

# UCITS IV

Cross-border notification of UCITS

November 2009

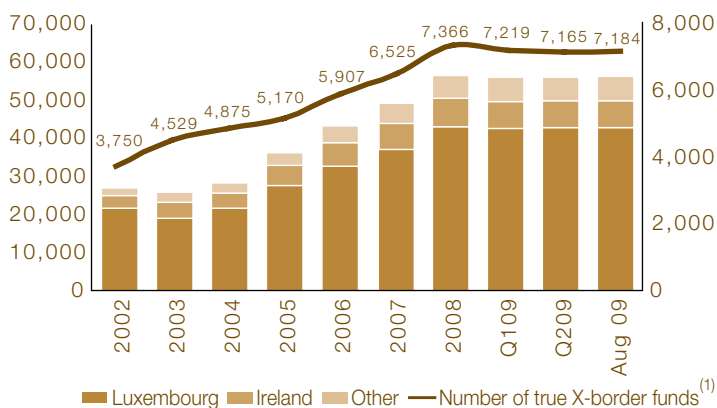
Further to the adoption of the recast UCITS Directive (“UCITS IV”) that is due to come into force in July 2011, CESR issued on 17 September 2009 its consultation paper to the European Commission on level 2 measures relating to several topics inter alia the cross-border notification of UCITS (“CESR level 2 consultation paper”) inviting responses from the Industry by 17 November 2009.

### Background

Since the implementation of the previous UCITS directive, (the so-called “UCITS III Directive”) and thanks to the June 2006 CESR guidelines, there has been a significant increase of the number of true cross-border funds<sup>(1)</sup> from 3,750 back in 2002 to 7,184 in August 2009. Indeed, one of the objectives of the EU Commission was to simplify the notification process for a UCITS which intends to market its units on a cross-border basis in the European Union introducing harmonized rules and to give a common approach on market access.

The recast of the UCITS Directive providing for the overhaul of the notification procedure should contribute to the continuous growth of the number of cross-border funds. Indeed, this time the main objective is to accelerate the market entry process thanks to a simplified notification process as well as a removal of unnecessary administrative burdens. The new notification procedure is based on swift, electronic communication of standardized documentation between authorities. It removes ex-ante check of marketing arrangements by authorities of the UCITS host Member States and facilitates immediate access to the host Member States market for UCITS.

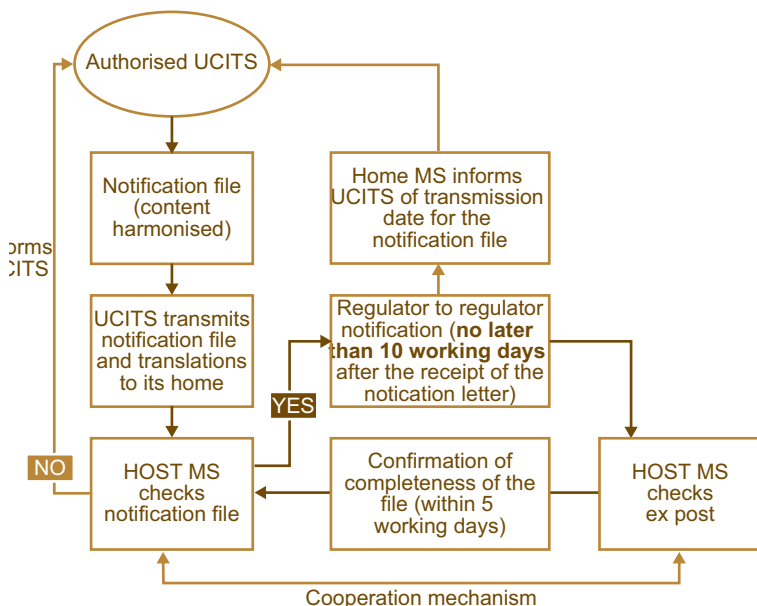
#### Evolution of x-border distribution



Note: <sup>(1)</sup> Funds distributed in more than 2 countries

### Scope of the UCITS IV notification process

The new notification process will be a regulator to regulator process, the UCITS Home Member State regulator having only a maximum of 10 working days to review a notification file (standardized in form and content) and to transmit it to the Host Member State regulator, thereby triggering the immediate right to start marketing activities in that country.



### Core requirements of UCITS IV

#### Information to be published by each Member State

Member States are required to publish by electronic means full information on their local laws, regulations and other provisions relating to the marketing of foreign UCITS in their jurisdiction.

This information must be disclosed in a clear and unambiguous manner and be kept up to date.

CESR consultation paper has defined the minimum information as not being an exhaustive list being specifically related to arrangements for marketing units of UCITS in the Member States.

#### Access for host Member State to the notification documentation

The home Member State regulator is required to ensure that host Member State regulators have access by electronic means to the UCITS supporting documentation to be sent together with the standard notification letter.

CESR is considering several solutions from simple e-mail messaging to EU-wide database system or UCITS/Man Co website.

Post notification, the UCITS itself is afterwards required to keep this documentation up-to-date and to notify the amendments to the Host Member State regulators.

Indeed, CESR level 2 advice confirms that they do not intend to suggest that the above requirement imposed on the UCITS itself is done via the home Member State regulator (as it is the case for the initial notification process).

### Standard notification letter and attestation

Article 93(1) of the UCITS IV Directive requires a UCITS intending to be registered in a host EU Member State to submit a notification letter to the host Member State regulator, this document having to be submitted together with a UCITS compliance attestation provided by the home country regulator.

This requirement is derived from the harmonized documents already contained in the June 2006 CESR guidelines to simplify the cross-border notification process of UCITS.

CESR has suggested new drafts of notification and attestation letters based on the standard ones already attached to the CESR guidelines. No changes have been made to the UCITS attestation. Minor modifications have been made to "Part A" of the notification letter but it has to be noted that "Part B" covering non-harmonized requirements has been expanded and will have to be completed with the amount of details requested by each Host Member State regulator.

### Electronic transmission of notification files

Member States regulators shall accept electronic transmission and filing of notification documents.

This was already included in the June 2006 CESR guidelines and approximately 75% of the Member States regulators have already implemented such means of transmission.

CESR level 2 consultation paper firstly suggests the use of a centralized system to deal with the notification procedure.

Since it is likely that this system, if implemented, may not be available before the implementation of the UCITS IV Directive, existing electronic means (i.e. e-mail messaging) could first be used between Member States regulators.

To allow the UCITS to enter a market in an easier process and in a quicker way, Member States regulators will have to comply with the following notification rules:

- Upon sending of notification e-mail including the UCITS documentation, the home country regulator shall inform the UCITS of its right to access the host country market immediately.
- Host Member State regulators shall confirm receipt / completeness of the notification request within 5 working days
- Problems of incompleteness of the notifications shall be resolved by the home Member State regulator within 24 hours otherwise it has to inform the UCITS to cease the marketing in the host Member State.

## Main business implications for the UCITS industry

### Focus on preparation of the notification file

- UCITS must make sure it complies with the local laws, regulations and other provisions applicable in any host Member States.
- How can the UCITS rely on the information made publicly available by the Member States i.e. what is the liability of the host Member States if the information provided is not fully up-to-date?
- UCITS must make sure its marketing documents are in line with all host Member State requirements.
- How will the UCITS make sure its interpretation of the information disclosed by the Member States is correct and is in line with what is expected?
- UCITS must make sure the notification file is complete before sending it to the Home Member State regulator.
- UCITS must use the standard notification letter and make sure that Part B (disclosing non-harmonized requirements) is in line with the host Member States requirements. Since information included in Part B of the notification letter will be different depending on each host Member States requirements, there will be one specific file per country where the UCITS intends to be registered for distribution to the public.
- Standard notification letter is disclosing the list of sub-funds to register requiring the ISIN Codes. Does that mean that the registration will have to be made at a unit/share class level even in the countries where it is currently done at a sub-fund level?

### Focus on registration maintenance process

- What about the update of the UCITS documents? The UCITS itself will have to notify all Host Member States regulators and keep its documentation up-to-date and available. What would be the process to follow? Same as the one currently applicable?
- In case of liquidation / merger / de-registration in the host Member States, what would be the process to follow? Nothing is actually foreseen in the CESR consultation paper...
- If the UCITS / Management company website has to be used for the storage of updated documentation, would the UCITS website have to meet certain specific requirements based on national regulations (language, front, format, etc)?
- Standard notification letter is disclosing the list of sub-funds to register requiring the ISIN Codes. Does that mean that the registration will have to be made at a unit/share class level even in the countries where it is done at a sub-fund level? In that case, as soon as a new unit/share class is created, will it entail the submission via the home Member State regulator of a new registration file? Will it be standardized in all countries?

### Focus on investors' interest/feelings

- In case marketing of the UCITS in the host Member State shall cease due to any problems of incompleteness arising from the home Member State regulator, how to manage the relationship with and the commercial approach to potential local investors / what about the bad reputation of the UCITS towards the local investors?

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