

Thursday 17 February 2000

TEXTS ADOPTED

1. UCITS ***I

A5-0025/2000

I.

Proposal for a European Parliament and Council directive amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities (UCITS) (COM(1998) 449 – C4-0464/1998 – 1998/0243(COD))

The proposal was amended as follows:

TEXT PROPOSED
BY THE COMMISSION ⁽¹⁾

AMENDMENTS
BY PARLIAMENT

(Amendment 1)

Recital 4

(4) 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;*

(4) Whereas money market instruments cover those 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 it is necessary to ensure that the concept of regulated markets in this Directive corresponds to that in Directive 93/22/EEC ⁽¹⁾;**

⁽¹⁾ OJ L 141, 11.6.1993, p. 27.

(Amendment 2)

Recital 5

(5) Whereas it is desirable to permit a UCITS to invest its assets in units of other collective investment undertakings of the open-ended type which also invest in transferable securities and which operate on the principle of risk-spreading; *whereas the requirement of risk spreading for UCITS investing in other collective investment undertakings is indirectly respected since such UCITS can only invest in units issued by collective investment undertakings complying with the risk spreading criteria of Directive 85/611/EEC;* whereas it is important that such UCITS adequately disclose to investors the fact that they invest in units of other collective investment undertakings;

(5) Whereas it is desirable to permit a UCITS to invest its assets in units of **UCITS and** other collective investment undertakings of the open-ended type which also invest in transferable securities and which operate on the principle of risk-spreading; **whereas UCITS or other collective investment undertakings in which a UCITS invests should also be subject to effective supervision; whereas investments in units of UCITS and other collective investment undertakings should not result in cascades of funds;** whereas it is important that such UCITS adequately disclose to investors the fact that they invest in units of other collective investment undertakings;

⁽¹⁾ OJ C 280, 9.9.1998, p. 6.

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TEXT PROPOSED
BY THE COMMISSIONAMENDMENTS
BY PARLIAMENT

(Amendment 3)

Recital 6

(6) Whereas to take market developments into account and in consideration of the completion of the EMU it is desirable to permit UCITS to invest in bank deposits;

(6) Whereas to take market developments into account and in consideration of the completion of the EMU it is desirable to permit UCITS to invest in bank deposits; **whereas to ensure adequate liquidity of the investments in deposits the terms of these deposits should include a break clause; whereas, if the deposits are made with a credit institution situated in a non-Member State, the credit institution should be subject to effective supervision;**

(Amendment 4)

Recital 10

(10) Whereas new portfolio management techniques for collective investment undertakings investing primarily in shares are based on the replication of stock-indices; whereas it is desirable to permit UCITS to replicate well known and recognised stock-indices; whereas therefore it is necessary to introduce more flexible risk-spreading rules for UCITS investing in shares; whereas in order to ensure transparency of the stock-indices which the Member States consider to be replicable by harmonised UCITS and a wide acceptance of such indices, it is desirable to provide for adequate publication of the list of replicable stock-indices;

(10) Whereas new portfolio management techniques for collective investment undertakings investing primarily in shares are based on the replication of stock-indices **and/or indices on debt securities**; whereas it is desirable to permit UCITS to replicate well known and recognised stock-indices; whereas therefore it is necessary to introduce more flexible risk-spreading rules for UCITS investing in shares **and/or debt securities**; whereas in order to ensure transparency of the stock-indices which the Member States consider to be replicable by harmonised UCITS and a wide acceptance of such indices, it is desirable to provide for adequate publication of the list of replicable stock-indices **and an indication about where updated information can be obtained, possibly by electronic means;**

(Amendment 5)

Recital 13a (new)

(13a) Whereas the development of opportunities for a UCITS to invest in UCITS and other collective investment undertakings should be facilitated; whereas it is therefore essential to ensure that such investment activity does not reduce investor protection; whereas, taking into account the nature of investments in sufficiently diversified collective investment undertakings, it may be necessary to restrict the possibility for a UCITS to combine its direct investments in a liquid financial asset with the investments made through these other collective investment undertakings; whereas, because of the enhanced possibilities for UCITS to invest in units of other UCITS and collective investment undertakings, it is necessary to lay down certain rules on quantitative limits, disclosure of information and prevention of the cascade phenomenon;

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TEXT PROPOSED
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BY PARLIAMENT(Amendment 6)
Recital 14a (new)

(14a) Whereas, for prudential reasons, a UCITS should, whether its chosen investment policy is to invest in a variety of liquid financial assets or to specialise in a certain category of such assets, avoid assuming an excessive concentration in liquid financial assets issued by and/or made with a single body;

(Amendment 7)
Recital 17a (new)

(17a) Whereas a codification of the Community legislation relating to UCITS will have to be prepared immediately after the adoption of the modifications to Directive 85/611/EEC contained in this Directive;

(Amendment 8)
ARTICLE 1(1)
Article 1(2), 1st indent (Directive 85/611/EEC)

— the sole object of which is the collective investment in transferable securities and/or in other liquid financial assets mentioned in Article 19 of this Directive of capital raised from the public and which operate on the principle of risk-spreading;

— the sole object of which is collective investment in transferable securities and/or in other liquid financial assets **covered by** this Directive of capital raised from the public and which operate on the principle of risk-spreading;

(Amendment 9)
ARTICLE 1(2a) (new)
Article 19(1)(a) (Directive 85/611/EEC)

2a. Article 19(1)(a) shall be replaced by the following:

(a) transferable securities admitted to or dealt in on a regulated market within the meaning of Article 1(13) of Directive 93/22/EEC on investment services in the securities field in a Member State; and/or

(Amendment 44)
ARTICLE 1(3)
Article 19(1)(e) (Directive 85/611/EEC)

(e) units of other collective investment undertakings within the meaning of the first and second indent of Article 1(2); and/or

(e) units of **UCITS and** other collective investment undertakings within the meaning of the first and second indent of Article 1(2) **provided that:**

— **the other collective investment undertaking is authorised under laws which provide that it is subject to supervision considered by the UCITS' competent authorities to be equivalent to that laid down by Community law, and cooperation between authorities is sufficiently ensured;**

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BY PARLIAMENT

- the level of protection for unitholders in the other collective investment undertaking is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on borrowing, lending, uncovered sales of transferable securities and the role and the liability of the depositary laid down by this Directive are respected;
- the business of the other collective investment undertaking is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period;
- the other collective investment undertaking is, according to its fund rules or instruments of incorporation, not permitted to invest, in aggregate, more than 10% of its assets in units of other UCITS or other collective investment undertakings; and/or

(Amendment 11)

ARTICLE 1(3)

Article 19(1)(f) (Directive 85/611/EEC)

(f) deposits with credit institutions; and/or

(f) deposits with credit institutions **which are repayable on demand or have the right to be withdrawn and maturing in no more than 12 months, provided that the credit institution has its registered office in a Member State or, if the registered office of the credit institution is situated in a non-Member State, provided that it is subject to prudential rules considered by the UCITS competent authorities to be equivalent to those laid down by Community law; and/or**

(Amendment 37)

ARTICLE 1(3)

Article 19(1)(g) and (h) (Directive 85/611/EEC)

(g) *standardised financial-futures contracts, including equivalent cash-settled instruments, dealt in on a regulated market mentioned in the previous sub-paragraphs (b) and (c); and/or*

(g) **financial derivative instruments, including equivalent cash-settled instruments dealt in on a regulated market mentioned in the previous sub-paragraphs (a), (b) and (c) or dealt in over-the-counter (OTC), provided that the counterparties to OTC transactions are institutions subject to prudential supervision, and belonging to the categories approved by the UCITS' competent authorities, and the instruments with a high rating based on a recognised rating scale are subject to reliable and verifiable valuation and they can be sold or liquidated on a daily basis; and/or**

(h) *standardised options to acquire or dispose of any instruments falling within this Article, including equivalent cash-settled instruments, dealt in on a regulated market mentioned in the previous sub-paragraphs (b) and (c). This category includes, in particular, options on currency and on interest rates; and/or*

(h) Deleted

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(Amendment 13)

ARTICLE 1(3)

Article 19(1)(i), introduction (Directive 85/611/EEC)

(i) money market instruments *which are not* dealt in on a regulated market, unless the issue of such instruments is itself regulated for the purpose of protecting investors and sav-
ings, and provided that they are:

(i) money market instruments **other than those dealt in on a regulated market which fall under Article 1(8)(b)**, unless the issue of such instruments is itself regulated for the purpose of protecting investors and sav-
ings, and provided that they are:

(Amendment 14)

ARTICLE 1(5)

*Article 20 (Directive 85/611/EEC)*5. *Article 20 shall be deleted.***Deleted**

(Amendment 16)

ARTICLE 1(6)

Article 21(4), 1st subparagraph (b) and 2nd subparagraph (Directive 85/611/EEC)

(b) in relation to each securities lending transaction appropriate collateral shall be given covering the risk of default of the borrower. The value of collateral must be, during the entire period of the contract, at least equal to the total value of the financial instruments lent.

(b) in relation to each securities lending transaction, **provided they are not carried out by recognised security clearing houses and exchanges**, appropriate collateral shall be given **to the UCITS** covering the risk of default of the borrower. The value of collateral must be, during the entire period of the contract, at least equal to the total value of the financial instruments lent.

When a UCITS is permitted to conclude securities lending transactions with the depositary which performs for that UCITS the duties mentioned in Articles 7 and 14 of this Directive, the competent authorities shall ensure that the collateral is entrusted, during the entire period of the contract, with a third party custodian and that measures are undertaken preventing the depositary from using it.

When a UCITS is permitted to conclude securities lending transactions with the depositary which performs for that UCITS the duties mentioned in Articles 7 and 14 of this Directive, the competent authorities shall ensure that the collateral is entrusted, during the entire period of the contract, **to a blocked account, a security deposit or a third-party custodian** and that measures are undertaken preventing the depositary from using it.

(Amendments 36 and 45)

ARTICLE 1(6a) (new)

*Article 22(1a) (new) (Directive 85/611/EEC)***6a. In Article 22, the following paragraph shall be added:**

1a. A UCITS may invest no more than 5% of its assets at any time in transferable securities dealt in, over-the-counter derivatives and deposits made with the same body.

In no case may the transferable securities dealt in, over-the-counter derivatives and deposits made with bodies belonging to a single group at any time account for more than 15% of the assets of UCITS. For the purposes of this rule, group shall include bodies linked by the relationship defined in Article 1 of Directive 83/349/EEC⁽¹⁾.

⁽¹⁾ OJ L 193, 18.7.1983, p. 31.

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(Amendment 42)

ARTICLE 1(6b) (new)

Article 22(3) (Directive 85/611/EEC)

6b. Article 22(3) shall be deleted.

(Amendment 39)

ARTICLE 1(6c) (new)

Article 22(3a) (new) (Directive 85/611/EEC)

6c. In Article 22, the following paragraph shall be added:

3a. A UCITS which has adequate risk management controls may invest in financial derivative instruments, provided that investment in over-the-counter financial derivatives does not result in an overall daily exposure measured by its mark to market value exceeding 30 % of its total assets.

(Amendment 18)

ARTICLE 1(7)

Article 22a (1) to (3) (Directive 85/611/EEC)

1. Without prejudice to the limits laid down in Article 25, the Member States may raise the limits laid down in Article 22 to a maximum of 35 % for investment in shares issued by the same body when, according to the fund rules or instruments of incorporation, the aim of the UCITS' investment policy is to replicate *the composition of a certain stock-index*.

2. *Replicable stock indices shall be indices which Member States consider to:*

- *have a composition which is sufficiently diversified;*
- *be easy to replicate;*
- *represent an adequate benchmark for the equity market to which they refer;*
- *be published in an appropriate manner.*

3. Each Member State shall send to the Commission the list of stock-indices which they consider replicable by UCITS, together with details of the characteristics of such stock-indices. A similar communication shall be effected in respect of each change to the aforementioned list. The Commission shall publish the complete list of replicable stock-indices and updates thereto in the Official Journal of the European Communities at least once a year. This list may be subject to exchanges of views within the Contact Committee in accordance with the procedure laid down in Article 53(4).

1. Without prejudice to the limits laid down in Article 25, the Member States may raise the limits laid down in Article 22 to a maximum of **20 %** for investment in shares issued by the same body when, according to the fund rules or instruments of incorporation, the aim of the UCITS' investment policy is to replicate **a certain recognised stock or debt securities index on the following basis:**

- **its investment policy seeks to reflect the composition of that index;**

- **the index represents** an adequate benchmark for the market to which **it refers;**

- **it is** published in an appropriate manner.

2. Each Member State shall send to the Commission the list of stock-indices which they consider replicable by UCITS, together with details of the characteristics of such stock-indices **and an indication about where updated information can be obtained.** A similar communication shall be effected in respect of each change to the aforementioned list. The Commission shall publish the complete list of replicable stock-indices and updates thereto in the Official Journal of the European Communities at least once a year **or make such information publicly available in an appropriate manner.** This list may be subject to exchanges of views within the Contact Committee in accordance with the procedure laid down in Article 53(4).

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(Amendment 19)

ARTICLE 1(8)

Article 24(1), (2) and (3) (Directive 85/611/EEC)

1. A UCITS may acquire the units of other collective investment undertakings *within the meaning of the first and second indent of Article 1(2)* provided that it invests no more than 10% of its own assets in units of a single UCITS.

2. The Member States may raise the limit laid down in paragraph 1 to a maximum of 35%. However, in that case the UCITS must invest in at least five different collective investment undertakings mentioned in paragraph 1.

3. A UCITS may not invest in units of a collective investment undertaking *within the meaning of the first and second indent of Article 1(2)*, which invests more than 10% of its own assets in units of other collective investment undertakings.

1. A UCITS may acquire the units of **UCITS and** other collective investment undertakings **mentioned in Article 19(1)(e)** provided that **no more than 10% of its assets are invested** in units of a single UCITS **or other collective investment undertaking**. **The Member States may raise the limit to a maximum of 20%.**

2. **Investments made in units of collective investment undertakings other than UCITS may not exceed, in aggregate, 30% of the assets of the UCITS.**

The Member States may **allow that, when a UCITS has acquired units of UCITS or other collective investment undertakings, the assets of the respective UCITS or other collective investment undertaking do not have to be combined to the limits laid down in Article 22.**

3. A UCITS may not invest **in another UCITS or other collective investment undertaking that invests itself more than 10% in units of other UCITS or other collective investment undertakings.**

3a. The UCITS' fund rules or instruments of incorporation, its prospectuses and any promotional literature shall include a prominent statement drawing attention to the fact that the UCITS invests, as a part of its general investment policy, in units of other UCITS and other collective investment undertakings.

(Amendment 20)

ARTICLE 1 (9)

Article 24a(1) and (2) (Directive 85/611/EEC)

1. Notwithstanding the provision laid down in Article 19(4), a UCITS may invest its assets in deposits with credit institutions furnishing sufficient financial and professional guarantees, provided that the UCITS places no more than 10% of its assets in deposits with the same credit institution or with credit institution within the same group.

2. Member States may raise the limit laid down in paragraph 1 to a maximum of 35%. However, in that case a UCITS must invest in deposits with at least five different credit institutions. For the purposes of this rule, credit institutions belonging to the same group are considered to be one single institution.

Deleted

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TEXT PROPOSED
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(Amendment 43)

ARTICLE 1(9)

Article 24b(1) (Directive 85/611/EEC)

1. Notwithstanding the provisions laid down in Article 21, a UCITS may invest, as a part of its general investment policy, in financial-futures contracts and options mentioned in Article 19(1)(g) and (h), provided that the maximum potential exposure relating to the conclusion of each such derivative transaction is covered, during the entire period of the contract, by assets belonging to the UCITS of the right kind and sufficient in value.

1. A UCITS may invest, as a part of its general investment policy, **in financial derivatives, provided that the amount of the commitments entered into by the UCITS is not greater than the total net value of its assets. In calculating the value of the commitments, reference must be made to the current value of underlying activities.**

(Amendment 21)

ARTICLE 1(16)

Article 53a, second indent (Directive 85/611/EEC)

— adaptation of the ceilings referred to in Section V and in Article 36(2) in order to take account of developments on financial markets, where such adaptations will not lead to stricter requirements for the UCITS,

Deleted

European Parliament legislative resolution on the proposal for a European Parliament and Council directive amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (COM(1998) 449 – C4-0464/1998 – 1998/0243(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(1998) 449) ⁽¹⁾,
 - having regard to Article 251(2) of the EC Treaty and Article 47(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C4-0464/1998),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0025/2000),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

⁽¹⁾ OJ C 280, 9.9.1998, p. 6.