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AFG'S COMMENTS ON THE INITIAL ORIENTATIONS ON POSSIBLE ADJUSTMENTS TO THE UCITS DIRECTIVE

Dear David,

AFG[1] welcomes the initial orientations drafted by the European Commission on possible adjustments to the UCITS Directive. As you know, the French asset management association has been very active in answering to the Green Paper consultation and the Group experts' reports on investment funds. AFG is very grateful you invited our Chairman Alain Leclair as well as our CEO, Pierre Bollon, to express the views of the French asset management industry on the draft exposure of DG Internal Market, during the Open Hearing held on 26 April in Brussels.

[1] The Association Française de la Gestion financière (AFG)[1] represents the France-based investment management industry, both for collective and discretionary individual portfolio managements.

Our members include 365 management companies and 772 investment companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing more than 2500 billion euros in the field of investment management, making in particular the French industry *the leader in Europe in terms of financial management location* for collective investments (with more than 1500 billion euros managed, i.e. 22% of all EU investment funds assets under management, wherever the funds are domiciled in the EU) *and the second at worldwide level*. In the field of collective investment, our industry includes – beside UCITS – the employee savings schemes funds and products such as regulated hedge funds/funds of hedge funds as well as a significant part of private equity funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

We are satisfied with the proposals made by the European Commission services, which are generally in line with the agenda and the content set up in the White Paper on the investment funds, except on one crucial point.

Indeed, we think that there is still an urgent need for improvement on the **Management Company Passport** since we plead for an operational passport, which can only be a **full** passport.

First, the arithmetic of the European Commission services impact table (part 1.5, page 7 of the "Management Company Passport" document) is hard to understand. If one sums up the three columns, one comes to a draw between the two options (full passport vs. partial passport) and not to a preferred one (respectively: "*neutral/++/-*" equals "*neutral/+/neutral*"). However, on this basis, the European Commission concludes that they would currently prefer the option for a partial passport.

Second, to our knowledge, national regulators have different views on the subject for the moment: Some national regulators are clearly and explicitly in favour of a full passport (for instance, the UK FSA and the French AMF) while others are more cautious.

We have heard that some national regulators see a danger in the creation of a partial passport along the line prepared by the Commission. We understand this fear as it would mean that a fund Management Company can be cut in two parts: one in charge of the financial management (that could operate cross-borders) and one in charge of "fund administration" (that couldn't). It can be argued that this would be a dangerous path indeed and that it would not be better, in terms of consumer protection, than a full passport, contrary to what is stated in the "impact table". The principle that is now in use, that delegations are possible but that when they occur the responsibility of the Management Company remains complete, can appear to be safer than the new idea of truncating the Management Company into two parts. The full passport, in a nutshell, would be useful while a partial one would being little progress in terms of cost savings while blurring the lines of responsibility.

On the contrary, we have also heard that some other national regulators are concerned that, with a full Management Company passport, UCITS which would be domiciled in their jurisdiction (and therefore under their legal responsibility) might be managed by Management Companies located in another Member State (and therefore the relevant Management Companies would not be under their control): there is a supervisory concern for some national regulators.

From this latter perspective, we wish to give two complementary answers.

First, in this matter as in many other topics – regarding the UCITS Directive review or not (Market Abuse Directive, MiFID, etc.) – there is *a trend to more co-operation between regulators, through the legal provisions of Directives* (thanks in particular through some already transposed directives like the Market Abuse Directive), *complemented by a growing trust in practice between regulators,* on the basis of the daily implementation of such directives and also thanks to the excellent work initiated and still pursued by CESR.

Second, and here in the specific case of the Management Company passport, we wonder what would be really the best for national regulators:

- regulators are *currently* obliged to accept the import of UCITS from other Member States, through the product passport (without any harm in practice). In the context of the so-called notification procedure, having existed already for several years now, host regulators have a very narrow margin for manoeuvre when registering the foreign UCITS. In this case, the Host regulator cannot control the rules applicable to the fund. In addition, in many instances, the Management Company managing such imported UCITS are located abroad as well – the Host regulator have no power on

it. As a conclusion, the Host regulator can neither control the product nor the Management Company in many instances;

- by comparison, what would be the impact of a full Management Company passport? Obviously a fund could be managed from abroad. But as mentioned right above, it is already the case today in many instances through the *product* passport. And regarding the UCITS itself, either the UCITS will be domiciled abroad (as it is already the case today with the product passport) or in some cases it will be domiciled locally (i.e. in the country of the regulator, and therefore subject to the application of the local fund rules). [The latter case might occur if for marketing reasons, the promoter prefers to offer locally domiciled funds in order to give a closer proximity between the product and the local investor]. If the domicile of the UCITS is abroad, it will not change anything for the regulator as compared to today with the product passport. *If the domicile of the UCITS is in the country of the regulator, subject to the local fund rules, the level of monitoring by the regulator will be higher than today as compared to the product passport.*

To sum it up, we think that getting a full Management Company passport will not only offer cost savings to the final benefit of investors but will be as well either neutral or beneficial for the monitoring of the products by currently importing countries regulators.

On the **Simplified Prospectus**, and because of the failure of the current Simplified Prospectus, we do think there is a need for true harmonisation of the format of a **very short document** (half a page) regarding the *few key information* to deliver to the investor.

On the **Master-Feeder structures**, in our view, there is no rationale standing behind the requirement of having a minimum of two feeders for one master.

Beyond the current Commission proposals for amending the UCITS Directive but still within the scope of investment funds, **we still request urgently as well a complementary discussion on the need for an EU framework for alternative investments – real estate, hedge funds and funds of hedge funds and also private equity funds**. The very recent and positive decision by DG Internal Market services to set up (after having taken such a decision for real estate funds) an expert group on real estate funds should be followed very soon by a similar expert group on on-shore hedge funds and funds of hedge funds, which could helpfully lead to setting a European "alter-UCITS" brand complementary to the existing UCITS brand – the latter brand being so successful today both within the EU and at worldwide level.

In addition, we consider that the categories of eligible assets themselves, for UCITS funds, should be tackled at Level 2 for the future through the Lamfalussy procedure, in order to give more flexibility to the existing UCITS Directive.

Beyond the scope of investment funds, we think that until now the European Commission has not yet sufficiently taken into account the level playing field between savings products (and especially the discrepancies existing among Member States regarding marketing requirements). The Commission should provide for proposals in this matter, in particular following the ECOFIN Council requirement on 8 May to the Commission "*to review the consistency of EU legislation regarding the different types of retail investment products […], so as to ensure a coherent approach to investor protection and to avoid any mis-selling possibilities*".

Last general comment: throughout the whole work of revisiting the UCITS Directive and potentially other directives, **the Commission should take into account the development of IT techniques, which allow for investors to get a lot of information in a very fast and cost-efficient way**. Internet is a more and more popular tool for investors. As a reminder, the US is currently revising its own national simplified prospectus by taking IT techniques and languages (such as XBRL) into account. It would probably be a good initiative for the Commission to be inspired by such an approach.

You will find below our specific comments on each of the six topics covered by the draft exposure. Please take note that we have made suggestions of changes to the draft articles whenever we felt it was necessary to emphasise our comments. We have also answered to the specific questions raised by the European Commission.

SPECIFIC COMMENTS:

THE NOTIFICATION PROCEDURE:

AFG approves the proposal made by the European Commission to speed up the notification process, which would be then fully in the hands of the regulators.

However, we draw the attention of the European Commission to the fact that the time-frame proposed includes an excellent short time limit for scrutiny of the files by the host regulator (three days) before the actual marketing of the relevant UCITS, but it does not set up any maximum time limit for the **home** regulator to review the file *before* sending it to the host regulator. Since the home regulator has already approved the funds, we suggest limiting its review period of the file to three days.

In addition, we think that the European Commission should be clearer about the split and share of responsibilities between the home and the host regulators.

Moreover, we draw European Commission's attention to the fact that the proposed procedure can only work if the key information delivered to investors –through the Simplified Prospectus – is fully harmonised. Otherwise, passporting UCITS will still remain difficult between some Member States – where the format and content of the Simplified Prospectus are currently very dfferent.

In addition, host authorities must not be able to intervene neither to require new additional information nor to change already included information.

To illustrate our comments, please find below the draft proposal of Article 46 with changes highlighted in yellow:

Article 46

1. **[notification letter]** If a UCITS proposes to market its units in a Member State other than that in which it is situated, it must first submit a notification letter to the competent authorities of its home Member State. The notification letter shall include information on arrangements made for the marketing of units of the UCITS in that other Member State: ~~in particular~~
- details of a paying agent ~~and~~ **or** other arrangements for making payments to unit-holders and re-purchasing or redeeming units;
- information on distribution channels;
- if applicable, the contact point where the information on third parties entrusted by the UCITS with the marketing of its units on the market in that other Member State is available;
- information on how compulsory information to be provided to investors in accordance with Section VI will be made available to investors in that other Member State.

3. [obligations of the UCITS home Member State authorities] The competent authorities of the UCITS home Member State shall verify, within three days, whether the documentation submitted by the UCITS according to paragraphs 1 and 2 is complete.
If the documentation is complete, the competent authorities of the UCITS home Member State shall transmit it to the competent authorities of the Member State in which the UCITS proposes to market its units, together with an attestation to the effect that the UCITS fulfils

the conditions imposed by this Directive […].

We proposed deleting 'in particular' to limit the scope of the information contained in the notification letter (as we don't see the need for additional information); replacing 'and' by 'or' to reflect the fact that in some Member States, no paying agent is required and finally adding a maximum time period of three days for the home regulator to review the file.

Answers to the questions raised by the European Commission:

Legal questions *(section 2)*

1. Does the proposed approach represent the most effective basis for achieving the smooth functioning of the passport? How could the proposed approach be improved and what alternative approaches could/should be envisaged?

The reduction of the notification procedure timetable is crucial to enable a firm to start marketing its authorised UCITS in another MS. However, we do think that some clarifications are needed regarding the maximum time-period the home regulator can use to review the notification file before sending it to the host regulator. We suggest adding a maximum time-period of three days as the 'filing period' by the home regulator to scrutinize the content of the file it has received before transmitting it to the host regulator.

2. Do the proposed provisions represent a sound and operational basis for informing host authorities about the marketing of UCITS in their Member States? Are the responsibilities and obligations of the respective competent authorities sufficiently clear?

Some clarifications are needed regarding the remaining powers of the host regulator, in order to be sure that it will not review the authorisation given by the home regulator.

3. In the event of host country's questions relating to matters not harmonised by the Directive (e.g. advertising/promotional material, commercial communications, and distribution channels) how can these be addressed/resolved without obstructing or delaying the right of the fund to circulate its units in that market?

A good solution could be to ask regulators to post on their website, in a language customary in the sphere of international finance, all the non-harmonised requirements that a firm must meet to start marketing its UCITS in that host Member States.

4. Proposed solutions foresee that obligatory publications are distributed to investors in a host Member State according to its local rules. Is harmonisation of those methods of distribution to investors desirable? Feasible?

*We do not clearly understand what the word 'publications' refer to. Is it referring to annual reports? To other documents? In addition we do not think that harmonisation of the **methods** of distribution should be sought, since distribution ways should not be imposed at EU level. Instead, we support harmonisation of the marketing and disclosure **rules** since it is logical that investors get access to the documents in the same conditions everywhere in the EU.*

5. Will new rules on use of languages for obligatory disclosures affect investor protection?

We are satisfied with the new set of rules regarding the use of languages. We definitely support the idea of providing the KII in the host regulator's language since the KII is the only tool explicitly intended for the investor and should logically be understood by him/her.

Economic questions *(section 1)*
6. Do you agree with the analysis of the expected impacts? Are there any other economic or investor protection implications that should be taken into account?

Yes. The modification of the notification procedure will obviously induce economies of scales.

7. What do you expect to be the size of the different savings highlighted in the analysis (possibility of using electronic means, translation regime, etc.)? Which other costs could be saved thanks to the proposed procedure?

Regulation fragmentation in the context of notification procedure is costly: around 25 million euros (see study made by EFAMA on the costs of notification procedure[2]).
Other cost savings would include among others, cost savings for regulators as well as cost savings regarding legal consultations.

8. Do you agree with the following assumptions?

- The envisaged adjustments should lead to reduction of current notification fees: ***YES***

- Electronic communication between the fund promoter and its home MS regulator and between the home regulator and the host regulator is possible: ***YES***. ***This point should be stressed even more: electronic communication and languages (such as XBRL in the US for instance) must be kept in mind – and favoured – for the forthcoming work on the notification procedure as well as for the new Simplified Prospectus/KII.***

- The envisaged option will facilitate cross-border access for UCITS more than viable alternatives? ***YES***

- The envisaged option will free resources on the side of host regulators: ***YES***

- Implementation of new rules regarding the use of languages and making the UCITS responsible for translations will considerably reduce translation costs: ***YES***

9. Which further possibilities could be considered in order to reduce the industry's and regulators' administrative burden and other compliance costs linked to the proposed provisions?

The European Commission has not considered the issue of the notification taxes currently levied by regulators. Since the procedure will be simplified (and the work of the host regulator lightened), there is no justification anymore for host regulators to impose notification taxes.

THE MANAGEMENT COMPANY PASSPORT:

We **strongly disagree** with the option chosen by the European Commission, since we think that a partial passport is not a gain for the European fund industry in comparison with the current solution and does not comply with the spirit of the UCITS Directive. A partial passport would not comply either with the spirit of the EU Treaty, which is to establish a single market of the UCITS funds. Regarding the latter point, as the European Commission (through DG Internal Market services in this case) is the Guardian of the EU

[2] "*A harmonised, simplified approach to UCITS registration*", EFAMA, 26 April 2005

Treaty and has an official mission of ensuring compliance with the fundamental freedoms of services, goods, people and capital, we think that DG Internal Market should take all the necessary measures to enable the free choice of location of a management company and of a fund wherever in the EU, without any other considerations than cost efficiency – to the ultimate benefit of investors. On the contrary, by requiring keeping local entities for managing local funds, it will continue to keep significant costs directly or indirectly linked to this management. As mentioned during the Open Hearing on 26 April, currently the TER of UCITS domiciled in Luxembourg is for instance clearly higher than for those domiciled in France (see Fitzrovia figures, April 2007).

On this basis, we strongly disagree with the partial passport for the following reasons:

- it will not favour economies of scale since it is very costly to mandatorily either set up a branch or keep a physical presence in a Member State different from the Member State where the management company is located. Some of our members have estimated to several millions the cost of maintaining a team in another Member State (some of our members have until 7 or 8 local management companies just to be able to domicile funds locally);
- in some jurisdictions, the administrative management functions are currently outsourced from the country of domicile of the fund to another EU Member State; therefore the proposal made by the European Commission (i.e. to require the location of some administrative functions in the country of domicile of the fund) would change the way some European industries are currently organised and could even change the nationality of current funds – this location becoming a criterion for legal domiciliation;
- **the need to perform the NAV calculation and to keep the unit-holder registers in the fund's domicile is not substantiated at all by the Commission. The criterion of the free choice of location for the fund domiciliation should be sufficient by itself to determine the nationality of the fund**;
- in any case, we dispute the fact that the NAV calculation and the unit-holder register administrative functions may be considered as 'core' administrative functions;
- the adverse tax argument for full passport is not valid since in many Member States, UCITS are tax-free vehicles and bilateral agreements on tax issues can always be provided whenever necessary;
- finally, there is no evidence that the investor would be better protected with the partial passport than with a full passport. It even seems to be the contrary, as a full passport would clarify for the investor which entity is responsible for the whole management activity.

In addition, as mentioned (in a more developed way) in our general comments at the beginning of this letter, and from a supervisory perspective, we do think that a full Management Company passport will be either neutral or even beneficial to regulators of currently "importing" countries. With the existing product passport, the scope of scrutiny of the imported product by the importing country regulator is already very narrow (without any harm in practice), knowing that in many instances the Management Company itself is located abroad. With the forthcoming Management Company passport, the funds will be either still domiciled abroad or domiciled locally (i.e. in the country of the relevant regulator). In the first case, it will not change as compared to today (when the Management Company is domiciled abroad). In the second case, at least the product will be domiciled locally – and therefore the local fund rules will apply and will be supervised by the local regulator (contrary to the existing product passport).

Answers to the questions raised by the European Commission:

Legal questions *(section 2)*

1. Does the proposed approach represent the most effective basis for achieving the stated objective (to give effect to the management company passport)?

No, for the reasons stated above.

Actually, the option chosen by the European Commission would not result into fundamental gains for the industry. On the contrary, it would generate additional costs (by a mandatory location of some administrative functions in the country of domicile of the fund). In addition, this option does not comply with the general principle of getting a Single Market (with a free choice of location of activities), which is supposed to be promoted by the European Commission, in particular DG Internal Market. If a full management company passport arises, it will allow for locating wherever in the EU centres of excellence for each layer of the investment management value chain.

2. How could the proposed approach be improved? Should alternative approaches be envisaged? Which provisions are not adapted to realisation of the stated objective?

The approach proposed by the European Commission will be improved by opting for a full passport.

3. Are the reasons for defining the fund and management company domiciles well grounded? Are the proposed criteria and tests for defining the respective domiciles, appropriate and operational? Is the distinction between domicile of fund and that of the management company introduced coherently and systematically in all relevant provisions? Does this distinction need to be reflected more fully elsewhere in the Directive (e.g. depositary responsibilities)?

No since in many Member States, the administrative management functions are outsourced in other Member States. Determining the nationality of the funds by the location of "core" administrative functions would damage the currently well-settled fund economy and industry of many Member States (in addition, we contest that the administrative functions identified by the Commission are "core" functions). The choice of the national law to be applied and to comply with should be sufficient per se to define the nationality of a fund. The single criterion for determining the fund domiciliation should be the choice of the country for the fund registration, which would then determine the law applicable to the relevant UCITS (and the relevant regulator regarding the product).

4. The management company will be able to maintain the shareholder register and assume responsibility for fund valuations for a fund domiciled in another Member State, subject to the provision that these functions be physically performed in the fund domicile (via branching or delegation) and subject to competent authorities of that country. Is this a coherent and operational basis for reconciling the management company passport with the need to ensure sufficient substance in the fund domicile?

No, as we consider that there is no need for having these administrative functions located in the country of the fund. It is contrary to the general principle of the Single Market, which constitutes the official aim to be achieved by the European Commission. In addition, we dispute the identification of the administrative functions identified by the European Commission as being 'core' administrative functions; there is no rationale given by the European Commission for qualifying such functions as 'core' ones. The European Commission should be aware that by setting up a framework for such a partial passport, it would create an obligation of performing these functions in the fund's domicile – and therefore additional costs – which does not exist today!.

5. Are the responsibilities and obligations of the different actors (including depositaries) and competent authorities sufficiently clear so as to ensure integrated supervision of risks at the level of the fund and the management company? Do the strengthened supervisory cooperation mechanisms (see chapter 6) provide the basis for effective and timely intervention to correct any cross-border supervisory concerns that might arise from exercise of the management company passport?

YES

Economic questions *(section 1)*

6. Do you agree with the analysis of the expected impacts? Are there any other economic or investor protection implications that should be taken into account?

We agree with the conclusion following which a full passport would entail higher saving costs for asset managers than the partial passport, since the latter one would impose costs for maintaining a team in charge of some administrative functions on the fund's territory. Let's stress that having a full passport would not mean having anymore use of local lawyers and other providers in the fund's domicile: obviously these providers will remain the best placed for providing services, based on their daily experience of local legislation. But the choice of local providers must be ***freely*** *made by the companies managing the funds in practice – wherever these companies are located in the EU: this choice must become a faculty, and should not stay as a requirement.*

7. Is 'close physical presence' necessary for the depositary to fulfil its duties?
No since:
- *on going monitoring is done through IT: it is already the case today on a remote mode;*
- *'on-site' visits are still feasible, such as it is already the case today.*

8. What is the annual cost linked to maintaining the two core functions (i.e. valuation and pricing and the maintenance of the unit-holder register) in the funds' domicile? Can significant savings still be achieved despite the performance of those two functions in the funds' domicile?

First of all, we contest the fact that these two administrative functions are "core" functions.

Second, requiring having these two functions performed in the fund's domicile would incur potential additional costs since they would need to be (re)located in the fund's domicile. Let's recall that these functions are not performed in the fund domicile in many instances today. Therefore the right issue is not the 'annual cost linked to maintaining' these functions but the 'annual cost linked to the ***mandatory (re)location****' of these functions in the countries of domicile of the funds. We can estimate the costs at more than several millions euros.*

Regarding the second question, we do not think that any savings can be made through a partial passport. We need to be free to choose the best 'Centres for Excellence' anywhere in the EU for any function – which therefore requires a full passport.

9. Are there other administrative functions which should stay in the fund's domicile? What would be the estimated additional costs/savings associated to these functions staying in the fund's domicile?

No since any mandatory location of administrative functions in the funds' territory would induce additional costs.

THE FUND MERGERS:

AFG basically agrees with the proposal made by the European Commission, which is in line with the study carried by IOSCO in November 2004.

However, we want to underline some remaining issues:
- we wish a faculty – and not an obligation - to inform the investors of the receiving funds (see draft exposure, page 16, para. 4);
- we also think that the type of information to be provided to the investor should be 'reasonably disseminated' information, i.e. not sent to each investor but publicly available such as through newspapers or distributor's website.

Answers to the questions raised by the European Commission:

Legal questions *(section 2)*

1. Does the proposed approach represent the most effective basis for achieving the stated objective to create an effective framework for fund mergers? How could the proposed approach be improved and what alternative approaches could/should be envisaged?

Overall we agree with the proposal made by the European Commission.
But we make some reservations on:
- the obligation of information to investors of the receiving funds (see draft exposure, page 16, para. 4): there should not be any obligation to inform but merely a faculty;
- detailed information at Level 2: should provide for 'reasonable' information i.e. not individualised information to each investor but only publicly available such as newspapers, distributor's website for instance (i.e. without any exhaustive list of media).

2. Do the proposed definitions and scope of the proposed measures adequately capture the main features and characteristics of fund merger activity? Do they take sufficient account of differences between different fund types (corporate, contractual, trust) and legal systems (common law, civil law)?

Yes.

3. Are the interests of unit-holders in the merging/dissolving and receiving fund sufficiently safeguarded by the proposed arrangements? In particular, is the reliance on information provision coupled with the right to redeem free of charge a suitable basis for protecting investor interests?

Yes, but the information of the holders of the receiving fund should remain a faculty, not an obligation.

4. Does the proposed minimum content of the common draft terms of merger correspond with current practice? Should any other items be added to it? Do you consider it preferable to grant implementing powers to the Commission to further define the content thereof?

The content proposed should be exhaustive and not a minimum. Therefore, we suggest deleting in the box 'Draft terms of mergers', the expression 'at least' in the sentence "the common draft terms of merger shall include, ~~at least~~ the following (..)".

Economic questions *(section 1)*
5. Do you agree with the analysis of the expected impacts? Are there any other economic or investor protection implications that should be taken into account?

Yes (to the first question)

6. Is the assumption regarding the number of potential cross-border mergers right (i.e. the fact that option 3 would encourage a considerable lower number of mergers than option 1)? Will the envisaged solutions be more effective in facilitating fund mergers that other approaches considered?

Yes. The option chosen by the European Commission (i.e. option 1 where the regulator responsible for the disappearing fund decides on the merger) is the only one that will foster cross-border mergers. Option 2 (the two regulators make a common decision) would assume a very high degree of cooperation between the regulators. Option 3 (the two regulators decide separately) is a very inefficient solution.

7. Which additional possibilities could be considered in order to reduce the regulators' and industry's administrative burden and other compliance costs further?
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8. Have countries with a history of domestic mergers, observed identifiable positive or negative impacts for investors?

France has a significant experience of domestic mergers (more than 600 since 2003 for 'general purpose' funds; more than 1200 since 2003 if employee savings schemes are added). Those domestic mergers had no negative impact for investors.

In addition, no problems (scandals, sanctions from the regulator) have ever occurred in France.

On the contrary, at national level, mergers have been very positive in the sense they allowed to reorganise the range of products proposed to investors.

Moreover, from a cross-border perspective, it should be noted there is a current trend of cross-border mergers between financial groups - and therefore between management companies (contributing to make the Single Market a more obvious reality). But getting a higher degree of Single Market requires clearly to allow these merged management companies to merge their funds as well, consequently.

VIRTUAL POOLING AND MASTER-FEEDER STUCTURES:

Since its Green Paper on investment funds, the European Commission has identified pooling (as composed of both virtual pooling and master-feeder structures) as a high priority issue. AFG supports the approach of the European Commission, which would be to set the rules for the master-feeder structures through the forthcoming amendments of the UCITS Directive and to 'mandate' CESR to pursue a reflexion on virtual pooling. We consider the introduction of the master-feeder regime in the UCITS Directive as being a top priority for the European industry.

Despite our support to the European Commission's proposal, we would like to bring the attention of the Commission to some remaining issues.

First of all, regarding the rule following which the feeder is an authorised UCITS having a specific investment policy, our members are asking to introduce a (re)conversion possibility of the UCITS feeder into a regular UCITS, if needed. The idea would be to authorise the feeder to 'exit' from the master-feeder structure to (re)convert into a 'regular' UCITS again.

Second, and as important as the previous request, the rule following which a master must have at least two feeders does not seem to be justified and understandable since it limits the scope of the masters with no reason.

Answers to the questions raised by the European Commission:

Legal questions *(section 2)*

1. Do you agree/disagree with the intention to harmonise only master-feeder structures?
Why?

Yes since the structure is safer from a regulatory point of view and also for the investors themselves. Before deciding whether other pooling structures should also be harmonised, it is wise to wait for the outcome of the work to be undertaken by CESR on the topic.

2. Does the proposed approach represent the most effective basis for achieving the stated objective (to create an effective framework for master-feeder structures)? How could the proposed approach be improved and what alternative approaches could/should be envisaged?

We wonder why there is a requirement of at least two feeders investing in the same master, especially if the master fund is directly accessible to investors.

3. Are the responsibilities and obligations of the competent authorities sufficiently clear? Does the proposed authorisation and supervision mechanism ensure an efficient supervision, particularly in cross-border-structures?

Yes, however the European Commission should be aware that asset managers might get problems to rapidly gather the necessary information.

4. Do the proposed definitions and scope of the proposed measures adequately capture the main features and characteristics of master-feeder structures?

Yes

5. Is the proposed threshold for assets invested in the master by the feeder (i.e. 85%) an appropriate cut-off point? Apart for the (15%) holdings listed as permitted which other instruments/investments should a feeder be allowed to invest in?

Yes

6. Are the interests of unit-holders in the feeder UCITS sufficiently safeguarded by the proposed arrangements? Are additional safeguards needed in certain scenarios (e.g. conversion of existing UCITS to feeder UCITS; should master and feeder not be entitled to have the same depositary and/or auditor?)

Regarding the possible need for having the same depositary and/or auditor, we think that it should be an obligation only in specific cases clearly justified. For instance currently in France, for UCITS feeders investing on derivative markets, there is an obligation to use the same depositary as the master fund's one - in order to be able to monitor the cumulated "commitment risks" of the two relevant funds (feeder + master) and thus to comply with the requirement on derivative commitments included in the existing UCITS Directive.

7. For an investor considering investment in a feeder fund, which are the main elements, an investor should be informed about so as to enable her/him to take an informed decision? The resulting investment policy? The resulting level of fees/charges? Others?

The resulting investment policy as well as the resulting level of fees should be communicated to the investor, via the Key Investor Information.

Economic questions *(section 1)*

8. Do you agree with the analysis of the expected impacts? Are there any other economic or investor protection implications that should be taken into account?

Yes

9. Would the proposed UCITS master-feeder regime have an impact on the number of these pooling structures?
 ***YES**, an important surge on the use of master-feeder structures is to be expected + statistical data to provide.*
 No, the main change will be that existing structures become UCITS-compliant.
 No, main pooling advantages are already exploited through national structures.

10. Which possibilities could be considered in order to reduce the regulators' and industry's administrative burden and other compliance costs linked to the proposed provisions?
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THE SIMPLIFIED PROSPECTUS

Contrary to the proposal made by the European Commission, the French industry is supporting the harmonisation of the *key*-content and format of the Simplified Prospectus.

In 2004, a common format and content was suggested to Member States by a Commission Recommendation. But as by definition this Recommendation was not binding for Member States, it ended in practice with many discrepancies from one Member State to another: as a result, the document has missed its objectives to enable cross-border distribution of UCITS as well as to offer the investor a tool for comparisons between UCITS from different Member States (therefore missing the aim of offering a real UCITS Single Market to investors).

We strongly support the models of the Simplified Prospectus that EFAMA, our European association, published in 2002[3]. These models are still valid and offer easily understandable and comparable information, enabling the investors to make informed decisions. Up to now, the philosophy of the European Commission was to set up a single, short and harmonised document containing a defined set of key information for the investors. On the contrary, the Key Investor Information as proposed is not included in a specific document and will therefore present the same negative characteristics as the Simplified Prospectus - in particular the lack of comparability and potential difficulties of product passporting in practice. And even worse, at distributors' level, the absence of harmonisation regarding the presentation of key information in a standardised format would end up in a situation where each distributor would impose its own set of requirements (making once again comparability impossible). In addition, the European Commission should be aware that the solution proposed will increase the costs supported by the industry and reduce transparency at the point of sale.

The Key Investor Information should definitely offset the defaults of the Simplified Prospectus and be a simple, EU document harmonised both in its short format and key information, clearly stating the split of responsibilities between distributors and asset managers.

Moreover, we ask the European Commission for finding solutions in order to help the industry transiting from the existing simplified prospectus to the forthcoming KII document.

Three last points:

- the Commission should further think about taking into account electronic techniques and languages (such as XBRL in the US) in the context of rethinking the Simplified Prospectus;

[3] See : http://www.efama.org/50Standards

- in any case, the Commission should get fast results as the bad (conversely, good) aspects of existing simplified prospectuses have already been tested negatively (respectively, positively) in all Member States, and knowing that EFAMA has already provided an interesting model in this area;

- launching any forthcoming work on the Simplified Prospectus will require first to know how this key information/document will be used by distributors (on the basis of the MiFID and the Insurance Mediation Directive in particular).

Answers to the questions raised by the European Commission:

Legal questions *(section 2)*

1. Does the proposed approach represent the most effective basis for achieving the stated objective (a sound approach to generating meaningful product disclosures that are relevant to the end-investor)? Can it help to resolve the problems that have beset the Simplified Prospectus (information overload, irrelevant information, gold-plating)? How could the proposed approach be improved and what alternative approaches could/should be envisaged?

A full harmonisation of the principles, short key information and short format of the document to be delivered to the investor should be the way to improve the Simplified Prospectus.
The document should clearly state the split of responsibilities between asset managers and distributors.

2. Should these disclosures be produced in a physical document to support the sales process?

Yes in order to keep track of the information that the distributor has given to the investor, a short physical document (less than one page) should be delivered to investors. However, the KII should not be the mandatory single document to support the sales process. For supporting the sales process, the distributor should be free to use its own marketing documents as well.

3. Should intermediaries and distributors be required to make effective use of these disclosures when selling UCITS or UCITS-based investments? What types of obligation could be imposed through point of sale regulation?

The use of the KII should be mandatory and a short physical document should be given by intermediaries to the investors.

4. Do you consider that, when providing key investor information, a distinction should be made depending on the retail or professional nature of the investor?

As the Simplified Prospectus, the KII should be tailored mainly for the retail investors who need to easily understand the funds they are buying. However, even if the KII is tailored to retail clients and should be mandatory for retail investors, distributors should have the faculty to give the same document to professional clients and eligible counterparties covered by MiFID.

5. What are the possible implications for investors of the envisaged regime to limit civil liability attached to the provision of key investor information to such situations where the information is misleading, inaccurate or inconsistent with the relevant parts of the prospectus?

If the KII has the status of a pre-contractual document, the envisaged regime might have an impact on the national regime of torts law.

6. In case of electronic delivery of key investor information, should the use of hyper-links to refer to additional information (prospectus, annual and half-yearly reports) be allowed and if so, what safeguards should be provided for?

Yes. We do not see which safeguards should be provided for.

Economic questions *(section 1)*

7. Do you agree with the analysis of the expected impacts? Are there any other economic or investor protection implications that should be taken into account?

The option chosen by the European Commission i.e. a new approach to investor disclosures might incur in the short term more costs for the European fund industry, which has just finished implementing the very costly Simplified Prospectus (According to a study made by Deloitte in January 2006, the existing Simplified Prospectus' implementation cost was estimated at € 40 millions in France) However, in the medium term, a harmonised KII would generate cost savings and facilitate cross-border marketing. Such a pace would be in line with the pace of adoption of the relevant texts by the European institutions.

8. Which possibilities could be considered in order to reduce the industry's adjustment and other compliance costs linked to the proposed provisions?

The KII should be a document as simple as possible in order to be a useful document for the layman retail consumer.

9. What is the estimated size of savings that could be expected if electronic means are used to provide fund's disclosures (e.g. in percentage of actual information delivery costs)? What would be the estimated size of savings that could be expected if UCITS are exempted to provide the same information to professional investors than to retail investors?

We agree that delivering the KII to professional investors should not be an obligation but a faculty (see above).
In addition we also agree that the use of electronic means would incur economies of scales.

10. What is the estimated size of additional costs that could be expected if UCITS marketing its units in another Member State will need to comply with the relevant rules of the host Member State on language / publication methods to deliver key investor information to investors in such Member States?

It will be expensive for UCITS to comply with the national rules of the host Member State in terms of language and methods of publication. However it will be less expensive than the current non-harmonised Simplified Prospectus.

THE SUPERVISORY COOPERATION

Many proposals made by the European Commission to review the UCITS Directive can only work if there is a true and efficient cooperation among regulators. It is crucial that the obligation to cooperate is mentioned and comprehensively developed in the UCITS Directive, in order to give a binding aspect and legal certainty to the cross-border cooperation. Although CESR is doing an excellent work in enhancing the cooperation between regulators, it is not enough by itself at this stage considering the ambitions of the UCITS Directive review.

Answers to the questions raised by the European Commission:

1. Do the proposed amendments represent the most effective basis for achieving the stated objective (strengthening supervisory cooperation) in relation to each of the four adjustments under review (notification, management company passport, mergers, pooling)?

Regarding the powers of the competent authorities, we agree in particular on the provision setting up the principle of administrative sanctions.

Regarding the exchange of information, we agree on Articles 50, 52, 52a, 6c.

Regarding the cross-border verification/investigation, we agree on Articles 50, 52b (alignment with supervisory powers under MiFID). But is the split of powers/responsibilities clear enough where a branch is set up in another Member State's territory?

Regarding the cross-border enforcement, we consider that Article 52, 6c needs a careful review and consideration: an arbitrage procedure would probably be necessary in case home and host regulators disagree on the measure to take, in which CESR should play a role.

2. How could the proposed amendments be improved and what alternative approaches could/should be envisaged? Which provisions are not adapted to realisation of the stated objective?

3. Are some proposals redundant, being already in place as a consequence of other Directives, such as on powers (MiFID in particular)?

Yes but they make sense since the scopes of the MiFID and the UCITS are complementary: the first one deals basically with the distribution (and regulates activities/services) whereas the second one deals with the products.

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We thank the European Commission for carefully reviewing the comments made by the European industry on the initial orientations on possible adjustments to the
UCITS Directive and remain available to discuss further the content of this letter.

Should you have any questions, please contact myself at 01 44 94 94 14 (e-mail: p.bollon@afg.asso.fr); Stéphane Janin, Head of International Affairs Division, at 01 44 94 94 04 (e-mail: s.janin@afg.asso.fr); or Catherine Jasserand, Deputy Head of International Affairs Division, at 01 44 94 96 58 (e-mail: c.jasserand@afg.asso.fr).

Yours sincerely,

(signed)

Pierre Bollon