

# COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 9 February 1993

Proposal for a

COUNCIL DIRECTIVE

**AMENDING DIRECTIVE 85/611/EEC ON THE COORDINATION OF LAWS,  
REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO  
UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES  
(UCITS)**

(presented by the Commission)

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## EXPLANATORY MEMORANDUM

### I INTRODUCTION - GENERAL CONSIDERATIONS

With the adoption of the UCITS Directive<sup>(1)</sup> in 1985 the first important step was taken toward coordinating the laws and regulations for certain collective investment undertakings. The undertakings covered by the Directive were those of the open-ended type which promote the sale of their units to the public in the Community and the sole objective of which is investment in transferable securities, essentially those officially listed on stock exchanges or similar regulated markets. The main purpose of the coordination was to approximate the conditions of competition between those undertakings at Community level and at the same time to ensure more effective and more uniform protection for unit holders.

The Directive laid down provisions for the authorization, supervision, structure and activities of UCITS and for the information they must publish. Furthermore the Directive laid down - for the first time in the financial sector - the principle of mutual recognition. An authorized UCITS would be able to market its units in other Member States without any further authorization as long as it fulfilled the requirements of the Directive.

At the time of adoption of the Directive there was a consensus that those collective investment undertakings not covered should be the subject of coordination at a later stage, and the regulation of such undertakings should until then be left to national discretion<sup>(2)</sup>.

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(1) Council Directive 85/611/EEC of 20 December on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ N° L 375, 31.12.1985, p.3.

(2) Sixth recital of the preamble of Directive 85/611/EEC.

The Directive was to be implemented no later than 1 October 1989 but the Hellenic Republic and the Portuguese Republic could postpone the implementation until 1 April 1992.

As mentioned above the scope of the Directive covers undertakings the sole object of which is investment in transferable securities, but the Directive does not define what is to be meant by transferable securities. Due to different market conditions but also due to different interpretations of what transferable securities are, differences have emerged from one country to another as to which instruments coordinated UCITS can invest in. The type of securities in question are in particular short(er) term securities which often are regarded as being money market instruments.

The UCITS Directive has established an internal market for those undertakings covered by it but all the investment funds outside its scope are still limited to marketing their units domestically. These include money market funds, real estate funds, futures and options funds, commodity funds, venture capital funds and funds of funds. Some of those funds do not appear to be suitable candidates for coordination at present whereas others do seem to meet the necessary conditions. One of the factors to be looked at is the degree of risk an investor is taking when investing in units of such funds. This proposal should therefore be seen as a second stage in the process of coordinating national laws governing collective investment undertakings. It is proposed to expand the scope of the UCITS Directive by including money market funds and funds investing in units of other UCITS. At the same time a number of amendments are proposed the purpose of which is to update the text of the Directive to bring it more in line with the developments which have taken place in other EC legislation within the financial sector.

## II COMMENTARY ON INDIVIDUAL AMENDMENTS

### Article 1

#### Amendment n° 1 - Article 1(2) - Definitions and scope

This amendment is the most substantial in the proposal because, besides defining UCITS, transferable securities and money market instruments, it also lays down the scope of the Directive.

In the definition of UCITS it is proposed to allow UCITS to place capital in banking deposits in addition to investing in transferable securities. Banking deposits are one of the safest ways to place assets because the only risk for deposits is the default risk of the credit institution where the deposits have been placed. To reduce the impact of the default of a credit institution a provision on risk-spreading is proposed (see amendment n° 9).

At present UCITS are allowed to hold ancillary liquid assets in the form of banking deposits (Art. 19(4)) but only on a temporary basis. Under the new proposal banking deposits will be a tool available to all UCITS on a more permanent basis. It will also broaden the scope of the Directive because those funds placing all their assets in banking deposits (cash funds) will now be covered.

It is also proposed to include in the Directive's scope funds of funds complying with certain conditions (see Amendment n° 14).

The definition of "transferable securities" should be the same as that in the Investment Services Directive (ISD)<sup>(1)</sup>, in order to have as consistent a definition as possible in the securities field. Only when the ISD has been finally adopted will it be possible to say whether its definition of transferable securities is adequate for the UCITS Directive or whether another definition would be better.

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(1) Council Directive .../.../EEC of ..... on investment services in the securities field.

The definition of "money market instruments" (MMI) is based on a similar definition in the ISD, but in order to be able to regard MMI as transferable securities, and be under the scope of UCITS, they must be transferable and the Member States must consider the instruments to be a) liquid and b) have a value which can be accurately determined.

The reason why the Commission has chosen to leave it to Member States to decide whether MMI fulfil the conditions for being an acceptable instrument for UCITS is that the money markets and the instruments themselves differ from one Member State to another. A MMI might fulfil the condition in certain markets but not in others.

Amendment n° 2 - Article 8(1) - depository

The proposed change means that branches of third country banks may also be a depository for UCITS organized as unit trusts (see amendment n° 3).

Amendment n° 3 - Article 8(4) and (5) - depository

The new paragraph 4 will make it possible for credit institutions and investment firms which have been granted the EC-passport to provide depository services, to act as depository for a UCITS organized as a unit trust without being established in the same Member State as the management company. When the Directive was adopted in 1985 the principles of the EC-passport for credit institutions and investment firms and of home country supervision had not been laid down, and it was therefore natural to require establishment. However, after the adoption of the Second Banking Coordination Directive and the Investment Services Directive, the logical consequence should be that the establishment requirement for EEC-coordinated depositories should be deleted. The proposed text is not a compulsory requirement but an option to allow such institutions or firms to be depositories for unit trusts.

The new paragraph 5 is added as a consequence of amendment n° 2 to make it clear that Member States must not treat third country branches more favourably when they act as a depository for a unit trust than they treat branches of EC institutions or firms.

Amendment n° 4 and 5 - Article 15(1), (2) and (5) - depository

Same as amendments n° 2 and 3 but covering the case where the UCITS is organised as an investment company.

Amendment n° 6 and n° 7 - Article 19

The two amendments are technical consequences of including money market instruments in the scope of the UCITS Directive.

Amendment n° 8 - Article 21 - Use of derivatives

This amendment is intended to clarify to what extent UCITS can make use of derivative products. Only financial derivatives may be used and only when they are covered by assets which the UCITS already holds.

Amendment n° 9 - Article 22 - risk-spreading

As already mentioned under amendment n° 1 the only risk inherent in banking deposits is the risk of the credit institution defaulting. In order to spread this risk it is proposed to limit the amount a UCITS may place with a single credit institution. Credit institutions are supervised and have to respect strict solvency requirements. Therefore the general maximum of 5% of net assets as used for transferable securities would probably be too tight and a 20% maximum is proposed.

Amendments n° 10 and n° 13 - Articles 24 and 25

Technical consequences of including funds of funds in the definition of coordinated UCITS.

Amendment n° 11 - Article 24 - Investment in UCITS

A UCITS may invest up to 5% of its assets in units of other UCITS. Several Member States have requested that this figure should be increased because from time to time it has proven very profitable to place ancillary liquid assets in such units. The proposed new figure is 10%.

Amendment n° 12 - Article 25(1) - significant influence

At present Member States have the discretion to fix how many shares carrying voting rights a UCITS may acquire in a single company and pending further coordination Member States shall take account of such limits under other Member States' legislation. In order to coordinate the rules and ensure consistency with other financial directives it is proposed to introduce the limits which are used for the definition of qualifying holding in the ISD and the Second Banking Directive. The limit would then be 10% of the capital or of the voting rights.

Amendment n° 14 - Article 26a - Funds of UCITS

The new Article establishes the conditions which will allow UCITS only investing in units of other UCITS to come within the scope of the Directive. Such UCITS are called "Funds of UCITS". Funds of UCITS may invest only in units of other UCITS complying with the Directive but not in units issued by funds of UCITS. They will also be allowed to hold ancillary liquid assets. A fund of UCITS may invest in as many UCITS as it wants but must never invest more than 20% of its assets in a single UCITS.

A specific rule is provided for to ensure adequate disclosure in the prospectus of the related costs for investors.

Amendment n° 15 - Article 44(2) - Advertising

When a UCITS wants to market its units in another Member State the 1985 Directive requires that it comply with provisions governing advertising in that State. In the meantime a rule on advertising has been adopted in the Second Banking Directive which allows credit institutions to advertise their services through all available means of communication in the host Member State subject to rules adopted in the interest of the general good relating to the content of such advertising. A similar provision appears in the ISD. Again here the Commission is of the opinion that an up-dating of the UCITS Directive requires the inclusion of similar advertising provisions for UCITS so that UCITS selling their units in other Member States can make use of the same means of advertising as credit institutions and investment firms marketing investment certificates on a cross-frontier basis.

Amendment n° 16 - Article 47 - translation

Article 47 requires that documents and information which must be published are to be translated into at least one of the official languages of the Member States where the units are marketed. The change will bring the text in line with jurisprudence in this area.

Amendment n° 17 - Article 50 - professional secrecy

The Community provisions on professional secrecy have been further developed since 1985. First during the discussion of the Second Banking Directive and secondly in connection with the ISD. In order to have the maximum consistency as regards the provisions on professional secrecy throughout the financial services legislation, it is proposed to bring Article 50 into line with the corresponding provisions in the ISD. In this connection it should be remembered that in some Member States the same authorities are supervising UCITS and one or more of the other types of financial institution and it would be very inconvenient for them to have to respect different sets of rules for professional secrecy.

Amendment n° 18 - Article 53a - Comitology

The Article specifies that the procedure for making technical amendments to the Directive shall be that laid down in a future directive establishing a securities markets committee. In this context it should be borne in mind that the Council has currently before it two parts of Commission proposals whose objective is the setting up of "regulatory committees" in accordance with procedure IIIa as defined in Council Decision 87/373/EEC, with a view to making technical adaptations to the forthcoming directives on the capital adequacy of investment firms and credit institutions (CAD) and on investment services in the securities field (ISD).

When the Council adopted its common position on CAD on 27 July 1992 and on ISD on 21 December 1992, it decided to reserve the exercise of implementing powers to itself at this stage.

At the same moment, it expressed its intention subsequently to take a decision on the creation of a regulatory committee not only in respect of CAD and ISD but also for other directives in the securities markets sector such as the present UCITS directive.



The fields in which such technical amendments can be applied will be clarification of definitions and alignment of terminology but also changes in investment ceilings where such changes will not lead to more strict requirements for the UCITS.

## Article 2

### Final provisions

The first paragraph requires Member States to comply with the Directive by 1 July 1994 at the latest.

The second paragraph stipulates that, when Member States adopt the necessary provisions of national law, these must contain a reference to this Directive or must be accompanied by such reference when they are officially published.

Paragraph three deals with the transmission to the Commission of the main provisions of national law adopted by the Member States.

## Article 3

This Article contains the usual wording to the effect that the Directive is addressed to all Member States.

**PROPOSAL FOR A COUNCIL DIRECTIVE  
AMENDING DIRECTIVE 85/611/EEC ON THE COORDINATION OF LAWS,  
REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO  
UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES  
(UCITS)**

**THE COUNCIL OF THE EUROPEAN COMMUNITIES,**

Having regard to the Treaty establishing the European Economic Community,  
and in particular Article 57(2) thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the scope of Council Directive 85/611/EEC was confined initially to collective investment undertakings of the open-end type which promote the sale of their units to the public in the Community and the sole object of which is investment in transferable securities; whereas it was envisaged in the preamble to Directive 85/611/EEC that undertakings falling outside its scope would be the subject of coordination at a later stage;

Whereas money market funds and funds of funds have shown a considerable growth in certain Member States in recent years; whereas these two categories of funds, given their operational features and investment object, may be regarded as very close to UCITS; whereas it is desirable to bring these funds within the scope of Directive 85/611/EEC since the attainment of this objective will facilitate the removal of the restrictions on the free circulation of the units of these funds in the Community and such coordination is necessary to bring about a European capital market;

Whereas the inclusion of money market funds is achieved by allowing UCITS to invest freely in money market instruments; whereas money market instruments cover those classes of transferable instruments which are normally dealt in on the money market, for example treasury and local authority bills, certificates of deposit, commercial paper and bankers' acceptances; whereas Member States should have the option of choosing the list of eligible money market instruments on the basis of objective criteria to take account of the existing structural differences in the money markets of different countries;

Whereas, to take markets developments into account, it is desirable that the investment object of UCITS is widened in order to permit them also to invest in banking deposits;

Whereas only UCITS investing solely in units issued by other UCITS (fund of UCITS) may be brought within the scope of Directive 85/611/EEC; whereas a fund of UCITS may be identified on the basis of a minimum number of UCITS in which it can invest; whereas it is important that a fund of UCITS ensures to investors an adequate degree of disclosure on the costs they incur;

Whereas it is appropriate that, save explicitly mentioned exemptions, the rules laid down for the authorization, supervision, structure and activities of UCITS and for the information to be published should apply to money market funds and funds of UCITS as well;

Whereas, for prudential reasons, UCITS should avoid assuming an excessive concentration of banking deposits to a single credit institution;

Whereas many directives have been adopted in the financial field in recent years; whereas it seems therefore advisable to bring some Articles of Directive 85/611/EEC more in line with existing provisions of the Community legislation;

Whereas Council Directive 89/646/EEC and Directive .../.../EEC (Investment Services Directive) provided the basis for the single licence to supply financial services to credit institutions and investment firms respectively; whereas Member States should not therefore restrict the freedom of UCITS to choose a depository established in another Member State and authorized under the above Directives.

Whereas it is desirable to make the single market accessible to institutions and firms of third countries in respect of the depository function; whereas it is essential to provide that the rules applied to such firms may not be more favourable than those for branches of institutions and firms from another Member State;

Whereas Article 21 of Directive 85/611/EEC contains the rules under which UCITS are allowed to use derivative instruments; whereas it is necessary for the protection of investors to provide for a harmonized framework by introducing a minimum quantitative ceiling for the utilization of financial derivatives; whereas, considering the new portfolio management techniques which have developed in recent years, it is desirable that UCITS may use, in compliance with the above quantitative limit, financial futures and options for the purpose of adjusting their portfolio's composition on a temporary basis;

Whereas the current limit of 5% concerning the possibility for UCITS of investing in other UCITS proved to be too stringent in certain markets;

Whereas Article 25(1) of Directive 85/611/EEC envisaged a coordination of the concept of significant influence at a later stage; whereas, given the result achieved in this field in other Directives, it is desirable to define significant influence in terms of a quantitative limit;

Whereas it is appropriate to favour the reduction of costs related to translation of documents in the cross-border marketing without impairing the degree of investor protection;

Whereas technical adaptations to the rules laid down in this Directive may from time to time be necessary to take new developments in the investment funds field into account; whereas it is desirable to set a general criterion to define the technical nature of modifications; whereas it is important that these technical modifications should be adopted in accordance with the procedure established in Directive .../.../EEC,

HAS ADOPTED THIS DIRECTIVE:

## Article 1

In Directive 85/611/EEC as amended by Directive 88/220/EEC the following amendments are made:

1. In Article 1, paragraph 2 shall be replaced by the following:

"2. For the purposes of this Directive

i. "UCITS" shall, subject to Article 2(1), be undertakings:

- the sole object of which is the collective investment in transferable securities and/or to place deposits with credit institutions of capital raised from the public and which operate on the principle of risk-spreading, or
- the sole object of which is the collective investment in units of other UCITS in accordance with the provisions in Article 26 a) of capital raised from the public and which operate on the principle of risk-spreading, and
- the units of which are, at the request of holders, re-purchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such re-purchase or redemption.

ii. "Transferable securities" shall mean transferable securities as defined in Article 1 of Directive (.../.../EEC) (ISD).

iii. "Money market instruments" which, for the purposes of this Directive, shall be regarded as transferable securities, shall mean those classes of transferable instruments normally dealt in on the money

market which the Member States consider to:

- be liquid and
- have a value which can be accurately determined at any time or at least with the frequency stipulated in Article 34."

2. In Article 8, paragraph 1, is replaced by:

"1. A depository must have an establishment in the same Member State as that of the management company."

3. In Article 8 the following two paragraphs shall be added:

"4. Notwithstanding the provisions in paragraphs 1 and 3 the competent authorities may allow unit trusts freely to choose a depository which is authorized to do safekeeping and administration of securities in one of the Member States according to Directive 89/646/EEC or Directive ..... (ISD).

5. Member States shall not apply to depositories which are branches of institutions or firms having their head office outside the Community, when commencing or carrying on their services, provisions which result in more favourable treatment than that accorded to depositories which are branches of institutions of firms having their head office in the Community."

4. In Article 15, paragraph 1, is replaced by:

"1. A depository must have an establishment in the same Member State as that of the investment company."

5. In Article 15 the following two paragraphs shall be added:

"4. Notwithstanding the provisions in paragraphs 1 and 3 the competent authorities may allow investment companies freely to choose a depository which is authorized to do safekeeping and administration of securities in one of the Member States according to Directive 89/646/EEC or Directive ..... (ISD).

5. Member States shall not apply to depositories which are branches of institutions or firms having their head office outside the Community, when commencing or carrying on their services, provisions which result in more favourable treatment than that accorded to depositories which are branches of institutions of firms having their head office in the Community."

6. In Article 19 the following shall be added to paragraph 1

"and/or

(e) money market instruments".

7. In Article 19, paragraph 2(b) after "10% of its assets in debt instruments", shall be added ", other than money market instruments,"

8. In Article 21 the following paragraph shall be added:

"3. In this context UCITS may carry out transactions in financial derivative instruments provided that the exposures relating to these instruments are covered in the sense that UCITS must hold assets which may reasonable be expected to fulfil actual or potential obligations which exist or may arise as a result of the derivatives themselves."



9. In Article 22 the following paragraph shall be added:

"6. A UCITS may place no more than 20% of its assets on deposits with the same credit institution or credit institutions within the same group."

10. In Article 24, paragraph 1, the words "of the first and second indents of Article 1(2)" shall be replaced by: "of the first and third indents of Article 1(2)(1)".

11. In Article 24, paragraph 2, the figure "5%" shall be replaced by: "10%"

12. In Article 25, paragraph 1, shall be replaced by the following:

"1. An investment company or a management company acting in connection with all of the unit trusts which it manages and which fall within the scope of this Directive may not acquire any shares carrying voting rights which directly or indirectly represent 10% or more of the capital or of the voting rights or which make it possible to exercise a significant influence over the management of the issuing body. The voting rights referred to in Article 7 of Directive 88/627/EEC shall be taken into consideration."

13. In Article 25, paragraph 2, third indent, the words "of the first and second indents of Article 1(2)" shall be replaced by: "of the first and third indents of Article 1(2)(1)".

14. After Article 26 the following new Article 26a shall be added:

"Article 26a

Notwithstanding Article 24(2), Article 24(3) first subparagraph and Article 25(2) third indent a UCITS (hereinafter referred to as a "Fund of UCITS") may invest its assets in units issued by other UCITS provided that the following conditions are met:

- (a) a Fund of UCITS must invest its assets exclusively in units issued by UCITS subject to the provisions of this Directive and may hold ancillary liquid assets but must not invest in transferable securities or in units issued by other Funds of UCITS;
- (b) a Fund of UCITS must not invest more than 20% of its assets in a single UCITS which meets the criteria set out in (a);
- (c) a Fund of UCITS must describe in its instruments of incorporation or fund rules and in its prospectus or any promotional literature the characteristics of the UCITS in the units of which it is authorized to invest. The prospectus must clearly describe the nature of fees, charges, taxes, commissions and other costs which directly or indirectly are expected to be borne by the Fund of UCITS' unit-holders."

15. In Article 44 paragraph 2 shall be replaced by the following:

"2. Nothing in paragraph 1 shall prevent UCITS with head offices in other Member States from advertising their units through all available means of communication in the host Member State, subject to any rules governing the form and the content of such advertising adopted in the interest of the general good."

16. In Article 47 the following words: "in at least one of that other Member State's official languages", is replaced by: "in a language which is easily understandable for the investors concerned in that other Member State".

17. Article 50 shall be replaced by:

"1. Member States shall provide that all persons who work or who have worked for the authorities referred to in Article 49, as well as auditors and experts acting on behalf of these authorities, shall be bound by the obligation of professional secrecy. That means that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual UCITS cannot be identified, without prejudice to cases covered by criminal law."

Nevertheless, where a UCITS has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that UCITS may be divulged in civil or commercial proceedings.

2. Paragraph 1 shall not prevent the authorities of the various Member States referred to in Article 49 from exchanging information in accordance with this Directive. Such information shall be subject to the conditions of professional secrecy referred to in paragraph 1.

3. Member States may conclude co-operation agreements providing for exchanges of information with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article.

4. The authorities referred to in Article 49 which receive confidential information under paragraphs 1 or 2 may use it only in the course of their duties:

- to check that the conditions governing the taking up of the business of UCITS are met and to facilitate the monitoring of the conduct of such business, especially with regard to administrative and accounting procedures and internal control mechanisms, or
- to impose sanctions, or
- in an administrative appeal against a decision of the competent authorities, or
- in court proceedings, initiated under Article 51(2).

5. Paragraphs 1 and 4 shall not preclude the exchange of information:

(a) within a Member State, where there are two or more competent authorities, or

(b) between Member States, between competent authorities and:

- authorities responsible for the supervision of other financial organisations and insurance undertakings and the authorities responsible for the supervision of financial markets;
- bodies involved in the liquidation of UCITS and in other similar procedures, or
- persons responsible for carrying out statutory audits of the accounts of UCITS and other financial institutions,

in the discharge of their supervisory functions. The information received shall be subject to the conditions of professional secrecy referred to in paragraph 1.

6. This Article shall not prevent an authority referred to in Article 49 from disclosing to those central banks which do not supervise UCITS individually such information as they may need to act as monetary authorities. Information received in this context shall be subject to the conditions of professional secrecy referred to in paragraph 1.

7. In addition, notwithstanding the provisions referred to in paragraphs 1 and 4, the Member States may, by virtue of provisions laid down by law, authorize the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment firms and insurance undertakings and to inspectors acting on behalf of those departments. However, such disclosure may be made only where necessary for reasons of prudential control.

The Member States shall, however, provide that information received under paragraphs 2 and 5 may never be disclosed in the cases referred to in this paragraph except with the express consent of the competent authorities which disclosed the information".

18. After Article 53 the following new Article 53a is added:

"Article 53a

The technical modifications to be made to this Directive in the following areas shall be adopted in accordance with the procedure laid down in Directive .../.../EEC:

- clarification of the definitions in order to ensure uniform application of this Directive throughout the Community;
- adaptation of the ceilings referred to in Articles 19(2) and (3), 21(3), 22, 24(2), 25 and 36(2) where such adaptations will not lead to more strict requirements for the UCITS in order to take account of developments on financial markets;

- alignment of terminology on and the framing of definitions in accordance with subsequent acts on firms and related matters.

#### Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 1994 at the latest.

When Member States adopt the measures referred to in the first subparagraph, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of provisions of national law which they adopt in the field governed by this Directive.

#### Article 3

This Directive is addressed to the Member States.

IMPACT ASSESSMENT FORM

**THE IMPACT OF THE PROPOSAL ON BUSINESS**

with special reference to small and medium-sized enterprises (SMEs)

Title of proposal

Proposal for a Council Directive amending Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

Document reference number: COM

The proposal

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

The main aims of the directive are:

- a) To broaden the scope of the UCITS Directive by including money market funds and fund of funds whereby the authorization of such funds will be mutually recognized and they will benefit from the freedom to market their units in the other EC Member States;
- b) To revise some of the provisions of the UCITS Directive to take account of developments which have taken place since 1985 within other EC-regulations concerning financial institutions.

Since the main aim of the directive involves the removal of barriers to cross-border marketing of units issued by money market funds and funds of funds legislation at Community level is necessary.



The impact on business

## 2. Who will be affected by the proposal?

**-Which sector of business**

The UCITS which are already under the scope of the Directive and the money market funds and funds of funds which are proposed to be included in the scope will be affected. A UCITS is composed of a management company and a depository. The depository function is normally carried out by a big credit institution whereas the management function is undertaken by a management company often set up by big credit institutions but not exclusively.

**-Which sizes of business (what is the concentration of small and medium sized firms)**

In principle all UCITS should be affected in the same manner irrespective of their size

**-Are there particular geographical areas of the Community where these businesses are found**

The majority of UCITS have their registered office in the financial centres of the EC countries.

## 3. What will businesses have to do to comply with the proposal?

The majority of money market funds and funds of funds which will come under the scope of the directive are already authorized and supervised. The rest will have to be authorized. However all of them will have their freedom to market their units within the EC increased.

4. What economic effect is the proposal likely to have?

**-On employment**

Even if the UCITS sector is managing very large amounts of money the number of employees is relatively very small. The proposal is not expected to have much influence on employment in the sector.

**-On investment and the creation of new businesses**

The increased marketing possibilities might foster the activities of money market funds and funds of funds.

**-On the competitive position of businesses**

To the extent that money market funds and funds of funds start to market their units in other Member States the competition between such funds should increase.

5. Does the proposal contain measures to take account of the specific situation of small and medium sized firms (reduced or different requirements etc)?

No. All UCITS must comply with the same provisions.

Consultation

6. List the organisations which have been consulted about the proposal and outline their main views.

European Federation of Investment Funds and Companies (EFIFC).

The EFIFC, which represents the interests of the sector in general has informally been consulted during the preparation. The Federation very much supports the principles of the proposal.

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