

European Commission
Internal Market DG
Green Paper on the enhancement of the
EU framework for investment funds

**Comments on the Commission's Green Paper on the enhancement of the
EU framework for investment funds**

1. General comments

Sweden welcomes the Green Paper on the enhancement of the EU framework for investment funds and appreciates the way the Commission has chosen to treat this extensive subject. It is highly important that the investment fund industry works efficiently given that this industry is a vital agent in the European capital markets, both in terms of its size and its importance as an intermediary between the professional and retail markets.

According to both the Financial Services Action Plan and the Lisbon agenda, creating an efficient and integrated European market for financial services is important for stimulating economic growth throughout the union. Furthermore, given an increasingly ageing population in Europe, there is an urgent need to remove any regulatory obstacles for efficient forms of long term savings. However, we strongly support the cautious approach allowing the existing legislative framework to settle before significant amendments are made.

In order to identify which regulations or regulatory differences are inhibiting retail customers from reaping the benefits from a more integrated and efficient investment fund industry, more research is needed. Potentially the reason for the fragmentation could be the differences in legislation and regulatory practices. The Green Paper does not sufficiently investigate where the problems lie. Nor does it analyse which measures are needed to solve the problems. In our view, therefore, there is a need for thorough analysis of these questions in line with what was done in the Giovaninni reports a few years back. Taking into account that such analysis is time-consuming and urgent, we believe that priority should be given to this work.

Below we give our opinion on issues that we consider are of particular importance. We have coordinated our answer with the framing of the Green Paper.

2. Making existing legislation deliver

2.2.1 The management company passport

According to the Background Paper on UCITS Review, the Commission considers that Article 3 of the Directive prevents the establishment of any contractual UCITS in a jurisdiction different from the domicile of the management company. We share this interpretation of the article. Our opinion is that, in order to keep a level playing field between contractual funds and investment companies, the same legal framework needs to be valid also for investment companies.

Any amendment of the Directive in this respect would require both further harmonization of supervision and enhanced supervisory cooperation.

3. Beyond the existing legislative framework – long-term challenges

3.1 Towards a cost-efficient industry

Cross-border fund mergers and fund pooling

Cross-border fund mergers could, if successfully implemented, increase the efficiency of the European fund industry. However, mergers of funds have not been common even within national borders. The suggestion on fund pooling is also interesting and should be further discussed. There are certain legal obstacles with these suggestions that must be handled, for example organizational issues. We are also concerned by the possibility that cross-border mergers might be used for the purpose of tax avoidance. The emergence of cross-border fund mergers and pooling would indeed pose challenges for national authorities in order to manage a more complicated supervisory environment.

Location of depositary

The Commission brings up the alternative of introducing a possibility of using a depositary in another Member State. In our view, this could increase cross-border competition between depositaries and result in lower costs for depositary services. This would however require a careful review of the legislation on depositaries.

3.4 Europe's alternative investment market

In our opinion non-harmonized products should not be subject to a more extensive legislative framework on a European level than is the case today. The structure and purpose of both hedge funds and private equity funds differ significantly from the harmonized products of today. The reason for investing in such products is also different.

3.5 Modernising UCITs law?

As mentioned above, we prefer not to take any extensive measures at this stage with regard to the legislative framework for investment funds during the transitional period until February 2007.

However, we acknowledge the need for revising the legislative framework and favour a comprehensive review of the obstacles to integration including a list of measures to enhance the benefits to the retail investors.

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