

UCITS III News

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Pan-European UCITS III Newsletter

13 February 2004 is now behind us. With the exception of Belgium, Finland and the Netherlands, which have not yet enacted their primary legislation, all the other European countries and already some of the 10 new joining countries have successfully implemented the UCITS III Directives.

The information given herein is valid as of 3 March 2004 and may be rapidly superseded as interpretations in the various countries are changing almost daily!

Implementation Status

For most countries, the implementation of UCITS III into primary legislation consisted of a "copy paste" of the text of the Directives, without much further clarification. As of 13 February 2004, the state of implementation in many countries is such that it is still difficult, if not impossible, to set-up a UCITS III fund based only on the text of such legislation. As of this date, only Luxembourg, Ireland, Austria, UK and France had UCITS III products up and running, in some instances despite the lack of additional guidance. The following table gives an overview of current supplementary regulation that has been issued over the past two months on four major topics in the context of UCITS III.

A ☺ indicates that supplementary legislation has already been issued and/or that additional guidance is expected. A ☹ indicates that no regulation has been published yet and/or that it does not seem that the regulator/legislator is working on guidance. N/A indicates that the existing regulation is sufficiently detailed and that no further regulation is required. This will not prevent the regulators from amending the existing regulation in the future.

Supplementary Regulation	AUT	BEL	DEN	FIN	FR	GER	IR	IT	LUX	NL	POR	SP	SW	UK
Simplified Prospectus	☺	☹	☺	☺	☺	☹	☹	☹	☺	☹	☺	☹	☹	☹
Additional Guidance expected	☺	☺	NA	☺	NA	☹	☺	☺	NA	☺	NA	☺	☺	☺
Derivatives	☺	☹	☹	☹	☺	☺	☺	☹	☹	☹	☺	☹	☹	☺
Additional Guidance expected	☺	☺	☺	☺	NA	NA	NA	☺	☺	☹	NA	☺	☺	NA
Management Company	☹	☹	☹	☹	☺	☺	☹	☹	☺	☹	☺	☹	☹	☺
Additional Guidance expected	☹	☺	☺	☺	☺	NA	☺	☺	☺	☹	NA	☺	☺	NA
Risk Management	☺	☹	☹	☹	☺	☺	☹	☹	☹	☺	☺	☹	☹	☺
Additional Guidance expected	☺	☺	☺	☺	☺	☺	☺	☺	☺	NA	NA	☺	☺	NA

Further many countries have clearly expressed their need to receive guidance from the EU Commission, which is still expected to issue at some point a Recommendation on topics such as the Simplified Prospectus ("SP") and Derivatives/Risk Management, possibly also on the ManCo's activities and scope of passport.

Grandfathering Provisions

With local regulation coming into place slowly and numerous uncertainties still remaining, many fund promoters are postponing the conversion of their product range to UCITS III. This strategy is particularly interesting in countries where maximum flexibility has been granted to the grandfathered funds, for example where UCITS I umbrella funds are allowed to set-up new UCITS I sub-funds even after 13 February 2004 (Luxembourg, Ireland, UK). Although they cannot benefit from the new investment opportunities offered by UCITS III, these promoters can at least continue to extend their product range in a known environment without having to struggle, for example, with new risk management or compliance requirements. Others, in the above-mentioned domiciles, have converted their product to UCITS III but benefit from the grandfathering period for the "substance" of their investment or management company.

While some regulators (generally from countries with little flexibility in this respect) had at first unofficially expressed their reluctance to accept structures either not fully UCITS III compliant (product/profession) or which continue to function after 13 February 2004 as "new" UCITS I, it now appears that most will adopt a flexible view faced with such odd products. Few have expressed it clearly: only Germany has so far issued guidance as to registration of foreign funds. In some countries such as Italy or Finland, the regulators are reluctant to issue an opinion in the absence of any guidance and thus their decision is pending the moment when they will be confronted with an actual case.

In general, provided of course the EU Commission does not recommend otherwise, countries should accept without discussions the passport of foreign funds. Good news at last!

Based upon our current understanding, the following chart shows whether there will be any registration issues.

Practical Impact : Will countries allow registration?	AUT	BEL	DEN	FIN	FR	GER	IR	IT	LUX	NL	POR	SP	SW	UK
UCITS III Funds managed by "substanceless" ManCo	☺	☺	☺	☺	☺	☺	☺	?	☺	?	☺	☺	☺	☺
Ucits I Sub-funds created in GF Ucits I funds after 13/02/2004	☺	☺	☺	☺	☺	☺	☺	?	☺	☺	☺	☺	☺	☺
Irish mixed-fund i.e Ucits III Sub-funds created in GF Ucits I funds after 13/02/2004	?	☹	?	☺	☹	☹	NA	?	☹	☹	?	☹	☹	☹

Simplified Prospectus

In the last issue of our UCITS III News, we already discussed the issues facing fund promoters in relation with the issuance of the SP. Pending clarification by the EU Commission, some countries have gone ahead and issued their own guidelines.

Recently Luxembourg, Ireland, Portugal and Austria have issued guidance in this area, thereby joining France where the AMF produced an Instruction back in November 2003. Already, the contents of the SP varies from one country to another. Luxembourg, for example, does not require the TER to be included in the SP and its calculation method does not need to be audited. This is however required in most other countries. The Luxembourg SP discloses the historic performance of the UCITS over 3 years only, whereas Austria, France and Ireland require 10 years.

The objective for a streamlining of SPs for multi-domicile funds is clearly at risk. However, promoters that market their funds from one single platform will, at least according to the current information, not have to amend the SP, once approved by the home State, for the registration in the host State. Good news again!

This being said, it is our understanding that the CNMV will require a SP even from foreign UCITS I funds, provided they (or some of their sub-funds) have been created after 13 February 2002. Due to a change of the regulation applicable since 13 February 2004, foreign funds marketed in Spain have to identify a main Spanish distributor starting from that date, for certain information obligations. Upon filing of this change with the CNVM or registering a new sub-fund, the Spanish authority may well take the opportunity to request the SP for the entire entity and not just for that recent sub-fund.

Location	Contact Name	Company	Phone Number
Austria	Gerald Schwab	PricewaterhouseCoopers	(43) 1 501 88 37 25
Belgium	Koen Vanderheyden	Lawfort	(32) 2 710 78 59
Czech Republic,			
Slovakia	Martin Svalbach	PricewaterhouseCoopers	(420) 2 5115 2584
Denmark	Michael E. Jacobsen	PricewaterhouseCoopers	(45) 39 45 92 69
Finland	Karin Svennas	PricewaterhouseCoopers	(358) 9 22 801 801
France	Jacques-Hubert Diner	Landwell & Associés	(33) 1 5657 8027
Germany	Robert Welzel	PricewaterhouseCoopers	(49) 69 9585 6758
Hungary	Norbert Christ	Dezsö, Réti & Antall Law Firm	(36) 1 46 19 270
Ireland	Aidan Conlon	PricewaterhouseCoopers	(353) 1 704 87 58
Italy	Francesco Mantegazza	Pirola Pennuto Zei & Associati	(39) 02 66 995 505
Luxembourg	Odile Renner	PricewaterhouseCoopers	(352) 49 48 48 2615
Poland	Rafal Wyszomierski	PricewaterhouseCoopers	(48) 225 23 44 19
Portugal	Sofia Pereira	Ommea	(351) 21 79 14 225
The Netherlands	Frank van Groenestein	PricewaterhouseCoopers	(31) 10 400 8444
Spain	Gemma Moral	Landwell	(34) 91 568 4467
Sweden	Susanne Sundvall	Ohrlings PricewaterhouseCoopers	(46) 85 553 32 73
Switzerland	Philipp Amrein	PricewaterhouseCoopers	(41) 61 270 57 18
	Andrea Brüllmann	Suter & Partners Rechtsanwälte	(41) 1 630 48 38
United Kingdom	Roger Turner	PricewaterhouseCoopers	(44) 20 780 43 249