

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