Does the Commission not feel that the clause contained in the two Spanish decisions on solar energy is in clear conflict with the above points, which currently define European policy in the field of renewable energies?

In what way does the Commission consider that the above-mentioned exclusion clause might hinder the granting of Community aid in the context of ‘laws or regulations emanating from European administrations’?

**Supplementary answer**
given by Mr Monti on behalf of the Commission

*(25 November 2002)*

The Honourable Member asks whether the conditions set by the Spanish Ministry of Science and Technology for the granting of national state aid are an obstacle to receiving Community aid.

The Community policy on state aid for environmental protection is set out in the relevant Community guidelines *(1)*. As emphasised in point 32 of the guidelines, investments to promote renewable sources of energy are deemed equivalent to environmental investments in the absence of mandatory Community standards and are thus encouraged by the Commission, which accepts the granting of state aid.

However, Community aid cannot be treated in the same way as state aid because it is financed by the Community budget and not by those of the Member States. Accordingly, the clauses laid down by the Spanish Ministry of Science and Technology governing national aid cannot be seen as obstacles to the receipt of Community aid. However, it should be stressed that, where a project simultaneously receives national aid and Community aid, point 74 of the Community guidelines, which concerns overlapping aid, applies.

*(1)* OJ C37, 3.2.2001.

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**WRITTEN QUESTION P-2279/02**

by Carles-Alfred Gasòliba i Böhm (ELDR) to the Commission

*(18 July 2002)*

**Subject:** Modification of the Spanish Law on personal income tax

The draft act partially reforming personal income tax in Spain (which is governed by Law No 40/1998 of 9 December 1998) was published, along with other tax rules applicable in that country, in the Boletín Oficial de las Cortes Generales on 5 June 2002. The act is due to become law on 1 January 2003.

Article 77 of the above Law sets out the tax arrangements applicable to Spanish citizens who derive income from units held in collective investment undertakings, irrespective of whether these are based in Spain or abroad. The amendment that the Spanish government is seeking to introduce would see tax benefits being granted to unit-holders who reinvest the units they hold in non-corporate organisations in other types of unit fund. The tax benefits would not apply to transfers from or to corporate organisations. Given that the majority of the corporate organisations operating in Spain are foreign organisations, could this not be construed as the Spanish authorities impeding free competition or imposing some other form of de facto protectionism?

Do these new provisions comply with the judgment of the Court of Justice of 5 June 1997 in case C-398/95 (SETTG) and Article 49 of the EC Treaty, which prohibits any restrictions liable to discourage the activities of service suppliers, irrespective of their nationality?

In any case, is the Commission aware that the modification which the Spanish authorities intend to introduce under this reform, as regards the applicable tax treatment of reinvestment by Spanish citizens in
Spanish and European non-corporate collective investment undertakings harmonised under Directive EEC/85/611 (1), will have a discriminatory effect on European corporate collective investment undertakings operating in Spain?


Answer given by Mr Bolkestein on behalf of the Commission

(2 October 2002)


Council Directive 85/611/EEC of 20 December 1985 on undertakings for collective investment in transferable securities (UCITS), as well as its successive amendments, do not contain any tax provisions on UCITS, whatever their legal form is (with or without legal personality).

However, according to constant case-law of the Court of justice of the European Communities, even if direct taxation falls under the exclusive competence of Member States, these cannot, however, fail to respect Community rules, and must exercise their competence in the respect of Community law (1).

As the Honourable Member points out, there appears to be a risk of subsequent restriction of competition and even a new barrier to freely provide services throughout the Union, as these companies might feel obliged to change their legal form to a fund in order to be able to continue operating in Spain in a profitable way (2), whereas at the same time they would no longer be able to take into account a preference by subscribers in other Member States for companies.

There also appears to be a danger of indirect discrimination of foreign investment companies that operate under corporate form.

The Commission has already contacted the Spanish authorities to ask for an explanation of the reasons that have led to the introduction of a difference in the tax treatment of the tax payer depending on his investment in 'common funds' (without legal personality) or in 'investment companies' (under a corporate form) in the meaning of Article 1.2 of Council Directive 85/611/EEC. If the reply does not eliminate the doubts that may occur as to the compliance of the new provisions (if the bill were adopted as it is) with Community law, the Commission may envisage to take the necessary steps that are at its disposal as guardian of the EC Treaty.


WRITTEN QUESTION E-2319/02
by Paul Rübig (PPE-DE) to the Commission

(26 July 2002)

Subject: Application of national competition law in Slovakia in accordance with EU law

As part of the EU accession process, Slovakia has undertaken to bring its laws gradually into line with the acquis communautaire. This applies in particular to competition law.