estate] assets held within the portfolio

30) Those which are not aimed exclusively and professional investors and therefore subject to different or no rules at national level, and can be offered to suitably qualified investors via private placement – they therefore face a different set of issues in respect of cross border distribution.

31) Caveat that this can be subjective and perception of quality (property/locations) changes over time

32) The open ended structure offers retail investors flexible access to this asset but typically requires that a % of funds have to be invested into cash plus other more liquid assets (although not all Member States currently require this). This is required in order to ensure that OEREFs can meet redemption requests that may exceed the value of other investor's new subscriptions.

33) Given that short-time in- and outflows of investor money typically dilutes the fund performance and makes the liquidity management more difficult, there is an incentive for OEREF managers to discourage short-term investors.

34) As evidenced by Raimond Maurer, Frank Reiner, Ralph Rogalla: "Return and risk of German open-ended real estate funds", 2005

35) According to Maurer/Reiner/Rogalla, "the correlation between the real estate fund portfolio and the equity index, being 0.06, is not significantly different from zero".

total portfolio into real assets – with the remaining invested in more liquid investments such as cash, bonds or listed real estate securities – this ensures i) efficient use of assets while managers assess future investment possibilities, and ii) ensures that departing investors can be repaid at regular intervals (in accordance with national regulations). The OEREFs performance is not dependent on the development of stock market prices, as is usually the case with other redeemable structures, such as listed property companies or REITs. It is very difficult to make a direct comparison between OEREFs and listed property stocks. Prices for listed real estate remain more closely correlated to the stock market than to the sale prices for buildings³⁶[in particular over short time horizons]. Listed property stocks may also be harder to compare due to differing levels of gearing. Data from Germany shows that OEREFs display moderate but stable investment returns³⁷, thus implying a conservative but reliable risk-return profile. One further aspect of real estate investments is the fact that individual real estate values rarely fall to zero. By contrast, this risk is theoretically possible in the case of individual investments in debt and equity securities of listed companies.

○ 3.4 How can real estate fund managers provide regular redeemability?

OEREF managers need to ensure that all investors, investing on the same terms, are treated equally. OEREFs typically issue and redeem OEREF units according to investor demand – this is what is understood by the term «open ended». This requires careful liquidity management, as too much new money cannot necessarily be quickly and efficiently invested. Conversely too much demand for money to be returned to investors requires properties within the portfolio to be sold. The fund manager should also provide for a level of liquidity which enables him to make use of profitable investment opportunities when they arise. This requires managers offering daily liquidity to place increased focus on liquidity management and pre contractual disclosure and risk warnings aimed at preparing investors for the rare circumstances in which

daily redemption will not be possible due to insufficient liquidity reserves.

The OEREF redeemability structure serves as an important discipline³⁸ on fund managers to manage funds effectively and efficiently to mitigate risk of panic redemption demands (and associated reputational damage of a liquidity run). The OEREF manager must guard³⁹ against the need to fire-sell its best properties to cover redemption orders.

OEREF liquidity management is not straightforward. It requires high levels of skill and commercial judgement – in predicting levels of demand for units, and in delivering liquidity to investors – while maximising potential investment returns for remaining investors. In recognition of this, fund managers of OEREF structures may apply «deferral» or «suspension» mechanisms, to protect the fund. This can be activated in cases of extreme redemptions. Suspension clauses are also subject to detailed regulations in Member States and therefore differ from country to country. Such a mechanism is not activated unless absolutely necessary, given the reputational damage and the risk of investor disaffection. It is used as an exceptional measure and is not a substitute for lax liquidity management procedures. Such measures, while uncommon, have been used in the Netherlands⁴⁰, Germany⁴¹, and currently in the UK. In the UK several property vehicles have temporarily suspended redemptions over the last months due to significant devaluations of the UK property market. However, whether structured as insurance funds or OEREFs all products have predetermined redemption procedures. In the case of OEREFs these procedures are highly regulated by the national supervisor. Cases of suspensions highlight the critical importance of clear and robust procedures for liquidity management, notably at times of falling real estate values.

Deferral and suspension mechanisms therefore help to limit the potential for fund collapse due to mass investor withdrawal⁴² due to perceptions of changing economic

36) Edhec, November 2007

37) As evidenced by analyzing extreme performances at individual points in time, average performances for best and worst years and finally mean monthly and yearly returns and corresponding volatility. Raimond Maurer, Frank Reiner, Ralph Rogalla: "Return and risk of German open-ended real estate funds", 2005. Examining the historical risk-return profile of open-end real estate funds in Germany over the period 1980-2002, we find that, in comparison to equity and bonds, real state funds exhibited by far the lowest volatility. On a yearly basis, between 1959 and 2004 open-end real estate funds yielded an average return of about 4%, without a single year displaying a negative performance (Klug, 2004). OEREFs in Germany exhibit risk-return characteristics that are different from any other asset class and that make them attractive both for institutional and private investors.» http://www.bundesbank.de/download/bankenaufsicht/dkp/200704dkp_b.pdf

38) Fama and Jensen (1983)

39) OEREFs cannot solely rely on matching investor subscriptions i.e. new money, with investor redemptions i.e. departing money, to provide sufficient ongoing liquidity in OEREF units. Such «matching» is of course preferable for managers and investors, because this lowers the total operational costs associated with buying and selling properties. A matched bargain allows sellers and buyers to be paired off against each other and an element of the benefit or saving is shared between them. Instead, a minimum liquidity as well as a sophisticated risk and liquidity management system is required.

40) cf note 3

41) In Germany three retail OEREFs suspended redemption at the end of 2005/early 2006 and reopened after a few months. All three funds still successfully operate on the market. After one OEREF announced that it would reevaluate its real estate portfolio as a consequence of a corruption affair, investors massively withdraw their money from this and most other German retail OEREF. The two others suffered from mass outflows after a rating agency downgraded its rating of one of these funds.

42) E.g. Germany in 2005; UK in 2007/8

circumstances. For example, if enough investors chose to redeem their investments, the fund could be closed temporarily and reopened when the situation has improved. If this is not to happen in due course, the fund could ultimately be wound up. Similar challenges are faced by managers of other asset classes whose investments can suffer from illiquid markets⁴³.

Deferral and suspension mechanisms are however only a last resort. Prudent and sophisticated liquidity management not only addresses the risks associated with withdrawals, but also the risks of excessively high capital inflows. If the fund is not in a position to invest the capital on a timely basis, the fund performance may suffer, because real estate investments are typically better performing than liquidity investments invested in money market investments and short term bonds. Furthermore, the fund manager has to proactively react to (potential) market shifts. Given that mass withdrawals are in most cases driven by a decline of performance, prudent fund managers will sell properties when there are signs for an overheating of the local property market and reduce the inflow of new investor money.

○ 3.5 What level of investor protection is provided?

To ensure that OEREFs provide high levels of protection for their investors, OEREF are regulated as a retail investment product at national level. In all Member States where OEREFs regimes have been provided, they have been specifically designed with retail investor protection in mind. This shows that Member States have already taken the view that OEREFs are – in principle, subject to appropriate regulatory safeguards – suitable investments for retail investors, in the same vein as other retail investment funds, such as UCITS.

This means that the level of investor protection provided by OEREFs, in accordance with national rules, is comparable to other retail funds, such as UCITS, and taken together, are regarded by this Group to be higher than for other real estate investment products (whether constituted as funds or other financial instruments, or as insurances). Key features of OEREF regulation are similar to those for UCITS, namely: (i) both the OEREF and the management company need to be authorised by the financial regulator and that (ii) the national framework contains a set of important investor protection rules. The most important are: (i) risk spreading rules in order to reduce the risks of exposure to single properties, (ii) borrowing restrictions,

(iii) a minimum redemption frequency, (iv) mechanisms to ensure sufficient liquidity, (v) control by independent depositary acting in the sole interests of the investors, and whose role is to ensure that the OEREF and its management company complies with all duties set up by law or in the fund rules. Unit prices are calculated in a fair, transparent way and based on regular valuations provided by impartial and independent valuers, rather than by fund managers. As for UCITS funds, the unit price for OEREFs is derived from the current net asset value of the underlying assets.

○ 3.6 How are funds distributed?

Fund managers may choose to distribute OEREFs via a number of different channels. According to FERI Fund Market Data the networks of banks and insurance companies have dominated fund distribution in most EU states. However, many financial products in Europe are increasingly sold to retail customers via 'fund supermarkets' or other 'open architecture platforms'. It is usually the case that these entities require the ability to subscribe, redeem and switch money between different funds and asset classes on a daily basis. While some OEREFs are daily priced, not all offer daily liquidity. There is no standardised regulated structure for redeemability of OEREFs in Europe; as such they are effectively excluded from being sold via these platforms. Even at national level, OEREFs do not always qualify for this distribution channel, thus vastly reducing choice for the end customer.

○ 3.7 Conclusion

Retail OEREFs investment strategies and risk management practices must correspond with the expectations of retail investors. Their characteristics establish OEREFs as a distinct investment product within the real estate asset class. OEREFs represent a particular combination of performance, risk and regulatory characteristics. While a number of their characteristics are explained with reference to their underlying real estate investments (high transactions costs, limited liquidity of investment markets, low correlation with other asset classes and relatively low volatility), they also display similarities with traditional regulated investment funds, such as UCITS (redeemability, highly regulated, unit price based on net asset values). They should therefore be seen as a particular form of investment product, suitable for the retail investor, but different from other forms of real estate investment and investment fund products.

43) Cf funds invested in asset backed securities during Autumn 2007

4. Business case for EU level action

4.1 Expected benefits of panEuropean OEREFs

OEREFs face specific challenges in that they must attract funds from potentially very large numbers of [usually retail] investors⁴⁴. Under the current legal framework the fund manager would have to create four identical funds to access investors in four different countries⁴⁵. Scale effect is more important for real estate investments than in the context of other asset classes because property funds cannot easily be cloned for different markets. Notwithstanding this clear level of demand already evident from retail investors, it is notable that only a small number of real estate managers offer products to retail consumers. INREV has identified over 150 managers who offer real estate funds in Europe, yet only a small handful of those offer products to retail consumers. Undoubtedly, many are put off by the lack of a regulatory structure and/or the difficulties in cross border marketing. If a pan EU regulated structure for OEREF existed, it is likely that many more of the existing managers would offer products for retail investors, thus increasing choice and competition.

○ Economies of scale

OEREFs play an important role in mobilising household savings for investment into real estate assets on a collective and diversified basis. The emergence of cross border OEREFs would increase the potential for more OEREFs and larger funds. Economies of scale are particularly important for OEREFs. Real estate funds can only become cost effective through scale (irrespective of the product structure in question). Economies of scale would result in:

- a reduction of costs per investment unit for the end investor;
- the development of a specialised product range and more specialised know-how in fund management can be achieved.

○ Diversification benefits

Diversification is particularly important and arguably harder to achieve for real estate funds than for other asset classes. Given the character of real estate investments where a single investment in property can only be made at comparably high costs, the relationship between the fund size and the level of diversification is even more important. If cross-border distribution were possible, notably OEREFs with a relatively small domestic investor base could more easily reach the critical mass for the required diversification by both geography and sector.

○ Investor demand for OEREF

The current level of assets managed by European OEREFs clearly demonstrates that there is a demand for these products at national level among retail investors and certain institutional investors. Assets under management for OEREFs in the EU's top 5 markets have grown at a compound annual growth rate of 6.8%⁴⁶ between 2003 and 2007. Investments by retail investors into OEREFs in particular in France and Netherlands, also indicate that there is demand for real estate investments in countries without OEREF rules (or only newly created rules, e.g. France).

This demand can be explained by:

- a general wider interest among investors, including institutional investors, in different/alternative types of funds – funds that can either provide increased potential for returns, for increased asset security (guarantees), for increased diversification, or a combination of these elements;
- for retail investors, increased accessibility to these new products, including those from other Member States, through evolving distribution/sales channels whereby products can compete more freely alongside each other from other EU countries; and
- as part of a greater awareness among investors and financial intermediaries of the changing needs of individuals to ensure that they save adequately for the long term and maintain adequate levels of income and security in their retirement. This Group strongly believes that OEREFs will form an important additional channel through which to accumulate retail long term savings.

○ Investor demand for «cross-border» distribution of OEREF

In the absence of a passporting mechanism it is difficult to estimate the level of cross border demand that could be expected from retail investors. However, given recent experience in the distribution of foreign UCITS products across the EU to retail investors, we increasingly observe that the nationality of a fund is becoming less and less important and does not prejudice sales to foreign investors. There do not appear to us to be significant cultural barriers to cross border investing or distribution of funds that are specific to OEREFs. This Group believes that consumers would be better served if regulated OEREFs could be sold effectively and efficiently across EU borders, providing increased fund choice and more competitive prices.

○ Avoidance of further fragmentation in the future

In recognition of the important role OEREFs can play in national real estate markets and investor's portfolios, several national regimes have been developed only recently (e.g. Austria 2003; Slovakia 2003; France 2005; Finland 2007).⁴⁷ A common EU approach would now help to ensure a common EU OEREF market in which funds could be sold and accessed across borders. An EU regime would provide the added benefit that Member States without their own national regimes, could also utilise the common EU wide rules, rather than having to develop new OEREF legislation.

4.2 Limitations to cross border development

Over the past decade Europe witnessed a strong growth of retail investment in OEREFs. However, this growth is based on purely domestic sales of OEREFs. In recent years more and more fund promoters have sought to offer OEREFs across EU borders, to investors in other Member States. In practice however this has proved particularly difficult and most attempts have been unsuccessful. Within the EU it is very difficult and sometimes even impossible to promote OEREFs across borders to retail investors. This is due to the absence of a formal recognised EU status for OEREF or a formal recognised retail distribution channel for these

products. Currently cross-border distribution of OEREFs is almost exclusively undertaken on a private placement basis to institutional investors only. Retail investors, the main investor base for OEREFs, have no access to private placement⁴⁸.

Both regulatory and fiscal barriers impede the creation of a Single market for OEREFs. Existing national OEREF markets are still practically sealed off from foreign competitors. OEREFs may only expand within the boundaries of the home market - which is a small market in some Member States. The result are inefficiencies due to a lack of competition, small and less diversified portfolios in Member States with a small domestic investor base, investments predominantly in local properties which increases the cyclical risks and higher costs for investors. Another negative effect is that retail investors in the currently 16 Member States without an OEREF regime do not have any access to this real estate investment product. But even for retail investors who can buy domestic OEREFs, choices are limited.

Recommendation 1:

The need for an European Single Market framework for OEREFs

Over the last two decades OEREFs have become a mainstream investment product for retail investors in many Member States. At the same time the OEREF industry has significantly matured and now manages over €110 billion assets under management. However, the EU is currently a patchwork of fragmented national OEREF markets. Retail investors in more than half of all Member States do still not have access to OEREFs. This is due to the absence of a regulatory framework at domestic level and the lack of a European Single Market for OEREFs. Almost all attempts to distribute OEREFs across EU borders have been unsuccessful. Multiple and divergent national OEREF regimes create significant barriers to cross border OEREF market access. These differences should not continue to represent a straitjacket on the development of a pan European OEREF industry and to deprive retail investors of access to foreign OEREFs. There is now an urgent need to facilitate the cross border offer of OEREFs to retail consumers. Only an EU passport can create a Single Market for OEREFs.

44) For instance, the hausInvest Europe of Commerz Real AG has more than 400.000 investors.

45) This creates conflict issues between funds for assets.

46) source: Commerz Real AG

47) By contrast, in Germany OEREFs have been available since 1959, in Portugal since 1987 and in the UK since 1992.

48) Offers not subject to rules for public offer of securities

4.3 Lessons from European level retail fund regulation

The UCITS Directive sought to overcome differences in national rules for retail products. However at the time when the UCITS Directive was agreed (1985), the real estate fund industry in most of Europe was in its infancy, characterised by unregulated products, underdeveloped risk management practices, inconsistent valuation methodologies and little consistency with regard to the redeemability of assets. The market now is clearly much more sophisticated and all of the risks outlined in this report have now been positively addressed (liquidity management functions, risk management tools, valuation practices, pricing policies, disclosure standards etc) through national regulation. As we have demonstrated in this section, OEREFs are now well supervised and regulated, have strong governance controls and are highly transparent. The market for property has become so strong that there is now also a well developed derivatives market taking shape, initially in the UK, and now also in France and Germany.

The UCITS Directive is a clear example of how the Single Market for financial products depends on formal and legally secure EU passporting arrangements. Before the UCITS Directive was enacted there was virtually no cross-border investment fund market, whereas today it is a market of €6 trillion – with a strong cross border component [c. 50% new sales relate to cross border funds]. The absence of a common set of harmonised EU

rules for OEREFs creates significant obstacles to cross border distribution. Regulations have not kept pace with these changes. In recognition of this the UCITS Directive includes a clause that a review⁴⁹ would later be necessary to consider whether similar passporting arrangements might later need to be considered for, inter alia, real estate funds. This time has now come.

4.4 Regulatory barriers to cross border OEREF access

Regulatory barriers result from the fact that most of the Member States restrict the public distribution of non-harmonised funds situated in another Member State by requiring that the regulatory standards (notably for investor protection) of the foreign OEREF are equivalent to the standards set up in the national OEREF regime. Most of the national regulators approve the public distribution of foreign OEREFs to retail investors only if the fund complies with the major local product rules. Equivalence is therefore difficult to demonstrate given that Member States have similar, though not identical rules for OEREF. The Group has undertaken a comprehensive comparison of the different national regimes (published with this report) in order to i) analyse how much common ground these frameworks provide for an EU regime on OEREFs (see table on page ...), but ii) also to elaborate the regulatory barriers blocking effective cross border market access. The following table illustrates the major differences between the various national OEREF regimes.

Box: Comparison of major regulatory differences

This comparison demonstrates that the mechanisms national OEREF frameworks use to obtain a similar outcome are sometimes different and that details of regulation often differ.

Issue addressed	Regulatory differences in Member States
Risk spreading rules	Some regimes require OEREF to invest at least in a certain number of properties (ranging between 5 and 10). In other regimes no single property may exceed a certain percentage of AuM (ranging between 15% and 35%)
Borrowing limits	The borrowing thresholds (ranging from 10% to 50%) and the basis to calculate them differ significantly ⁵⁰
Use of property SPVs	i) In a few Member States OEREFs may not use SPVs. In others they may invest up to 49%, and in one State, all of their assets may be invested through SPVs; ii) Most Member States only allow interests in SPVs, if the OEREF may control the SPV whereas in others there are no such restrictions
Minimum redemption frequency	Wide range from daily to biannual redemption
Minimum liquidity	Member States with frequent minimum redemptions require a minimum liquidity (ranging between 10% to 20% of AuM); others do not require a minimum liquidity
Maximum liquidity	The thresholds for permitted liquidity range between 25% and 49% of AuM
Valuer	In most Member States properties are valued by one single valuer, whereas in others a college of valuers undertakes the valuations
Frequency of ongoing valuations	In some Member States properties have to be valued monthly whereas in others yearly valuations are sufficient
Binding effect of valuation	In most Member States the OEREF manager is bound by the valuation price determined by the independent valuer(s) when calculating the unit price, whereas in others the manager may justify a different value
Role of the depositary	In some Member States the depositary has to consent to property transactions, whereas in others no consent is required

49) Mandate for review of UCITS (Article 2 of Directive 2001/108/EEC). - review the scope of the Directive in terms of how it applies to ...real-estate funds... on the size of the market for such funds, the regulation, where applicable, of these funds in the Member States and an evaluation of the need for further harmonisation of these funds;

50) In some Member States the borrowing thresholds refer to the total assets under management whereas in others only to the real estate assets.

4.5 Absence of common regulatory understandings

This Group has examined six case studies where OEREF managers actually undertook to distribute their fund across border.

○ Surmountable barriers

In the two cases in which foreign OEREFs finally obtained host regulator approval for public distribution the process of obtaining recognition was very onerous and notably involved high compliance costs. In one case the costs exceeded €150.000 in external legal fees, plus significant internal resources.

Cross-border distribution of OEREFs is only possible (i) if the host regulator does not require foreign OEREFs to be identical with domestic OEREFs, i.e. interprets the equivalence in a broad sense, and (ii) if there are no significant regulatory differences between the home and the host Member State regime. Under certain conditions OEREFs can be structured in a way that allows them to be distributed to more than one Member State. However, no OEREF structure is that flexible as to allow promotion to multiple Member States.

○ Insurmountable barriers

In the majority of cases obstacles for cross-border distribution proved to be insurmountable. There are two principal reasons:

i) Mis-categorisation by host state regulator of status of foreign OEREF

In most cases the host regulator denied approval for the public distribution of the foreign OEREF by arguing that it is not equivalent to nationally regulated OEREFs. In one case, for instance, the foreign OEREF could not comply with the host Member States' investment rules that require that domestic OEREFs have to invest at least 50% of their assets in residential properties. In another example the host regulator mis-categorised the foreign OEREF as a hedge fund since it did not comply with all domestic requirements for OEREFs.

ii) Host Member State has no nationally regulated OEREF

There are several examples of OEREFs that could not be promoted cross-border for the simple reason that the host Member State has no national OEREF regime in place. In one case, for instance, the host Member State only accepted the public distribution of CEREF to retail investors.

○ Deterrent to attempting cross border marketing

This Group believes that the existence of these barriers deters managers from trying to market funds to retail investors on a cross border basis. The Group is aware of other examples where OEREF managers would have liked to market their units abroad, but have not even tried to get the approval of the host regulator after having been advised by their lawyers that such approval would be impossible to obtain. The end result is pent up demand, stagnant markets and missed opportunities for investors and for OEREF managers.

Recommendation 2:

An effective solution requires EU legislative action

This Group strongly believes that legislative action at European level is required in order to overcome existing regulatory barriers to the marketing of OEREFs to retail investors across borders. Only a clear set of binding rules can bring about the legal certainty needed for opening the currently sealed off markets for the cross-border distribution of foreign OEREFs to retail investors. The development of an EU regime would allow asset managers and consumers in all 27 Member States to benefit from new investment and business opportunities. At the same time it would provide a ready made framework for Member States which currently have no such rules.

4.6 Fiscal barriers to cross border OEREFs

Although tax issues are not a core item of this report, harmonising the regulatory framework for OEREFs might also mitigate some serious tax barriers which currently impede cross boarder activities of OEREFs.

Unlike mobile assets, the fixed nature of property gives rise to more complex tax considerations – with special taxes or duties on real estate transactions – in addition to those on rental incomes and on capital gains. National fiscal authorities' claims on taxation of income streams relating to real property assets remains a highly sensitive issue. While UCITS schemes⁵¹ and OEREFs have significant common regulatory characteristics⁵², there are important differences with regard to the assets held and income streams generated by their different activities. OEREF are, from the tax point of view, more complexly structured than UCITS.

51) Tax Barriers for UCITS have been analysed in detail in three reports the last of which is by PricewaterhouseCoopers/EFAMA, 2007, Tax discrimination against foreign funds: Light at the end of the tunnel

52) Both would in technical discussion on tax treaties and domestic laws often be referred to as Collective Investment Vehicles without distinguishing securities and property funds

○ Taxation at fund level

Domestic OEREFs: are, in most cases, treated as tax/exempt transparent⁵³ in order to allow investors to be treated as if they had directly invested into property. One major problem for cross-border distribution of OEREF is that most⁵⁴ tax authorities do not recognise foreign OEREFs as tax transparent. The reasons are twofold: (i) the regulatory structures of foreign OEREFs are different or (ii) foreign OEREF do not fit into the domestic tax system. Even with UCITS, similar problems have in the past been experienced, but are now diminishing, whilst still not solved entirely⁵⁵. This disadvantages foreign OEREFs compared to domestic OEREF which do not [usually] pay taxes at the fund level.

Foreign OEREFs: therefore need to make use of multiple SPV structures and internal financing in order at least to reduce taxes – without which investments would usually not be made as it would be uneconomical to do so. All additional structuring costs are usually charged to the fund itself, and therefore existing investors effectively pay for the inefficiencies created by complex and incompatible national approaches to taxation of OEREFs.

○ Taxation at investor level

Differences: Member States taxation of income streams relating to OEREF differ widely. This entails different consequences under the double taxation agreements. Income tax is typically secured by way of withholding tax. If an OEREF qualifies as a treaty beneficiary under the given double taxation agreement, withholding tax can be reduced. However, (i) not all Member States recognise OEREF of the contractual type (with no legal entity)⁵⁶ as treaty beneficiary or (ii) apply withholding tax to foreign investors. Looking at procedures, withholding relief should be made available in a practical and unbureaucratic way such that it can be obtained in reality and without delay. As regards the taxation of gains derived from an OEREF, some Member States grant favourable tax treatment only to investors in domestic OEREF. In other Member States equal treatment of foreign and domestic OEREF is subject to explicit and often very onerous reporting obligations (which require an OEREF to have a multiple reporting system).

Implications: The crediting or refunding of withholding tax may discourage domestic investors from investing in a foreign OEREF. Whereas investors in a domestic OEREF can credit or refund such tax in their personal income tax filings (unless withholding tax is of a definitive nature), investors in a foreign OEREF may have difficulties in obtaining the same treatment, as home tax authorities may have differing view on qualification of income or nature of withholding tax.

○ Options for addressing barriers

There are 3 main options for remedying the fiscal barriers for the cross-border distribution of OEREF: Option 1: enforce existing EU treaty freedoms that prohibit the discrimination of foreign OEREF/foreign investors in domestic OEREF. Option 2: Commission Statement on OEREF how the existing EU freedoms are considered to apply in the context of OEREF and to enforce them actively. Option 3: Common tax framework for OEREF as part of a wider OEREF Directive. This could contain basic rules, while allowing the source and the resident countries to fix the tax rates⁵⁷.

Option 3 would be the optimal solution from the industry's perspective that would truly foster a single market for OEREF. However, significant political obstacles stand in the way of any form of tax harmonisation. As an intermediate step the Group would stress the importance of «consistency» of treatment of foreign and national OEREFs by all Member States authorities, and request that Member States should not prejudice one vehicle over another (corporate, contractual and SPV structures).

○ Preferred solution for overcoming barriers

Any potential regulatory solutions to differences between Member States' regimes for OEREFs to facilitate cross border fund distribution would not, in themselves, sweep away existing tax obstacles. However, clarification of a common regulatory approach (harmonised rules) would form an effective basis on which to reach common agreements on consistency of fiscal approaches to OEREFs.

53) This is not the case in Spain, where OEREF are neither tax exempt, nor tax transparent

54) With the exceptions of Netherlands, Spain

55) See footnote 42

56) Such as FCP, Unit Trust and German Sondervermögen.

57) Real Estate Investment Trust (Reits) tax barriers are similar to OEREFs tax issues and have been subject to an OECD initiative with a public discussion draft for harmonisation of treaties dated 30 October 2007, "Tax treaty issues related to REITS" the proposed solutions to be considered and evaluated also for OEREFs; OECD established the Informal Consultative Group on Taxation of Collective Investment Vehicles and Procedures for tax relief for cross-border. Investors with a mandate to complete work by November 2008, the results expected to be equally being important to OEREFs (see Minutes of First Meeting London 9-10-11 May 2007)

**Recommendation 3:
Fiscal regime to accommodate cross border OEREFs**

In addition to regulatory barriers, OEREFs encounter significant tax barriers when being distributed across borders. There are both tax barriers at fund and at investor level.

Foreign OEREFs are taxed in a discriminatory way compared to domestic OEREFs. While domestic OEREFs are usually tax exempt at fund level, tax authorities refuse to grant the same status to foreign OEREFs. Moreover, in several Member States national tax law discriminates investors in foreign OEREFs over investors in domestic OEREFs. Both barriers result in distorted competition.

The Group is aware that a common tax framework for OEREFs would be very difficult to achieve politically. The Group therefore recommends a pragmatic approach. In the light of the EU treaty freedoms, notably the free movement of capital, it reminds Member States of the prohibited discrimination of foreign OEREFs and invites the EU Commission, if need be, to enforce these freedoms.

4.7 Conclusion

This Group has presented the potential sources of benefit for real estate fund investors and fund managers if OEREFs were able to operate on a cross border basis. The Group has explained that regulatory obstacles prohibit development of this market in Europe. Without coordinated action little progress can be made towards developing European OEREF markets. It therefore remains to consider how a European regime could be designed; such that OEREF managers from different Member States, with slightly differing business models, could all benefit and could develop products that attract and satisfy wider European investor demand, and at the same time assuring at all times high levels of investor protection.

5. Implementing an OEREF regime

5.1 Introduction

This section presents the Group's proposals on how such a regime could be developed. It is the result of a comprehensive comparison of national OEREF regimes the results of which are summarised in appendices 1 and 3 and legal comparisons which are published alongside this report. This section presents i) an overview of the major commonalities of national OEREF regimes, ii) the core principles on which such a regime would be based and iii) the essential chapters which would need to feature in the regime. There has been a high level of consensus within the Group about the core building blocks of the regime; however, the details of some of the main regulatory restrictions which should apply to all OEREFs need to be considered particularly carefully. This is because each practitioner operates within a different set of local regulatory restrictions – each having developed their own specific operating models and business practices based on their national rules and experiences.

The Group acknowledges that any EU harmonisation, by its very nature, requires a certain level of compromise [by industry players and by Member State authorities], and that some aspects of existing market practice or supervisory procedures would need to change and to converge around commonly agreed EU standards. While OEREF business models differ from one Member State to another in some particular respects (eg investment, borrowing, and redemption policies) this Group believes that there is a high level of commonality between such models. An EU wide OEREF regime could be designed to accommodate different business models and practices.

Following the introduction of a new regime all OEREFs would be free to compete on an equal footing. Convergence around a single set of rules would not come without costs for some players, though it would transform the European marketplace in terms of increased business opportunities for all OEREF managers and help create markets in Member States where OEREFs are currently not yet found. Following its reflections, the Group was able to reach conclusions on the most effective approach to addressing areas where currently Member States rules/practise diverge.

Major commonalities of national OEREF regimes

The national approaches provide for a comparable level of investor protection and corporate governance while at the same time allowing the manager to operate in a flexible business environment⁵⁸. This is a well founded basis for an EU OEREF regime. The major commonalities are presented below.

- **Regulation:** In all twelve Member States OEREFs are regulated investment products with specific safeguards to ensure retail suitability. The OEREF and its management company need to be authorised and are subject to an ongoing supervision by the financial regulator which also has to approve the fund rules;
- **Assets:** There is a common understanding that OEREFs may inter alia invest in the following real estate assets: (i) property⁵⁹, (ii) heritable building rights, and (iii) other property rights (e.g. usufruct). OEREFs may either do so directly or indirectly through SPVs.
- **Diversification:** The national approaches feature similar risk spreading rules. They contain (i) minimum requirements for the portfolio diversification (either by a minimum number of properties or by limiting the weight a single property may have) and (ii) limitations in (minority) interests in SPVs.
- **Borrowing:** All regimes allow OEREF to borrow significantly beyond the 10% maximum threshold for UCITS. However, there are borrowing limits in all twelve Member States.
- **Redeemability:** The investor's right to request redemption is a major characteristic for OEREF. Nearly all twelve national frameworks therefore contain a minimum redemption frequency which shall ensure that investors may redeem units within that predefined period. However, almost all national regimes allow OEREF to suspend redemptions in exceptional circumstances, notably if liquidity is insufficient.
- **Liquidity:** In order to enable OEREFs to redeem units at investors' request most Member States require OEREFs to hold a certain amount of liquid assets. At the same time most frameworks also provide for a maximum liquidity to ensure that the OEREF is predominantly invested in real estate assets.
- **Valuation:** Another common feature in all twelve Member States is that each single real estate asset of an OEREF has to be valued by at least one independent, impartial, reliable and qualified valuer. Each property has to be valued prior to acquisition and prior to sale as well as on an ongoing basis at least once a year.
- **Pricing:** Under all frameworks the unit price is derived from the net asset value of the underlying assets. This means that the unit price reflects the property prices determined by the valuer. The OEREF has to calculate and publish the current unit price whenever subscriptions or redemption take place. This ensures that investors enter or exit at the current price which equals the latest price of all assets.
- **Oversight:** Depositories play an important safeguarding role. They monitor whether the OEREF complies with all duties set up by law or by the fund rules. In some Member States the depository's consent is required for certain transactions (such as the acquisition, encumbrance or sale of property).
- **Conflicts:** Almost all national regimes have provisions in place for the prevention of conflicts of interest. They notably address conflicts which arise if a property is sold within the same financial group.

⁵⁸⁾ To achieve the same goals, Member States, however, often use different mechanisms. You can find a list of regulatory differences under ...

⁵⁹⁾ Including undeveloped land and property under construction.

**Recommendation 4:
Strong potential for a harmonised approach**

Given the high level of commonality that exists, the new EU OEREF regime should be modelled to the extent possible on existing national frameworks. To build the framework on tested and common ground will also ease political negotiations and speed up the process.

5.3 Core principles

This Group calls on European policymakers to build on the experiences from Member States' regulatory regimes for OEREFs. The Group suggests that the EU OEREF regime would harmonise existing Member States' product rules on OEREFs and replace them with a new EU rulebook. These rules would therefore also be implemented by Member States currently without OEREFs.

The broad principles should be developed in accordance with IOSCO principles on investment funds and include the following:

- the regulatory system should set standards for the licensing and the regulation of those who wish to market or operate a collective investment scheme
- the regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client money and assets
- regulation should require full, timely and accurate disclosure of financial results and other information which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme;
- regulations should ensure that there is a proper and disclosed basis for asset valuation and the pricing and redemption of units in a collective investment scheme.

- The regime should be designed to ensure high levels of protection for retail investors and should offer investor equivalent levels of investor protection as those of UCITS funds.

- funds registering in their home Member State in compliance with the EU regime should be able to be passported throughout the EU without requiring additional registration in each Member State where the fund was offered.

- the regime should offer a high level of clarity over which activities are permitted to be undertaken by different actors involved with the operations of the OEREF.

- the regime should take into account the variety of existing business models in existence today – these differ according to the investment strategy and geographic focus. Such variety is valuable as it widens the choice, increases competition and enables investors to select a tailor made investment proposition. Potential EU provisions should therefore be conceived in a way to allow different business models to coexist and new business models to emerge.

5.4 Essential regulatory chapters

The Group proposes a set of regulatory features that should form the basis for constructing a panEuropean OEREF regime. The key features of this new regime are summarised below, and presented in more detail in appendix, with further information on how these issues could be effectively approached by the European legislator. Together, these features should be seen as a complete package of regulatory safeguards and investor protection rules for EU OEREFs. This regime should be flanked by appropriate tax measures by national fiscal authorities.

Essential elements for European regime for OEREFs

- **Authorisation** of the OEREF and its management company⁶⁰ by the financial regulator. OEREF funds and their management companies should be regulated and subject to ongoing supervision to ensure that the interests of retail investors are protected in a UCITS like way;
- **Approval** of fund rules by financial regulator;
- **A definition of eligible assets for OEREF;**
- **Diversification requirements** to reduce the risk exposure to e.g. a single property;
- **Limits for investments** in more risky assets such as undeveloped land, property under construction, minority interests in SPVs;
- **Borrowing limits** that, while enabling the manager to increase the efficiency of the real estate investment, at the same time ensure that retail OEREF are not over-leveraged;
- A **minimum redemption** frequency that enables retail investors to request to withdraw money at least quarterly⁶¹; retail OEREF should, however, be able to redeem more often on a voluntary basis;
- A **minimum liquidity** that ensures that the retail OEREFs may under normal market conditions redeem units at investor's request⁶²;
- A **maximum liquidity** that, while ensuring that OEREFs are predominantly invested in real estate, allows the fund manager to restructure the property portfolio and to flexibly react to market developments;
- OEREF should be able to **temporarily suspend** redemption if redemption requests exceed the existing liquidity, as the fund manager should not be forced to sell property at fire sale prices to investors' detriment and as a suspension may, under certain circumstances, be the only way to ensure an equal treatment of all investors;
- Unit price calculation derived from **net asset value**⁶³;
- **Unit price** calculation and publication linked to subscription and redemption policy ;
- **Property valuation** valuation in accordance with international valuation standards by one or more independent, impartial, reliable and competent appraiser having knowledge of the specific real estate market. The appraiser shall be notified to the regulator;
- Each property has to be valued prior to its acquisition and sale as well as on a regular basis not exceeding one year; but exceptional situations will require more regular valuations to avoid unit pricing based on stale values
- **Binding effect** of valuation price determined by appraiser for unit price calculation
- A **depository** ensures that the OEREF complies with the law and the fund rules and protects the best interests of investors (including the protection of the assets);
- Rules to **prevent** and/or resolve **conflicts** of interest;
- Retail investors should be offered free of charge a **prospectus** and **key investor information** prior to their purchase of units. The latter shall notably disclose the long-term investment focus of real estate investments and the relatively high transactions costs involved with real estate investments. It shall furthermore warn that redemptions might be temporarily suspended under exceptional circumstances.

60) Please note, however, that retail OEREF may also be established in the corporate form (e.g. as SICAV). Retail OEREF of the corporate form may be internally managed and thus do not require a management company.

61) The minimum redemption frequency refers to the number of times a year units can be redeemed. In case of quarterly redemptions investors may redeem units four times a year. A separate issue is the 'payback period', i.e. the maximum amount of time an investor might have to wait to have that claim honoured.

62) The minimum liquidity can be complemented by alternative solutions (such as bank guarantees or credit lines). Additionally retail OEREF should have a liquidity management system in place.

63) Price calculation for UCITS is based on the same concept in order to ensure that retail investors fairly participate in the performance of the underlying assets.

Some essential features of the EU regime (described below in more detail) were subject to particular discussion. The Group would like to stress that agreement on these issues would need to be found, if the OEREF regime were to be able to function effectively, and ensure high protection for retail investors.

(i) The particular role of SPVs in real estate investment

Property SPVs are indispensable for OEREFs. They i) ring fence liabilities⁶⁴ of the property and the financing⁶⁵ of the property; ii) enable OEREFs to invest in countries where foreign funds are not allowed to directly acquire property; and iii) they reduce transfer taxes and thus enable OEREFs to compete with other investors that may use SPVs.

(ii) The particular role of borrowing in real estate investment

UCITS may only borrow up to 10% of their value. OEREFs by contrast should be allowed a significantly higher degree of borrowing when acquiring real estate assets (namely land/buildings) for the following reasons: i) real estate provides a high and stable covenanted income that is on average in excess of borrowing costs and can thus be used to make interest payments and amortise debt at relatively low risk; ii) real estate is not of itself leveraged, whereas UCITS invest in companies/assets that are typically already leveraged; iii) other real estate funds may use borrowing which would give them a competitive edge when bidding against OEREFs for real estate assets. For these reasons this Group recommends that OEREFs should be entitled to borrow up to 60% of their real estate assets.

(iii) Sufficiently frequent redemptions

OEREFs like all other real estate investment products have a long-term investment focus. A unique selling point of OEREFs is that investors may withdraw their money within short notice. The combination of a long-term investment with the flexibility to be paid out quickly makes OEREFs very attractive for typical retail investors. This flexibility is, however, not free of charge. Given that OEREFs cannot usually sell real estate quickly enough to finance redemptions and taking into account the high costs of property transactions, OEREFs have to hold sufficient liquidity reserves. OEREFs typically invest only 80% of their assets in real estate. This may have an impact on the performance and distract certain types of investors from investing in OEREFs.

This Group is convinced that relatively frequent redemptions are an important precondition for attracting retail investors. However, this does not necessarily mean that OEREFs have to be daily traded as is currently the case in the most mature OEREF markets. The OEREF regime should rather allow OEREFs with different redemption policies and, accordingly differing levels of liquidity, to coexist.

OEREFs should therefore redeem at least once in a quarter, but may do so more often on a voluntary basis.

(iv) Liquidity management

Unlike equity funds OEREFs cannot sell property to respond to redemption requests as this would take too long. OEREFs should therefore be obliged to hold a minimum liquidity of 10% of their assets under management and install a sophisticated risk control and liquidity management system. Such mechanisms ensure that OEREFs may in the overwhelming majority of cases redeem units at investors' request.

However, as currently witnessed in some segments of the UK property fund markets, or two years ago in Germany, investments in redeemable real estate products may under exceptional market circumstances face difficulties in redeeming units. In the best interest of investors. OEREFs with insufficient liquidity should not be forced to sell properties at fire sale prices. Instead, OEREFs should be entitled to make use of a set of mechanisms to avoid a 'run', such as short-term borrowing or a quantitative⁶⁶ restriction of redemptions. If these instruments are insufficient, the OEREF may temporarily suspend redemption in order to generate liquidity by selling property without time pressure. Historical examples have demonstrated that these instruments, if used properly, allow OEREFs to solve liquidity problems and to regain strength.

(v) Maximum liquidity

In order to be truly called real estate funds OEREFs have to predominantly invest in real estate. On the other hand OEREFs may only operate successfully, if they are not forced to invest quickly, but may take the necessary time to find good investment opportunities. OEREF should also be able to sell properties or to restructure the portfolio. OEREFs should therefore be allowed to hold up to 49% in liquid assets.

(vi) Independent valuation

The independent valuation of property is another unique selling point of OEREFs. For investor protection reasons it is of utmost importance that the unit price investors pay when buying and that they receive when redeeming units is derived from the market value of the properties.

(vii) Disclosure policy

Retail investors should be offered free of charge a prospectus and key investor information prior to their purchase of units. These documents shall notably disclose the long-term investment focus of real estate investments, indicate that there are significant costs in buying, managing and selling real estate and warn that redemptions might be temporarily suspended under exceptional circumstances.

Recommendation 5

The building blocks for an EU regime

Although OEREFs share many common features with UCITS, there are also a number of real estate specific features that need to be addressed in a different way. This Group has undertaken a comprehensive comparison of existing national OEREF regimes. Based on the experiences from national regulatory regimes for OEREFs, this Group has extracted a set of key features. The Group recommends these key features as building blocks for the EU OEREF regime. Together, these key features should be seen as a complete package of regulatory safeguards and investor protection rules for EU OEREFs. They are presented in the annex with information on how these issues could be effectively approached by the European legislator.

Recommendation 6

Key issues requiring particular attention

The Group would like to stress that there are six key features without which OEREFs would not be able to effectively function, or without which investor protection would be insufficient. This group recommends the following:

(i) OEREFs should have the possibility to make full use of property SPVs;

(ii) OEREFs should be permitted to borrow up to 60% of their real estate assets [including real estate SPVs];

(iii) OEREFs should redeem units at investor request, which may be on a daily basis, but could be as infrequent as once in a quarter;

(iv) OEREFs should have a minimum liquidity of 10% of their assets and install a sophisticated liquidity management system appropriate to their subscription/redemption policy;

(v) Properties held within an OEREF portfolio should be subject to independent and regular valuation at least once per calendar year to determine a market value of the properties, based on international valuation standards;

(vi) OEREFs should fully disclose their pricing policies. They should also highlight to investors the long-term investment focus of OEREFs and that the redemption of units may be suspended under exceptional circumstances

5.5 The form of European action

● The objective of the Group

This Group's overall objective is to be able to offer an EU recognised regulated OEREF to retail investors in all EU Member States, on the basis of a single fund authorisation process in the home state where the fund is domiciled. This would enable efficient market access, overcome barriers created by national product rules, and minimise duplicative compliance costs. The Group believes that the best way to achieve this outcome is to establish an EU wide passporting system based on common OEREF regulations that can be implemented in all Member States. The Group recommends that this regulatory approval mechanism should function in ways similar to the present UCITS authorisation system. This section of the report considers how such a regime could be implemented at EU level.

The Group has undertaken its analysis during a period of heightened investor, fund manager and regulatory attention on the functioning and stability of financial markets, which is having implications for managers of real estate portfolios. In this context, the Group has paid particular attention to investor protection in the rare circumstances where OEREF's asset/liability management systems have come under significant pressures; either from new subscriptions (too much money to invest) or widespread redemptions (too many requests for fund withdrawals). The Group is aware of four occasions over the last two decades in different EU jurisdictions where liquidity management practices, linked to OEREF, have been subjected to operational difficulties⁶⁷ (Netherlands, 1990; Germany 2006). The individual circumstances to each these situations are different. But in each of these instances it has been demonstrated that high levels of investor protection through product regulation are necessary to effectively overcome critical situations.

64) Such as environmental liability.

65) Lenders often require the setting up of an SPV per property financing in order to enable them to have recourse to the SPV.

66) OEREFs could for instance only redeem units up to 10.000 € per investor.

67) Similar difficulties have also been reported in the UK insurance real estate fund market during 2007 and 2008.

● **Regulatory technique: mutual recognition or legislation?**

The Group has given careful consideration to how such an objective can be best delivered. As a starting point, the Group stresses the need to ensure legal certainty. Non legislative approaches would not provide this level of certainty. The Group believes that mutual recognition of other Member State's laws (as understood by the EC Treaty) in the OEREF regulations is not a feasible solution to the restrictions to cross border market access and therefore legislative action should be pursued. As existing national OEREF regulations show numerous differences when it comes to technical details, the Group sees a high propensity for Member State's authorities to determine that there is a lack of functional equivalence between each others rules. This would limit mutual recognition of OEREFs to very few cases and thus make it ineffective. Legal certainty can only be effectively achieved on the basis of a common set of EU rules.

● **Lessons from existing EU retail investment fund law (UCITS)**

The UCITS Directive serves as an incredibly successful precedent for EU level retail financial services legislation.

The UCITS Directive demonstrated that market access barriers in the investment fund market, caused by regulatory fragmentation, can be effectively overcome through EU level action focused on achieving commonly agreed and implemented investment fund product rules. This Group recommends an approach similar to UCITS be adopted for OEREFs, to remove cross border market access barriers within EU.

The Group considered carefully what lessons could be learned from existing retail fund legislation when developing its proposed framework for EU OEREFs. The Group considered that most parts of any new EU regime on OEREF would need to address the same kinds of retail investment fund and investor protection issues as the existing UCITS provisions. This is to be expected given that OEREFs also manage transferable securities in the liquid portion of the funds' portfolio. For this activity the Group would expect existing EU rules to be fully applicable to OEREFs. However, as OEREFs invest into real estate assets there are a number of real estate specific investor protection safeguards which would need to be developed for OEREFs. These are not contained within the UCITS Directive. The following table sums up the most important differences between the proposed EU OEREF regime and existing UCITS rules for investment funds.

Key differences between OEREF and UCITS

Issue	OEREF regime	UCITS Directive
Eligible assets	predominantly real estate	predominantly only transferable securities ⁶⁸ and money market instruments
Use of SPVs	ermitted	rohibited
Granting of loans	OEREFs may grant loans to SPVs ⁶⁹	UCITS may not grant loans
Borrowing	high level of borrowing at fund level permitted (up to 60% of AuM)	low level of borrowing at fund level permitted (only up to 10% of AuM), but additional borrowing at level of invested company; aggregate borrowing level equivalent to OEREF
Redemption frequency	wide range from daily to biannual redemption (depending on Member State)	at least twice monthly (but in predominantly daily)
Minimum liquidity	minimum liquidity of 10% required to ensure redemption	Not necessary since assets can be sold within short notice
Maximum liquidity	wide range from 25% to 49% of AuM may be hold in liquid assets	UCITS may only hold ancillary liquid assets (no restriction in percentage of AuM)
Valuation	valuation of real estate assets by independent valuers	predominantly based on prices fixed at stock exchange
Safekeeping of assets	OEREF do not need to entrust their real estate assets to depositary, but depositary has to oversee the OEREF's property transactions	UCITS have to entrust all assets to depositary for safekeeping
Starting period	Newly created OEREF need to be exempted from certain restrictions (e.g. diversification rules, maximum liquidity) ⁷⁰	For UCITS there is only need for a very short staring period of six months ⁷¹

68) UCITS can however invest in (listed) property companies whose shares are transferable securities.

69) This can be a more efficient way of financing the SPV than increasing the capital in the SPV for each property transaction.

70) Newly created OEREF need to collect money from investors and may only later invest it step by step into properties.

71) Article 26.1 UCITS Directive

● Assessment of legislative options

While the Group's thinking has been informed by the precedent of the UCITS Directive for EU retail fund legislation, its views have not been constrained to solutions based on this experience and has explored alternative options. The Group identified 3 viable legislative options for developing an EU OEREF regime which could contribute to addressing the barriers described in the previous section (a summary table of the various options considered is attached in annex to this report). The Group's considerations aimed to ensure that the most effective and proportionate regulatory solution was found, in line with the EU's Better Regulation agenda. It considered the following:

- Could and should OEREF rules be added to the UCITS Directive? If so, how?
- Would it be better to develop a standalone Directive for OEREFs?
- Should all retail funds be regulated under one complete set of rules covered by an EU asset management Directive?

The Group agreed that effective solutions to current market access barriers should be a matter of urgency⁷².

Summary table of key advantages and disadvantages of each option:

Legislative tool:	Advantages:	Disadvantages:
i) Integrated into the UCITS Directive = additional OEREF chapter	Many OEREF provisions similar to majority of UCITS rules Product distribution channels familiar with UCITS label	Potential impacts on the UCITS industry/ UCITS regulatory label? Co-existence of 2 sets of provisions on (eg borrowing) within single regulatory framework
ii) OEREF Directive = separate OEREF regime	Legislation tailored specifically to real estate fund management No need to change UCITS	Duplicates many UCITS rules Fragmentation of retail fund law at European level
iii) Retail Funds Directive = revision of EU fund law	Further flexibility for retail fund product innovation Regulates all retail funds under one Directive	Far reaching impacts on UCITS and wider asset management industry Extensive adjustment costs for markets and national authorities; risk of unintended consequences

i) Should OEREF rules be added to the UCITS Directive? If so, how?

The Group's analysis revealed that national OEREF regulations are constructed in similar ways to UCITS rules, which have been implemented across the EU. OEREF products are the closest of all real estate products to harmonised UCITS funds. The degree of technical overlap between OEREF rules outlined in this report, and existing UCITS law, is very strong. The regulatory goals sought by each set of national OEREF rules appear to be the same as UCITS rules – these rules focus on protecting retail investors through product regulation. In a new European OEREF regime, the Group would consider that large parts of existing UCITS rules should also apply unchanged to OEREFs.

If, as this Group argues, national OEREF retail investor protections should be regarded as equivalent to UCITS, there is no immediate advantage to be gained by creating a new set of retail fund regulations at EU level in parallel to UCITS. Instead, one should strive to achieve a situation where OEREFs would be considered a subset of UCITS. UCITS would incorporate equity funds, bond funds, money market funds, mixed funds, financial derivative instruments and real estate funds. A new section addressing OEREFs would be added to the UCITS Directive and would contain a number of real estate specific rules. In this section, certain UCITS provisions would be adapted for the purpose of their application to OEREFs.

There are potential advantages for OEREFs to be regulated in the same way as other retail funds under the UCITS Directive. This is because the distribution channel already exists to distribute UCITS on a cross border basis and could also be utilised by OEREFs – there is already widespread familiarity with UCITS investor protection safeguards by regulators and by intermediaries across the EU and in many UCITS export markets.

The analysis undertaken by the Group highlights that OEREFs can be incorporated into the UCITS Directive via the introduction of a new chapter covering OEREFs.

However, such an approach potentially introduces important questions about what kind of impact, if any, such legislative changes could have for Europe's €6 trillion UCITS industry.

ii) Would it be better to develop a standalone Directive for OEREFs?

This option could also be appropriate because OEREFs offer retail investors a different kind of fund product, based on real estate assets. However, if a new Directive were formed, most of the UCITS provisions would need to be either copied verbatim from UCITS Directive, or cross references would need to be made to UCITS law, thus creating an element of redundancy and potential fragmentation of retail fund law at EU level. The main arguments in favour of this approach are whether this might avoid potential unintended impacts for existing UCITS managers and it would recognise some of the fundamental differences between the asset classes giving rise to the need for differing treatment as highlighted above. Uncertainty could be mitigated if a standalone regime was developed with UCITS law remaining untouched. In these circumstances, any uncertainty over the final outcome would only affect the OEREF industry for which the proposal was intended to address, and not the wider asset management sector. However, a separate OEREF regime could create an unwarranted perception that UCITS and OEREFs offered levels of investor protection which were not equivalent.

iii) Should all retail funds be regulated under one complete set of rules covered by an EU asset management Directive?

In the longer term, there may be a case for revising the existing UCITS framework to accommodate wider range of retail funds. This option could also provide OEREFs with an EU passport. However, this Group is not able to comment on whether other nationally regulated retail funds could demonstrate the same track record of retail suitability as OEREFs. This option appears to introduce the largest potential impacts on the wider asset management industry. At the present juncture this Group cannot identify strong arguments that this would be a better solution than either of the first two options. Nevertheless, a small minority of the group agreed with the possibility of an EU asset management Directive to regulate all retail funds. Although this solution would require more time, it could align all European retail fund rules to the Lamfalussy procedure. This would involve a first level of general and common retail fund rules and a second level of specific rules to be applied only to individual product categories.

⁷²⁾ The Group considered that a comparative assessment of the time taken for the delivery of different forms of legislative actions would be too speculative at this stage to meaningfully inform the Group's final recommendation. Speed should be of the essence, but not at the cost of achieving successful outcomes.

● Preferred option

A majority of the Group supports the proposal of inserting a new OEREF chapter to the UCITS Directive. The attraction of this option is that many of the existing UCITS provisions could also apply to OEREFs. The new OEREF chapter would take account of the real estate specificities – both by adding rules which only apply to OEREFs and by modifying existing UCITS provisions if applied to OEREFs. This approach would not touch upon the framework for existing UCITS – their regulatory environment would remain completely unchanged. At the same time OEREFs could benefit from the UCITS passporting arrangements and the set of well recognised rules. Furthermore, OEREFs could make use of the UCITS brand as the international gold standard for regulated retail investment funds. This approach would allow Member States to transpose the new EU OEREF regime into already existing national law. Those fifteen Member States which currently do not have an OEREF regime would not be forced to start from the scratch. The Group would however also like to express its sympathy with a standalone OEREF directive. Should the aforementioned option not be feasible or considered to be politically inopportune, a new OEREF directive would be a second best solution. This Group strongly recommends building any standalone OEREF Directive to the extent possible on the basis of UCITS law.

Recommendation 7

EU OEREF regime mostly built on UCITS model

Since OEREFs are primarily sold to retail investors, the EU regime should be built to the extent possible on the basis of UCITS law, except in areas where UCITS rules would be inappropriate for managing real estate portfolios, and in addressing their specific risks. In these cases, additional or modified rules are required.

Recommendation 8

Introduction of a new OEREF chapter to the UCITS Directive

The Group concluded that a modification of the UCITS Directive to provide a product passport for OEREFs would be the most efficient way to achieve cross border OEREF distribution to the retail market. This option would ensure that OEREFs could be readily marketable through existing distribution channels.

The Group advises that all rules relating specifically to OEREFs should be drafted according to the Lamfalussy procedures, whereby high level principles be established,

with detailed implementing measures undertaken at a second level in conjunction with Member State authorities.

If such an approach cannot be delivered for technical or political reasons, the Group recommends a standalone Directive for OEREFs as a second best option.

6. Conclusions

There is currently no Single Market for OEREFs, but several fragmented national markets due to divergent national regulatory systems for regulated OEREFs. These cause insurmountable obstacles to cross border fund registration and distribution to retail investors in other Member States. This Group strongly believes in the potential for much greater demand and appeal for OEREFs across the EU. Retail investors should neither be denied advantages in terms of choice nor cost benefits that a deeper and more efficient European market for OEREFs could offer to them; neither should managers of foreign OEREFs be denied the freedom to distribute their product across borders. These barriers can only be overcome by establishing an EU OEREF regime which sets up common regulatory standards. OEREFs authorised in their home Member State could then distribute their product throughout the entire EU by virtue of an EU passport. Such cross border passporting arrangements are already available for other retail investment funds (UCITS). This Group requests that regulated OEREFs be placed on an equal footing with UCITS and given the same opportunity to develop. This requires legislative action at European level as only binding rules can bring about the necessary legal certainty.

Twelve Member States have already introduced OEREFs. A comprehensive comparison of existing OEREF regimes revealed that there is lot of common ground for building an EU regime. The national OEREF regimes contain mature and tested frameworks which adequately address the risks inherent to real estate investments and notably have specific arrangements in place in the event of excessive redemption requests.

This report contains a list of key features that should form, in this Group's view, the building blocks of an EU OEREF regime. They are distilled from existing best practices at national level. The report furthermore highlights six essential elements without which OEREFs would not be able to effectively function or without which investor protection would be insufficient.

The Group has presented a business case for legislative action at EU level. A majority of the Group believes that the most appropriate way to proceed would be to add a new chapter on OEREFs to the UCITS Directive. However, the Group would also regard a standalone OEREF Directive as a suitable solution, should the preferred option not be politically opportune. Both proposed options should enable EU policymakers to deliver the expected results within manageable timeframes.

Appendix 1

1. Description of European OEREFs

A. Real estate investment landscape

1. The different real estate investment products

Within the last decade real estate has become a very popular asset class, both for institutional and retail investors. In most Member States a variety of different indirect⁷³ real estate investment products are nowadays available to retail investors. The most important ones are: (i) open-ended real estate funds (OEREF); (ii) closed-ended real estate funds (CEREF); (iii) Real Estate Investment Trusts (REITs); (iv) other (listed) property companies; and (v) certificates or insurance contracts with real estate exposure.

2. Characteristics and differences

All of these real estate investment products offer investors access to real estate, however, on different terms. Among them OEREF have the most common features with UCITS.

(i) Open-ended real estate funds

OEREF are typical open-ended fund product. They continually issue new units/shares to satisfy investor demand and redeem them at the investor's request. As a consequence the unit price

building is completely different from trading at a stock exchange. Whereas at an exchange the price of e.g. a share is subject to offer and demand, the subscription and redemption price of units in an OEREF are equal to the net asset value (NAV) of the underlying assets (e.g. plus subscription and/or redemption fees). Consequently OEREF are generally less volatile than shares in a listed REIT or other listed real estate company. Besides, the pricing at NAV shall ensure that investors may buy and sell units in an OEREF at the fair market value of the underlying assets. By contrast REITs or other real estate companies can often be traded either with a premium or with a discount to the fair market value.

In all eleven Member States with a specific regime OEREF are a regulated investment product. This ensures that the level of investor protection is comparable to UCITS and much higher than for other real estate investment products. It notably means that just like for UCITS (i) both the OEREF and the management company need to be authorised by the financial regulator and that (ii) the national framework contains a set of important investor protection rules. The most important are: (i) risk spreading rules, (ii) borrowing restrictions, (iii) a minimum redemption frequency, (iv) mechanisms to ensure sufficient liquidity, (v) control by independent depositary and (vi) valuation by independent valuers.

Risk spreading rules impede that the OEREF invests only in very few properties and becomes dependant of a very limited number of tenants.

Borrowing restrictions ensure a balanced risk-return-profile adapted to the needs of retail investors.

The minimum redemption frequency guarantees that an investor gets back the invested money within a certain period of time and thus protects retail investors from being locked-up for several years which is a common feature for CEREF.

Frequent redemptions are however only possible if the OEREF holds sufficient liquidity. Therefore, OEREF are usually obliged to have a minimum liquidity (e.g. 10% of all assets under management).

⁷³) This report does not deal with direct investments into real estate whereby the investor becomes owner or co-owner of single properties.

A depositary has to control that the OEREF acts in the best interest of investors. The acquisition and sale of real estate require the consent of the depositary.

OEREF may not value their properties internally, but have to mandate independent valuers to ensure that the value for each single property reflects the fair market value.

OEREF lack a UCITS like passport for being distributed cross-border.

(ii) Closed-end real estate funds

Like other closed-end funds CEREF do not issue new units/shares for 'new' investors on a continual basis, but only a predefined number of units in an initial public offering⁷⁴. 'New' investors may therefore only buy units from 'old' investors at a price that may either be higher or lower than the net asset value depending on offer and demand. Investors cannot redeem units during the 'lifetime' of a CEREF, but only at maturity (when the CEREF is wound-up).

In some Member States CEREF can or even have⁷⁵ to be listed at a stock exchange. Listed CEREF are transferable securities pursuant to Article 2(1)(a) of the Prospectus Directive⁷⁶ and as such profit from the passporting arrangement of Article 17 (1) of the Prospectus Directive. If the prospectus is approved by the competent authorities of the home Member States, the listed CEREF can be offered to the public or be admitted to trading on a regulated market in any other Member State. For listed CEREF therefore no insurmountable barriers to the cross-border distribution exist.

However, not all CEREF are listed. Non-listed CEREF cannot be easily traded. In Member States where no (functioning) secondary market for CEREF exists, investors are locked-up for the lifetime of the CEREF (that usually exceeds ten years). It is therefore questionable whether such types of CEREF can be truly regarded as a retail

investment product. In many Member States institutional investors are the predominant investors in CEREF.

Only some Member States provide for a specific regime and require CEREF to be authorised by the financial regulator. CEREF in many Member States are not subject to specific investor protection rules. The national regulatory frameworks for CEREF vary much more than those for OEREF. There is currently no common concept for CEREF within the EU.

The expert group agreed to focus on OEREF and not to further analyse ways for improving the cross-border distribution of CEREF as i) listed CEREF already benefit from a passporting arrangement and ii) non-listed CEREF which cannot be easily traded are less suitable for retail investors than OEREF.

(iii) Real Estate Investment Trusts

REITs are specific real estate companies which i) have to derive the majority of their income from property and ii) do not pay taxes at corporate level, but are obliged to pay a high proportion of net earnings (usually between 85 – 95%) out as dividends to shareholders who are then taxed at their individual tax rate. REITs can either be listed or privately held. However, in many Member States the listing is a prerequisite for the tax exempt⁷⁷ status.

Investors in REITs are ordinary shareholders which can only buy and sell shares at or outside of a stock exchange. By contrast to OEREF (i) REITs do not redeem shares at investors' request and (ii) shares of REITs are not traded at the net asset value of the underlying real estate assets, but are subject to offer and demand. REITs are therefore much more volatile than OEREF. iii) As ordinary stock companies REITs do not need to be authorised by and are not subject to ongoing supervision by the financial regulator. iv) Furthermore, there are no specific investor protection safeguards.

74) Under exceptional circumstances CEREF may later offer further units/shares by increasing their capital.

75) This is the case in Belgium and, if the minimum subscription amount is less than 25.000€, also in Italy.

76) Directive 2003/71/EC of the European Parliament and Council.

77) REITs are not necessarily tax transparent in all EU Member States

B. Common regulatory features and divergencies of national OEREF regimes

1. Convergences

The Group undertook to compare the existing eleven national frameworks for OEREF. The comparison revealed that all regimes are based on the same principles and that there is a lot of common ground for an EU regime. The national approaches provide for a comparable level of investor protection and corporate governance while at the same time allowing the manager to operate in a flexible business environment⁷⁸. The major communalities are:

(i) both the OEREF and its management company need to be authorised by and are subject to an ongoing supervision by the financial regulator;

(ii) All of the national regimes contain rules on the:

- eligible assets;
- risk spreading;
- borrowing;
- frequency of redemptions;
- suspension of redemptions under exceptional circumstances;
- minimum and maximum liquidity requirements⁷⁹;
- valuation by independent appraisers;
- calculation of the unit price at net asset value;
- role of the depositary in protecting investors;
- prevention of conflicts of interest.

With regard to **eligible assets** there is a common understanding among eleven⁸⁰ Member States that OEREF may inter alia invest in the following real estate assets: (i) property⁸¹, (ii) heritable building rights, and (iii) other property rights (e.g. usufruct). OEREF may either do so directly or indirectly through SPVs.

The national approaches feature similar **risk spreading rules**. They contain (i) minimum requirements for the portfolio diversification (either by a minimum number of properties or by limiting the weight a single property may have) and (ii) limitations in (minority) interests in SPVs.

All regimes allow OEREF to borrow significantly beyond the 10% maximum threshold for UCITS. However, there are borrowing limits in all eleven Member States.

The investor's right to request redemption is a major characteristic for OEREF. Nearly all eleven national frameworks therefore contain a minimum redemption frequency which shall ensure that investors may redeem units within that predefined period. However, almost all national regimes allow OEREF to suspend redemptions in exceptional circumstances, notably if liquidity is insufficient.

In order to enable OEREFs to redeem units at investors' request most Member States require OEREFs to hold a certain amount of **liquid assets**. At the same time most frameworks also provide for a **maximum liquidity** to ensure that the OEREF is predominantly invested in real estate assets.

Another common feature in all eleven Member States is that each single real estate asset of an OEREF has to be valued by at least one **independent, impartial, reliable and qualified valuer**. Each property has to be valued prior to the acquisition and prior the sale as well as on an ongoing basis at least once a year.

Under all frameworks the unit price corresponds to the net asset value of the underlying assets. This means that the unit price reflects the property prices determined by the valuer. The OEREF has to calculate and publish the current unit price whenever subscriptions or redemption take place. This ensures that investors enter or exit at the current price which equals the latest price of all assets.

Depositaries play an important safeguarding role. They monitor whether the OEREF complies with all duties set up by law or by the fund rules. In some Member States the depositary's consent is required for certain transactions (such as the acquisition, encumbrance or sale of property).

Almost all national regimes have provisions in place for the prevention of conflicts of interest. They notably address conflicts which arise if a property is sold within the same financial group.

78) To achieve the same goals, Member States, however, often use different mechanisms.

79) Please note that there are neither minimum nor maximum liquidity requirements in the UK.

80) In Hungary SPVs are not eligible assets for OEREFs

81) Including undeveloped land and property under construction.

2. Divergences

Notwithstanding the fact that all national OEREF regimes are built on the same principles and that they address the same issues, the way they address them is not always identical. Regulations often differ in details as the following examples illustrate:

(i) **eligible assets:** In certain Member States there are limits for investing e.g. in undeveloped land whereas in other Member States there are no such or slightly different limits;

(ii) **use of property SPVs:** The extent to which OEREF may hold interests in property SPVs significantly differs (ranging between 20% and 49% of AuM). In some Member States OEREF may only hold majority interests, whereas in others minority interests are also permissible;

(iii) **risk spreading:** The way Member States ensure a sufficient diversification of the real estate portfolio significantly differs. Some national regimes require the property portfolio to consist at least of a certain number of properties (ranging between 5 and 10) whereas others require that a single property may not exceed a certain percentage of the fund's value (ranging between 15% and 35%);

(iv) **borrowing limits:** The extent to which OEREF are entitled to borrow vary significantly within the EU, both with regard to the thresholds as such and to the base. Some Member States set up thresholds in percentage of the OEREF's total assets, whereas other thresholds are linked to the real estate assets. The thresholds range between 25% and 50%;

(v) **minimum redemption frequency:** In some Member States OEREF have to redeem units on a daily basis, whereas in other Member States investors only have the right to redeem twice a year or once a year;

(vi) **minimum liquidity:** National minimum liquidity requirements differ significantly given that e.g. a daily minimum redemption frequency requires a more advanced liquidity management than if redemptions may only take place biannually. In those Member States that require a minimum liquidity the thresholds in percentage of the OEREF's total assets range between 10% and 20%;

(vii) **maximum liquidity:** In order to ensure that OEREF predominantly invest in real estate, a majority of national OEREF regimes contain a maximum threshold for other

than real estate assets. However, these thresholds differ (ranging from 25% to 49% of all AuM);

(viii) **independent valuer:** Some national regimes require the real estate assets to be valued by one independent valuer, whereas other approaches foresee valuation by a college of valuers;

(ix) **valuation:** The frequency of mandatory property valuations significantly differs within the EU (ranging from monthly to yearly ongoing valuations. In a majority of OEREF regimes the value of each single property determined by the valuer has binding effect for the unit price calculation, whereas in some Member States managers are entitled to justify a different value;

(x) **role of the depositary:** The national regimes provide the depositary with different instruments in order to safeguard that the OEREF complies with all duties set up by law or the fund rules. In some Member States the depositary plays a stronger role than in others. Some regimes require the depositary to consent to certain transactions (e.g. acquisition, encumbrance and sale of property), whereas in others no consent is required.

C. Ideal regulatory key features of an EU regime on OEREF

The Group strongly believes that the recommended EU regime on OEREF should contain the following key features:

1. How to best create a competitive investment environment for OEREF:

(i) **Eligible real estate assets:** The list of real estate assets OEREF may directly invest in needs to be broad. It should at least contain the following assets: property, (ii) heritable building rights, and (iii) other property rights (e.g. usufruct). Retail OEREF should predominantly invest in income producing property⁸²; they should, however, to a certain extent⁸³ also be allowed to develop land or (re-) construct premises which comes along with higher risks, but also higher returns.

(ii) **Use of property SPVs:** The Group is fully aware that the UCITS Directive does not allow UCITS to invest through SPVs. For real estate specific reasons property SPVs are however indispensable for OEREFs, mainly for two reasons:

○ **ring fencing (environmental) liabilities:** Real estate is exposed to specific risks (such as environmental liability). These can be segregated from the fund by SPVs;

○ **restrictions to acquire property:** In certain countries foreign investors are not allowed to acquire properties, but may buy interests in a property SPV;

○ **transfer tax:** The acquisition of property triggers transfer tax, whereas interests in property SPVs can be transferred without or with a lower transfer tax. As OEREFs when buying property compete with investors that may use SPVs, OEREFs would otherwise be in a disadvantaged position. OEREF would have to pay the transfer tax, other investors would not.

The history of OEREF's in those Member State which already have a long OEREF track record demonstrates that the use of property SPVs does not cause 'unmanageable' risk. The expert group is therefore convinced that OEREF should be allowed to invest up to 49% of their real estate assets through property SPVs.

OEREF should at least be allowed to make use of property SPVs if they fully own or at least control them (which does not necessarily require a majority of interests/voting rights). Moreover, OEREFs should be allowed to use double-tier-structures. This means that the OEREF may hold interests in a holding SPV which may hold various local property SPVs.

(iii) **interests in property companies:** To a limited extent OEREF should be allowed to invest in property companies and listed property funds whose shares are easily transferable (such as listed REITs and listed real estate funds). Since shares of these companies/funds can quickly be sold, such investments should be deemed liquid. This will help OEREF to comply with the minimum liquidity requirements while at the same time avoiding detrimental effects for the OEREF's performance⁸⁴.

(iv) **borrowing:** The expert group is conscious that the borrowing powers for UCITS are much more restrictive than those for OEREF at national level⁸⁵. There are however three significant real estate specific reasons why OEREF should be allowed a significantly higher degree of leverage:

Firstly, the nature of real estate as an asset class means that the increase in risk brought about through leverage is significantly lower than for other asset classes.

(i) Real estate provides a high and stable covenanted income stream that is on average in excess of borrowing costs⁸⁶ and can thus be used to make interest payments and amortise debt at relatively low risk.

(ii) Unlike traded securities whose value can fall to zero, real estate assets have an underlying value that persists even in catastrophic circumstances⁸⁷.

Secondly, leverage allows access to a greater gross asset base for a given net equity investment (for example, 60% leverage allows €100m of equity to be exposed to €250m of property assets). This means that investors in smaller funds can benefit from:

(i) Diversification; the typical commercial real estate asset has a value measured in tens of millions of euro and thus assets of several hundred millions of euro are required to achieve a reasonable level of diversification⁸⁸; and

(ii) Economies of scale. The costs of managing real estate assets are significantly higher than for managing portfolios of securities, but they have a high fixed element.

Thirdly, property is not of itself leveraged. This contrasts with public securities which represent value in companies that are typically already leveraged. For example, the average leverage employed by quoted real estate companies is around 45-50% on a loan-to-value basis⁸⁹. Thus a UCITS-compliant securities fund could invest in these companies and add a further 10% leverage, resulting in 50-55% effective leverage on the real estate assets.

Fourthly, for a retail investor, use of leverage in direct real estate investment is the norm, if one considers both the acquisition of their own residence, and so called «buy-to-let» investments; both are typically leveraged at levels in excess of 50% of value. This contrasts with direct investments in transferable securities by retail investors which would generally not be leveraged.

⁸⁴ This is because under normal market conditions real estate returns are higher than returns on liquidity (such as cash and bonds).

⁸⁵ Pursuant to Article 36 (1) UCITS Directive borrowing is prohibited. However, Member States may derogate from this prohibition and permit UCITS to borrow up to 10% of their assets.

⁸⁶ This may not be the case if markets expect significant cyclical capital appreciation – as has been the case in the UK recently – but such pricing generally corrects.

⁸⁷ If tenants leave new tenants can be found; if buildings suffer damage insurance will usually cover the costs; and even if a building loses all its value the land on which it is built does not.

⁸⁸ See e.g. "Risk Reduction and Diversification in Property Portfolios", Investment Property Forum, May 2007

⁸⁹ i.e. 80-100% on a debt-to-equity basis – see "Global Real Estate Securities – Where do they fit in the broader market?", EPRA, September 2005

⁸² Property that is already rented to either residential or commercial tenants.

⁸³ However, for such properties investment limits are necessary

For these reasons, a higher leverage ceiling for OEREF funds would be both fair and in the interests of investors, as well as in line with the existing national regimes. A reasonable ceiling would be 60%, based on the value of the real estate assets in the fund.

(v) **Starting period:** For good reasons almost all national regimes exempt newly created OEREF for a starting period of two to four years from certain restrictions that newly created OEREF cannot comply with. An EU regime should therefore exempt new OEREF notably from the risk diversification rules⁹⁰ and any maximum liquidity requirement⁹¹ for an appropriate starting period.

2. How to best protect retail investors:

(i) **Authorisation/supervision:** OEREF should be a regulated product to ensure that the interests of retail investors are protected in a UCITS like way. Both the OEREF and its management company therefore have to be authorised and are subject to ongoing supervision by the financial regulator;

(ii) **Investment limits:** In order to ensure that the risk-return-profile of retail OEREF corresponds with the expectations of retail investors, investment limits for certain types of property that involve a higher risk (notably undeveloped land, property under (re-) construction, property with increased operator risks) are necessary. However, the EU regime should not be overly prescriptive, but rather allow fund managers to invest in those geographic markets and types of properties laid down in the fund rules.

(iii) **Diversification:** Just like with any other asset class OEREF must have a well diversified real estate portfolio in order to reduce the risks of each single property (e.g. the shortfall of a single tenant). The EU regime should therefore provide that no single property should exceed 15% of the OEREF's value at the time of acquisition. Moreover, no tenant (or group-related entities) can rent properties representing more than 15% of the OEREF's value.

90) OEREFs typically first have to create a property portfolio by acquiring properties. They can therefore not be treated as having a well diversified property portfolio right from the start. However, OEREFs may also fund acquisitions of property with credits and then draw down equity afterwards.

91) New retail OEREF first have to collect money from investors and then can invest it into properties. They are therefore unable to hold less than 50% of their assets in liquidity from the very first.

92) As the example of a Portuguese OEREF illustrates investors on average stay invested for more than five years. Nonetheless, investors are keen to get their money paid back within short notice, if exceptional circumstances force them to disinvest.

93) OEREF may however suspend redemption under exceptional circumstances; see below under (v).

94) Under exceptional circumstances OEREF may suspend redemptions; see below under (v).

95) The OEREF has to ensure that at the end of each redemption period 10% of the OEREF's total assets can be paid out in cash, if need be.

96) If the fund manager takes the view that such situation will not last too long given market conditions and the situation of the particular fund increasing liquidity by taking loans under economically justifiable considerations is also a viable instrument.

97) If the fund is suspended the home regulator and all regulators in countries in which the OEREF is marketed should be notified.

98) The pricing at NAV is one of the fundamental investor protection instruments and at the same time a unique selling point of OEREF compared to other real estate investment products.

(iv) **Minimum frequency of redemptions:** Although real estate investments have a mid to long-term investment focus, the expert group is convinced that OEREF will only be attractive⁹² for typical retail investors if investors are not locked-up in the fund, but may redeem units at least once in a quarter⁹³. OEREF should however be free to redeem units more often on a voluntary basis.

(iv) **Minimum liquidity:** Given that the sale of property takes on average three to six months and that it causes high transaction costs, it would be inefficient or even impossible to finance redemptions by disposing of property. In order to nonetheless ensure that OEREF can meet redemption requests under normal market conditions⁹⁴, they should be obliged to hold a minimum liquidity of 10% of AuM⁹⁵ and install a liquidity management system.

(v) **Suspension of redemptions in exceptional cases:** Despite the minimum liquidity requirement an OEREF may under rare, exceptional circumstances face redemptions which exceed the fund's available liquidity. This is currently the case with some UK OEREFs. Moreover, three German OEREF suspended redemptions for several months in 2005. In such a scenario it would be against the best interest of investors, if the OEREF were forced to sell real estate assets in order to generate sufficient liquidity at prices below fair market value. If no other⁹⁶ more proportionate measures to protect investors are available, the OEREF should be entitled to suspend redemptions for a pre-defined time⁹⁷. The OEREF should be entitled to repeat suspension until it may pay the redemption price and ensure a proper continuous management. However, after a total suspension period of two years the OEREF has to move to an orderly wind up.

(vi) **Unit price calculation:** Just like for UCITS the unit price for OEREFs should be based on the current net asset value of the underlying assets. This ensures that investors pay a fair price when subscribing and are paid back the current fair market value when redeeming⁹⁸.

(vii) **Valuation of property:** i) For investor protection reasons and for the trust in the markets it is crucial that at least⁹⁹ one independent¹⁰⁰, impartial, reliable and qualified valuer values the properties. ii) Each property needs to be valued prior to the acquisition and sale as well as at least once a year. Moreover, valuations need to take place whenever the market shifts. iii) The valuer has to determine the fair market value. iv) The valuer must have experience with the local market and use the local valuation methodology.

(viii) **Binding effect of valuation for unit price calculation:** When calculating the unit price the OEREF or its depositary is bound by the valuation prices determined by the independent valuer(s).

(ix) **Sale and purchase price:** The OEREF may not buy a property at a price significantly¹⁰¹ higher or sell a property at a price significantly lower than the valuation price determined by the independent valuer.

(x) **Safeguarding role of the depositary:** The depositary shall act in the sole interest of investors. It controls whether the OEREF and its management company complies with all duties set up by law or in the fund rules.

(xi) **Prevention of conflicts of interest:** i) To avoid conflicts of interest the management company may not sell a property to or buy it from another OEREF it manages, to/from an entity belonging to the same financial group or to from the depositary. ii) Neither the management company nor any other group entity may be a tenant of the OEREF.

(xii) **Disclosure:** The OEREF must publish a prospectus and key investor information (KII). The KII must be offered free of charge before the subscription of units. It must inform investors inter alia of i) the medium to long-term focus of property investments, ii) that the redemption may be suspended for up to two years if liquidity is insufficient, iii) and that real estate investments involve relatively high transaction costs and the way these costs are born by investors.

D. Commonalities and differences of UCITS and OEREFs

A comparison of the eleven national OEREF regimes and the UCITS Directive revealed that there is lot of common

ground between OEREFs and UCITS. Both are notably built on the same principles and philosophies. However, there are also a number of real estate specific items which need to be addressed differently than currently provided for in the UCITS Directive. The expert group considers that large sections of an EU regime on OEREF would be identical with the UCITS Directive.

The issue then arises of whether it would be feasible to incorporate OEREF into the UCITS Directive. This could be done by adding a new section on OEREF which would address all real estate specific issues. In such a scenario all provisions of the UCITS Directive would as well apply to OEREFs, unless otherwise provided for in the OEREF section. OEREFs would be treated as UCITS and would notably benefit from the UCITS passport. For existing UCITS the introduction of an OEREF section into the UCITS Directive would not result in any changes of the regulatory environment. Such a new OEREF section within the UCITS Directive would consist of two components: i) certain provisions of the UCITS Directive would need to be modified when applied to OEREF and ii) certain real estate specific provisions would need to be inserted.

Necessary modifications of the existing UCITS Directive

(i) **Eligible assets pursuant to Article 19 UCITS Directive:** The real estate assets OEREF should be allowed to invest in need to be defined;

(ii) **Investment limits and diversification rules:** The existing provisions in Articles 21 ss. need to be complemented by real estate specific investment limits for certain types of property (e.g. undeveloped land) and by specific diversification rules;

(iii) **Investment in SPVs:** OEREFs should be permitted to hold interests in property SPVs and to exercise significant influence (whereas neither UCITS nor their management companies are entitled to exercise significant influence over another entity pursuant to Article 25 UCITS Directive);

(iv) **Redemption frequency:** Pursuant to Article 34 and Article 37 (1) UCITS Directive a UCITS must redeem its units at the request of any of its investors and at least twice a month. Given the rather illiquid nature of real estate OEREFs should not be obliged to redeem more often than quarterly. However, OEREFs may redeem more frequently on a voluntary basis;

99) National regimes provide for different models: either a valuation by one valuer or by a college of valuers. Both models have pros and cons.

100) The expert group recommends the following instruments to ensure the independence and impartiality of the valuer(s): i) OEREF cannot cancel mandate to valuer before the end of the term (except under exceptional circumstances); ii) rotation of valuers; iii) the income the valuer or the valuer's firm obtains from valuing the OEREF and other OEREFs managed by the same management company shall not exceed a certain percentage of the income of the valuer's or her/his firm; iv) no valuer may value property that she/he or her/his firm sourced; v) no valuer shall hold units in the OEREF she/he values.

101) The expert group would regard deviations of more than 5% as significant.

(v) **Suspension of redemption:** For OEREFs the general provision on the suspension of redemption under exceptional circumstances needs to be adapted to the specificities of real estate. This notably means that i) all Member States must have rules on the suspension of redemption (whereas Article 37 (2) UCITS Directive does not oblige Member States to do so), ii) the conditions for and iii) the duration of suspension need to be clarified, and iv) the OEREF should be wound up after a maximum period of suspensions;

(vi) **Borrowing pursuant to Article 36 UCITS Directive:** OEREFs should be allowed to borrow up to 60% of their real estate assets (whereas UCITS may only borrow up to 10% of their total assets pursuant to Article 36 (2) UCITS Directive);

(vii) **Granting of loans to property SPVs:** Pursuant to Article 41 (1) UCITS Directive neither the UCITS nor its management company may grant loans. OEREFs should however be entitled to grant loans to property SPVs¹⁰²;

(viii) **Depository:** Pursuant to Article 7 (1) or Article 14 (1) UCITS must entrust their assets to a depository. OEREF should not be obliged to entrust their real estate assets to a depository, if it is otherwise ensured that the depository may efficiently verify that the OEREF complies with all duties set up by law or in the fund rules¹⁰³;

(ix) **Prevention of conflicts of interest:** The general provisions in Article 5h UCITS Directive need to be adapted to address real estate specific conflicts of interest. This particularly means that property transactions between the OEEF (or its management company) and group-related entities should be prohibited. Under such conditions no fair pricing can be ensured.

(x) **Disclosure:** All disclosure documents (full prospectus, key investor information, promotional literature as well as the annual and half-yearly report) need to be adapted to the specificities of real estate investments. The key investor information, for instance, should inform (potential) investors of i) the mid to long-term investment focus of real estate investments, ii) that redemption may be suspended up to two years in case of insufficient liquidity and iii) real estate investments involve relatively high transaction costs and how they are borne by investors.

New real estate specific provisions

(i) **Liquidity:** i) A minimum liquidity threshold (e.g. of 10% of AuM) is required to ensure that the OEREF may redeem units at investors' request. ii) The assets which are deemed 'liquid' need to be defined. iii) A maximum liquidity (e.g. of 49% of AuM This figure needs to be discussed) should be set up to ensure that OEREFs invest predominantly in real estate;

(ii) **Valuation:** The UCITS Directive does not contain any rules on the valuation of assets since for transferable securities prices are usually fixed at a stock exchange. Real estate however cannot be traded at a stock exchange or at any other form of regulated market. The value of real estate needs to be determined by independent valuers. A set of valuation rules is therefore required which should inter alia lay down i) under which circumstances and how often real estate needs to be valued, ii) who values the property (one or more valuers), iii) the qualifications and capacities of valuers, iv) who appoints the valuer(s), (v) the valuation method, (vi) whether the valuation price should be binding for unit price calculation, and (vii) whether OEREFs may buy/sell property at a price significantly higher/lower than the value determined by the valuer;

(iii) **Starting period:** Newly created OEREFs should be exempted from certain restrictions (such as the maximum liquidity and the diversification rules) for a starting period of four years in order to first collect money from investors and then to invest it in real estate.

On the other hand a standalone directive for OEREF could be created. It could be modelled on the general principles of the UCITS Directive, but would be directly adapted to the specificities of OEREFs. OEREFs authorised in their home member State would obtain a UCITS like passport which entitles them to distribute their units in all other Member States subject only to a mere notification.

¹⁰² The granting of loans to a property SPV is a recognised form of financing in most national OEREF regimes. Under certain conditions it is a more (tax) efficient way of financing property acquisitions by the SPV than the increase of capital in the SPV.

¹⁰³ The depository should have no discretion, but should be obliged to consent if the requirements laid down by law and the fund rules are met.

Appendix 2 Comparison of common real estate investment products

Characteristics	CEREFs ¹⁰⁴	OEREFs	REITS ¹⁰⁵	Listed property companies (other than REITS)
Key investor considerations				
Minimum investment threshold ¹⁰⁶	High	Low	Low	Low
Liquidity of investment ¹⁰⁷	Very low ¹⁰⁸	Medium/High	High/Medium	High/Medium
Diversified property portfolio ¹⁰⁹	Not necessarily the case ¹¹⁰	Yes ¹¹¹	Typically yes, but not necessarily the case ¹¹²	Typically yes, but not necessarily the case ¹¹³
Correlation to domestic real estate market ¹¹⁴	Usually high ¹¹⁵	Some are geographically well diversified, whereas many OEREFs have high correlation to domestic market ¹¹⁶	High, as for tax reasons many REITS predominantly invest in domestic property	Usually high ¹¹⁷
Volatility ¹¹⁸	Low	Medium	High	High

¹⁰⁴ Closed-end real estate funds.

¹⁰⁵ Real estate investment trusts.

¹⁰⁶ The minimum amount of money that is required for investing into a particular product.

¹⁰⁷ The term 'liquidity of investment' refers to how easy it is for the investor to sell the shares or units. The more liquid an investment is, the easier a sale can take place.

¹⁰⁸ Investors in a closed-ended fund may typically only redeem their units at maturity (generally after 7-10 years) when the fund is wound up.

¹⁰⁹ Diversification means that the investor invests into a real estate portfolio consisting of a significant number of properties with different tenants in order to reduce the risks associated with a shortfall of a single tenant or a single property. It furthermore takes into account to which degree the portfolio is prone to the economic development in one country/regional market.

¹¹⁰ CEREF cover a wide range of fund types. In some Member States they invest only in few properties and in some cases only in one property, whereas in other Member States there are also CEREF with large and well diversified portfolios.

¹¹¹ All national frameworks for OEREF contain mandatory diversification rules that oblige OEREFs to manage a portfolio instead of a few properties. In some Member States no single property may exceed a certain percentage of the fund's value, whereas in others a minimum number of properties is required.

¹¹² By contrast to OEREFs, national REIT regimes do not usually require REITS to have a diversified portfolio.

¹¹³ National regimes do not usually require listed property companies to have a diversified portfolio.

¹¹⁴ This means to which degree the performance is interlinked with the general performance of the real estate market in the vehicle's domestic market.

¹¹⁵ Many CEREF invest mainly in the domestic real estate market.

¹¹⁶ This depends on the degree of geographic diversification of the OEREF. A number of OEREF still predominantly invest in domestic real estate, whereas other OEREFs have a geographically well balanced portfolio taking into account the different local property cycles.

¹¹⁷ Many listed property predominantly operate and invest in their domestic market. There are however others with a geographically balanced portfolio.

¹¹⁸ In this context volatility describes how much the unit/share price is subject to changes (increases and decreases of value). A low volatility means that the prices are rather stable and risks are low.

Sources of main risk	Risk concentration/ difficult exit ¹¹⁹	Liquidity mis- match ¹²⁰	Stock market risk ¹²¹	Stock market risk ¹²²
Additional regulatory considerations				
Trading at NAV ¹²³	No ¹²⁴	Yes ¹²⁵	No ¹²⁶	No ¹²⁷
Valuation standards ¹²⁸	Typically less regulated / valuation by independent valuers not always required	Regulated/High standards ¹²⁹ / valuation by independent valuers	For listed REITS pricing at stock exchange/ no valuation required. For unlisted REITS unregulated/ no valuation by independent valuers required	Pricing at stock exchange/ no valuation required
Extent of borrowing	Typically unregulated	Maximum threshold	In some Member States unregulated and in others maximum threshold	Typically unregulated
Reporting standards	Typically none	Medium	For listed REITS high. For unlisted REITS typically low	High
Can the product be easily sold to retail investors in another Member State?	Yes, in principle. When complying with the Prospectus Directive, a closed end fund can be offered to retail investors in another Member State.	No	Yes for listed REITS and no for unlisted REITS	Listed shares can be easily bought by foreign retail investors

119) Investors in CEREF typically cannot redeem units during the fund's lifetime, but only when the fund is wound up (after on average 7 – 10 years). As there are no functioning secondary markets for closed-ended funds, investors face serious problems in finding a buyer for their units.

120) 'Liquidity mismatch' refers to the conflict between the illiquidity of real estate and the right to request redemption within short notice. Therefore OEREFs usually have to hold a certain percentage of their assets in liquid assets and provide for a liquidity management system. Nonetheless, OEREFs may under exceptional circumstances be unable to redeem units at investor request due to insufficient liquidity.

121) Stock market risk means that the value of a listed company does not only depend on the value of the underlying real estate assets, but is significantly influenced by the general ups and downs of the stock markets (typically with exaggerations to both sides). Listed real estate companies are very often traded at a significant discount to the net asset value. See next column.

122) Stock market risk means that the value of a listed company not only depends on the value of the underlying real estate assets, but is significantly influenced by the general ups and downs of the stock markets (typically with exaggerations to both sides). Listed real estate companies are very often traded at a significant discount to the net asset value. See next column.

123) This means whether the price of the units or shares is based on the net asset value of the underlying assets or whether it is a market price subject to offer and demand.

124) As CEREFs do not subscribe and redeem units on a regular basis, there is no need for publishing the net asset value. Prior to the maturity of the CEREF, investors can therefore only sell their units to other investors at a price subject to offer and demand.

125) In most Member States OEREFs have to calculate the net asset value on the basis of the property values determined by independent appraisers.

126) The share price of a REITS, irrespective of whether they are listed or unlisted, is entirely subject to offer and demand. It may trade either significantly below or beyond the net asset value.

127) The share price of a listed property company is entirely subject to offer and demand. It may trade either significantly below or beyond the net asset value.

128) Not all types of real estate investment vehicles are subject to the same valuation rules and the standards differ.

129) Valuations for OEREFs are typically carried out in accordance with the International Valuation Standards published by the International Valuations Standards Committee.

Options: 1-6	Degree of legal certainty for OEREFs	Ease of successful delivery	Economic impact for OEREF industry	Impact on UCITS industry
<i>No new EU rules</i> 1) Mutual recognition Based on interpretation of application of Treaty freedoms	<ul style="list-style-type: none"> Addresses issues on a case by case+ State by State basis Does not provide legal certainty 	<ul style="list-style-type: none"> No need for institutional negotiation Piecemeal dismantling of individual barriers No harmonisation achieved 	<ul style="list-style-type: none"> Many question marks over impact Input from industry needed to highlight nature of barriers 	<ul style="list-style-type: none"> Less clear impacts on UCITS
<i>No new EU rules</i> 2) EU Recommendation Exhortation from COM urging States to converge around existing practices	<ul style="list-style-type: none"> Some common EU orientations on OEREFs Does not provide legal certainty Non binding 	<ul style="list-style-type: none"> Fastest and most politically feasible in next years Fast focus on OEREF market potential and need to find solutions 	<ul style="list-style-type: none"> Hard to predict Depends on States acceptance of COM ideas as basis 	<ul style="list-style-type: none"> Less direct impacts on UCITS sector as not changing UCITS rules or creating a new regime
<i>Legislative</i> 3) New section in UCITS General UCITS rules apply in full where applicable, with specific OEREF rules added	<ul style="list-style-type: none"> Full legal certainty Retail product defined with reference to UCITS regime OEREFs seen as equal of UCITS in all respects, though with differences acknowledged 	<ul style="list-style-type: none"> Precedents for this approach (HU, CZ, DE, ES, SL, FI) Possibly politically challenging Possibly hard to get agreement of OEREF concept in UCITS 	<ul style="list-style-type: none"> Full passporting rights All UCITS export markets become targets (brand awareness) 	<ul style="list-style-type: none"> Potentially significant operational effects. Dilution of UCITS brand Requires careful consideration of impact
<i>Legislative</i> 4) New OEREF Directive OEREF are not UCITS, but are granted similar/equal passporting rights as UCITS	<ul style="list-style-type: none"> Full legal certainty; Presents OEREFs as a different type of retail fund Creates multiple retail fund regimes – potential for gaming/arbitrage (?) 	<ul style="list-style-type: none"> Precedents (FR) Focuses public debate onto REFs and away from other funds Potentially politically easier approach 	<ul style="list-style-type: none"> Full passporting rights Since these would not classify as UCITS, would they gain same acceptance as retail funds in 3rd countries? 	<ul style="list-style-type: none"> Less tangible impact as not changing UCITS rules, but issue of multiple, but similar product laws
<i>Legislative</i> 5) New nonUCITS Directive Covers all retail non-UCITS. = passporting rights as UCITS	<ul style="list-style-type: none"> Full legal certainty Less possibility for legal product patchwork; but Less clear that REFs are different from other retail funds Implies other non-UCITS need to be harmonised 	<ul style="list-style-type: none"> Precedents (UK) Possible contagion from other retail non-UCITS debates Some potential opposition from some States Outcomes possibly less certain as not only REF focused debate 	<ul style="list-style-type: none"> Full passporting rights Some resistance in gaining recognition as being UCITS/retail equivalent Potentially (?) more flexibility for innovation 	<ul style="list-style-type: none"> Some possible transfer from UCITS to new framework Uncertain risks and benefits
<i>Legislative</i> 6) New Fund Directive Sections for UCITS, OEREF and other funds. All have =passporting rights	<ul style="list-style-type: none"> Full legal certainty Clear vision of EU retail fund framework for next decade Subsequent changes made easier as one framework 	<ul style="list-style-type: none"> Hardest to negotiate Outcomes for REF less certain as debate not REF focused Precedents exist (cf option 3) 	<ul style="list-style-type: none"> Full EU market access Full passporting rights Opens all UCITS export markets, but some host resistance in gaining recognition as UCITS equivalent 	<ul style="list-style-type: none"> Significant tangible and intangible strategic effects Redraft EU framework for all products

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