

EUROPEAN COMMISSION Impact Assessment Board

Brussels, D(2010) 2 6 FEV. 2010

Opinion

Title

Impact Assessment accompanying the proposal for implementing measures for the UCITS (Undertakings for Collective Investment in Transferable Securities) Directive

(draft version of 27 January 2010)

(A) Context

The UCITS Directive creates a regulatory framework for retail funds at the European level and a basis for the cross-border sale of these funds. The Directive was updated in July 2009 (2009/68/EC, also referred to as UCITS IV) to address a lack of flexibility in organising the industry value chain, ineffective investor disclosures, barriers to marketing funds in other Member States, and the proliferation of funds of sub-optimal size. UCITS IV created a legal basis for the development of more detailed level 2 implementing measures, to be adopted by the Commission. This impact assessment accompanies a proposal for these implementing measures, and in line with the Lamfalussy procedure the Commission asked the Committee of European Securities Regulators (CESR) to provide technical assistance in preparing them.

This report follows earlier impact assessments accompanying the White Paper on Enhancing the Single Market Framework for Investment Funds in 2006 and the legislative proposal amending the UCITS Directive in 2008.

(B) Overall assessment

While the IA report is generally of good quality and provides the necessary evidence base for action in this area, it should nevertheless improve the analysis on a number of issues. First, it should explain more clearly how regulatory divergences and/or insufficiently robust standards in some Member States give rise to problems in terms of investor protection, financial stability and/or competition. Second, it should explain which Member States and how many UCITS management companies are affected. On this basis, it should be clearer about the costs of the proposed measures, how they will be distributed by Member States and by size/nature of UCITS company. Third, the report should make clear the difference between the options, and where the Commission has discretion to adopt measures it should demonstrate better the necessity and value added of them. Finally, an effort should be made to improve the self-standing nature of the report.

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In the IAB meeting, DG MARKT agreed to revise the impact assessment on this basis.

(C) Main recommendations for improvements

- (1) Explain systematically which Member States and how many UCITS management companies are affected by the problems identified, and how individual standards give rise to various risks. As the impacts for firms (and supervisors) of the options will depend on the national requirements already in place, the problem definition should describe in more detail the inconsistencies in the requirements on UCITS management companies across different Member States and illustrate the extent of cross-border activity. The problem definition should also clarify to what extent the problems under issues 1 (organisation, conflicts of interest) and 2 (risk management) arise from the inconsistencies between the Member States or insufficiently robust standards in some Member States, and explain more fully how individual standards give rise to problems related to investor protection, financial stability and/or competition. The report should make clear if there are any trade-offs between the proposal's various objectives, such as investor protection and removing barriers to EU fund integration.
- (2) Give a clearer indication of expected costs and describe more fully how they will be distributed across the Member States. The report should indicate the likely magnitude of costs for the different options for issues 2 (requirements on risk management) and 5 (information for investors in the event of a cross-border merger or master-feeder). For option 6 (communication between competent authorities) the report should provide a description of the cost drivers. For all issues, the report should be clearer about how the costs will be distributed across the Member States. In particular, as the proportion of independent asset managers is much higher than the EU average in some Member States (e.g. Ireland), for issues 1 and 2 the report should explain how they would be affected by the options (the extent of the changes necessary and the resultant costs). The report should also identify clearly any information obligations added or eliminated specifically by the level 2 measures, and if they are significant quantify them using the Standard Cost Model.
- (3) Make clear how the options differ, and better demonstrate their necessity and value added where the Commission has discretion to adopt implementing measures. Given that options 1.2 and 1.3 (aligning with MiFID requirements and developing "specific provisions" for the UCITS fund industry) are supposed to be alternatives, the report should make clear what substantial difference there is between them. The report should also clarify how option 5.2 (minimum of passive communication) and option 6.2 (electronic exchange via e-mails) differ from their respective baseline options. For issue 5, the report should better explain why EU action is justified given that there is no evidence of investor detriment (as the cross-border merger and master-feeder regimes are new) and this option departs from CESR's advice. For issue 6, the report should explain why action is necessary if the Omnibus Directive as proposed by the Commission would give the European Securities and Markets Authority (ESMA) the competence to address the communication problem between supervisors. As the Commission is not obliged to adopt the implementing measure for issues 5 and 6, the report should also discuss whether a self-regulatory or voluntary agreement option could be a viable alternative.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

Despite the number of issues and their largely technical character, an effort should be made to improve the self-standing nature of the report by adding brief descriptions of the options and more systematic references to the annexes. The report should be shortened by considerably limiting the analysis of issue 3 for which a separate IA will be necessary, and presenting the objectives more succinctly. On the other hand, the link between the problems and the options should be better explained and the analysis of impacts should be strengthened.

The report should briefly describe the "lessons learned" in preparing an IA for level 2 measures based on technical advice from CESR.

(E) IAB scrutiny process	
Reference number	(Comitology)
External expertise used	No
Date of IAB meeting	24 February 2010