

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 328 final
Brussels, 21 June 1979

Proposal for a
COUNCIL DIRECTIVE

amending for the second time the First Directive for
the implementation of Article 67 of the Treaty
(Liberalization of Capital Movements)

(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

1. The First Directive of 11 May 1960, amended on 8 December 1962, provides for the liberalisation of the movement of securities traded on a stock exchange (Article 2, List B annexed to the Directive); as is made clear in this list, however, the units of unit trusts - even those traded on a stock exchange - are excluded from liberalisation.

On the other hand, the securities traded on a stock exchange which have been liberalised also include those issued by investment companies, the Directive having provided for no exception in this case.

The main reason why free movement of the units of unit trusts could not be introduced is that the national laws governing unit trusts differ appreciably and consequently do not ensure equivalent protection for investors and conditions of fair competition between these trusts.

2. With a view to remedying this situation, the Commission has transmitted to the Council a proposal for a directive⁽¹⁾ for the coordination of laws, regulations and administrative provisions regarding collective investment undertakings for transferable securities (hereinafter referred to as CIUTS). This proposal, which covers unit trusts and investment companies, has already been endorsed by the European Parliament and the Economic and Social Committee.

3. The coordination provided for by this proposed directive is sufficiently rigorous and detailed to ensure, at Community level and as soon as the directive is implemented, the achievement of the following two objectives :

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(1) Doc. COM(76)152 of 05/04/1976 .

- more effective and more uniform protection of investors;
- approximation of the conditions of competition between (IUTS in the different Member States.

This coordination can thus help to achieve another basic objective : the removal of restrictions on the free movement of units of unit trusts within the Community.

4. For the planned coordination to be fully effective, it is therefore essential that, alongside implementation of the coordinating directive, a directive amending the 1960 Directive and based on Article 69 of the Treaty should be adopted which would remove the exchange restrictions on the free movement of :

- units of unit trusts, whether or not traded on a stock exchange, and
- securities of investment companies not traded on a stock exchange, where these units and securities are issued by the undertakings covered by the coordinating directive.

5. Scope of the proposed directive

The undertakings to which this proposed directive relates are the same as those in the proposed coordinating directive. It therefore covers collective investment undertakings (unit trusts and investment companies) which invest at least 95% of their assets in transferable securities and liquid assets.⁽¹⁾

6. At the present time in the majority of Member States (Belgium, France, Germany, Ireland, United Kingdom), collective investment undertakings for transferable securities invest all their assets in transferable securities or

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(1) Undertakings in existence when the coordinating directive comes into force will be covered by it if they invest at least 80% of their assets in transferable securities and liquid assets. However, these undertakings will be required to increase their investments in transferable securities and liquid assets to at least 95% of their assets under Article 25 of the same directive.

in liquid assets. In Denmark and Luxembourg, there are CIUTS which do not invest exclusively in transferable securities and liquid assets. Such undertakings are, however, small in number. In the Netherlands, the only undertaking which does not invest exclusively in transferable securities and liquid assets is Robeco; however, its securities are traded on the stock exchange and are therefore liberalised under the terms of the First Directive of 11 May 1960.

7. The liberalisation system

The capital movements to be liberalised are currently set out in List C of Annex I to the First Directive. Article 3 of the First Directive calls for conditional liberalising of this category of capital movements since it stipulates that a Member State may maintain or re-introduce exchange restrictions which applied to them on the date of entry into force of the Directive (in the case of the United Kingdom, Ireland and Denmark, on the date of accession) if free movement of capital might form an obstacle to the achievement of the economic policy objectives it is pursuing. Denmark, France, Italy, Ireland, the Netherlands and the United Kingdom have all exercised this right; the remaining countries have liberalised the transactions set out in the list. The liberalisation system laid down by this Directive consists in transferring from List C to List B the capital movements to be liberalised (these movements are shown at point 4 above).

However, List C must still include transactions in units of unit trusts which, not being covered by the coordinating directive, are not transferred to List B.

Article 2 of the Directive provides for the unconditional and - subject to the safeguard clauses laid down in the EEC Treaty - irreversible liberalisation of all capital movements set out in List B.

8. As a result of the inclusion in the liberalisation scheme of certain transactions and of the exclusion of others, it has been necessary to amend Lists B and C.

However, it is not necessary to amend the nomenclature of Annex II to the Directive, since the definitions are not affected by the amendment of Annex I.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 69 thereof,

Having regard to the proposal from the Commission, which consulted the Monetary Committee,

Whereas the First Council Directive of 11 May 1960 for the implementation of Article 67 of the Treaty⁽¹⁾, as amended by Directive 63/21/EEC⁽²⁾, excluded transactions in the units of unit trusts from the capital movements referred to in Article 2 and set out in List B of Annex I and included them in the capital movements referred to in Article 3 and set out in List C of that Annex;

Whereas Council Directive of _____ has coordinated the laws, regulations and administrative provisions regarding collective investment undertakings for transferable securities; whereas this coordination which provides investors with more effective protection and with more uniform safeguards, makes it possible to remove the restrictions on the free movement of units of these undertakings; whereas, moreover, retention of these restrictions would substantially reduce the effect of those provisions of that Directive which relate to the marketing of the units of these undertakings,

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(1) OJ No 43, 12.7.1960, p. 921-60

(2) OJ No 9, 22.1.1963, p. 62-63

HAS ADOPTED THIS DIRECTIVE :

Article 1

Annex I to the First Directive of 11 May 1960 is hereby amended as follows:

1. List B is replaced by the following:

"List B

Capital movements referred to in Article 2 of the Directive

	Items of nomenclature
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Operations in securities	
Acquisition by non-residents of domestic securities dealt in on a stock exchange excluding units of unit trusts not covered by Directive ../.../... and repatriation of the proceeds of liquidation thereof	IV A
Acquisition by residents of foreign securities dealt with in on a stock exchange and use of the proceeds of liquidation thereof	IV B
- excluding the acquisition of bonds issued on a foreign market and denominated in national currency	
- excluding units of unit trusts not covered by Directive ../.../...	
Acquisition by non-residents of units of domestic collective investment undertakings for transferable securities covered by Directive ../.../... which are not dealt in on a stock exchange and repatriation of the proceeds of liquidation thereof	IV C
Acquisition by residents of units of foreign collective investment undertakings for transferable securities covered by Directive ../.../... which are not dealt in on a stock exchange and use of the proceeds of the liquidation thereof	IV D
Physical movements of the securities mentioned above	IV E
	in conjunction with IV A and IV C, IV B and IV D

The use of the proceeds of liquidation of assets abroad belonging to residents must be permitted at least within the limits of the obligations as regards liberalisation accepted by Member States.

2. The section on "Operations in securities" in List C is replaced by the following:

	Items of nomenclature
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"Operations in securities	
Acquisition by non-residents of domestic securities not dealt in on a stock exchange and repatriation of the proceeds of liquidation thereof	IV C
Acquisition by residents of foreign securities not dealt in on a stock exchange and use of the proceeds of liquidation thereof	IV D
Acquisition by non-residents of units of domestic unit trusts dealt in on a stock exchange which are not covered by Directive/.../... and repatriation of the proceeds of liquidation thereof	IV A
Acquisition by residents of units of foreign unit trusts dealt in on a stock exchange which are not covered by Directive/.../... and repatriation of the proceeds of liquidation thereof"	IV B

Article 2

Member States shall adopt the measures necessary to comply with this Directive within 12 months of its notification and shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Monetary Committee

OPINION TO THE COMMISSION

1. At the request of the members appointed by the Commission, the Monetary Committee at its session of 5 and 6 June 1978 examined a proposal for a Third Council Directive amending the First Directive for the implementation of Article 67 of the EEC Treaty. The conclusions of this examination, which were prepared by the Working Party on Securities Markets are presented in this report.

2. According to the Commission representatives, the proposed Third Directive is an integral part of the work currently being carried on in the Council on the proposal for a Directive for the coordination of laws, regulations and administrative provisions regarding collective investment undertakings for transferable securities (CIUTS)⁽¹⁾. This latter Directive is designed to coordinate national laws on CIUTS which still differ considerably within the Community. It is because of these differences that the First Directive for the implementation of Article 67 of the EEC Treaty dated 11 May 1960 (supplemented and amended on 18 December 1962) had excluded the liberalization of securities issued by the majority of CIUTS, i.e., units of unit trusts whether or not dealt in on stock exchanges and shares of investment companies not dealt in on stock exchanges⁽²⁾. For the proposed coordination of national laws on CIUTS to be fully effective it is essential that, simultaneously with the implementation of the coordination directive, the measures necessary to abolish exchange control restrictions on the free movement of securities issued by CIUTS be taken. The liberalization of these transactions which is the objective of the proposed Third Directive would constitute a significant step towards greater interpenetration of national securities markets.

The Commission would point out therefore that without such measures being taken, work on the coordination directive could very well be prejudiced.

(1) CIUTS means unit trusts and investment companies who satisfy the conditions laid down in Article 2 of the proposed coordination directive (Doc. COM(76) 152 final).

(2) Transactions in these securities which currently belong in List C have been unconditionally liberalized by Germany, Belgium and Luxembourg, while the other Member States have maintained exchange control restrictions invoking Article 3(2) of the First Directive of 11 May 1960.

3. The Members emphasize their support for the development of a European capital market which was recently reaffirmed by the Commission in its Communication to the European Council on the prospects of economic and monetary union.

4. Despite this unanimity, opinion was divided on the practical measures regarding CIUTS which could be taken immediately.

5. Some members wholeheartedly support the proposals contained in the proposed Third Directive. The proposed liberalization would have particular significance in that it would be a concrete expression of the Community's willingness not to delay further the implementation of Article 67 of the Treaty, following the numerous setbacks which the Community has suffered in this field. In addition, according to these members, the "liberalization" directive constitutes an indispensable complement to the "coordination" directive given that the coordination of national laws on CIUTS would only be meaningful if the free movement of securities issued by these organizations was secured at the same time or shortly afterwards: in particular they note that the maintenance of existing restrictions would render the provisions of the "coordination" directive on the marketing of shares of CIUTS in the other Member States inoperative. For this reason, these members consider that without the prospect of parallel liberalization, some of these provisions might no longer be acceptable, especially those of a particularly binding nature.

6. Other members consider that coordination can be useful per se but also recognise the existence of links between the two directives. Because of this they share the view that the "coordination" and "liberalization" directives should as far as possible be implemented simultaneously. It was noted that the "coordination" directive contains a number of definitions and rules which will affect the Third Directive, but that work on the "coordination" directive is far from being completed. Some of these member also think that the "liberalization" directive raises a number of problems and uncertainties, particularly with regard to balance of payments and capital markets. Under these circumstances, all of these members feel that it would be premature to adopt a position on the proposed Third Directive until work on the "coordination" directive has reached a more advanced stage.

7. All members, although recognising the divergences which arose, emphasise the importance they attach to the objective of Liberalising capital movements. The majority of members, however, consider that a definitive solution to the specific problem put to them can only be found in the light of the progress in the work on the coordination of laws, regulations and administrative provisions governing CIUTS.
