



# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	1998/0243(COD) Procedure completed
Undertakings for collective investment in transferable securities UCITS: marketing (amend. Directive 85/611/EEC) Repealed by <a href="#">2008/0153(COD)</a>	
Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ECON</b> Economic and Monetary Affairs		13/09/1999
		ELDR <a href="#">SCHMIDT Olle</a>	
	Former committee responsible		
	<b>JURI</b> Legal Affairs, Citizens' Rights		23/09/1999
		UEN <a href="#">CROWLEY Brian</a>	
Council of the European Union	Former committee for opinion		
	<b>ECON</b> Economic and Monetary Affairs, Industrial Policy		13/09/1999
		ELDR <a href="#">SCHMIDT Olle</a>	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2393</a>	04/12/2001
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2353</a>	05/06/2001
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2335</a>	12/03/2001
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2329</a>	12/02/2001
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2297</a>	17/10/2000
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2283</a>	17/07/2000
European Commission	Commission DG	Commissioner	
	<a href="#">Financial Stability, Financial Services and Capital Markets Union</a>		

Key events			
17/07/1998	Legislative proposal published	COM(1998)0449	Summary
14/09/1998	Committee referral announced in Parliament, 1st reading		

21/04/1999	Vote in committee, 1st reading		
21/04/1999	Committee report tabled for plenary, 1st reading	<a href="#">A4-0233/1999</a>	
25/01/2000	Vote in committee, 1st reading		Summary
25/01/2000	Committee report tabled for plenary, 1st reading	<a href="#">A5-0025/2000</a>	
17/02/2000	Debate in Parliament		
17/02/2000	Decision by Parliament, 1st reading	<a href="#">T5-0056/2000</a>	Summary
30/05/2000	Modified legislative proposal published	COM(2000)0329	Summary
17/07/2000	Resolution/conclusions adopted by Council		
12/02/2001	Debate in Council	<a href="#">2329</a>	
05/06/2001	Council position published	<a href="#">07551/1/2001</a>	Summary
05/07/2001	Committee referral announced in Parliament, 2nd reading		
10/10/2001	Vote in committee, 2nd reading		Summary
10/10/2001	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A5-0324/2001</a>	
22/10/2001	Debate in Parliament		
23/10/2001	Decision by Parliament, 2nd reading	<a href="#">T5-0540/2001</a>	Summary
04/12/2001	Act approved by Council, 2nd reading		
21/01/2002	Final act signed		
21/01/2002	End of procedure in Parliament		
13/02/2002	Final act published in Official Journal		

### Technical information

Procedure reference	1998/0243(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Repealed by <a href="#">2008/0153(COD)</a>
Legal basis	EC Treaty (after Amsterdam) EC 047-p2
Stage reached in procedure	Procedure completed
Committee dossier	ECON/5/13254

### Documentation gateway

Legislative proposal	<a href="#">COM(1998)0449</a> <a href="#">OJ C 280 09.09.1998, p. 0006</a>	17/07/1998	EC	Summary
Economic and Social Committee: opinion, report	<a href="#">CES0201/1999</a>	25/02/1999	ESC	

		<a href="#">OJ C 116 28.04.1999, p. 0044</a>			
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A4-0233/1999</a> <a href="#">OJ C 279 01.10.1999, p. 0007</a>	21/04/1999	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A5-0025/2000</a> <a href="#">OJ C 339 29.11.2000, p. 0005</a>	25/01/2000	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T5-0056/2000</a> <a href="#">OJ C 339 29.11.2000, p. 0161-0220</a>	17/02/2000	EP	Summary
Modified legislative proposal		COM(2000)0329 <a href="#">OJ C 311 31.10.2000, p. 0302 E</a>	30/05/2000	EC	Summary
Council position		<a href="#">07551/1/2001</a> <a href="#">OJ C 297 23.10.2001, p. 0035</a>	05/06/2001	CSL	Summary
Commission communication on Council's position		SEC(2001)1003	28/06/2001	EC	Summary
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A5-0324/2001</a>	10/10/2001	EP	
Text adopted by Parliament, 2nd reading		<a href="#">T5-0540/2001</a> <a href="#">OJ C 112 09.05.2002, p. 0028-0111 E</a>	23/10/2001	EP	Summary
Commission opinion on Parliament's position at 2nd reading		COM(2001)0686	21/11/2001	EC	Summary

#### Additional information

European Commission

[EUR-Lex](#)

#### Final act

[Directive 2001/108](#)  
[OJ L 041 13.02.2002, p. 0035-0042](#) Summary

## Undertakings for collective investment in transferable securities UCITS: marketing (amend. Directive 85/611/EEC)

**OBJECTIVE:** To extend the field of application of the UCITS-Directive (85/611/EEC) to other types of collective investment undertakings.

**SUBSTANCE:** In order to remove existing barriers to a free cross-border marketing of units issued by undertakings for collective investment in transferable securities (UCITS), the Commission has prepared a package of measures distributed in two separate proposals: one (proposal 1) focussing essentially on the 'product' (the types of investments funds), the other (proposal 2) focussing essentially on the 'service provider' (the management company) and on prospectuses for UCITS. The aim of proposal 1 is to remove barriers to cross-border marketing of units of collective investment undertakings through; a) extending the freedom to be marketed throughout the EU to collective investment undertakings investing in financial assets other than transferable securities such as: units of other collective investment undertakings, money market instruments, bank deposits and standardised options and future contracts; new transparency requirements will ensure adequate information of investors; b) revising some other provisions of the UCITS-Directive in order to update the directive in the light of new portfolio management techniques which have been developed since 1985; c) removing interpretive uncertainties relating to a number of provisions of the UCITS-Directive which hinder its uniform application. ?

## Undertakings for collective investment in transferable securities UCITS: marketing (amend. Directive 85/611/EEC)

The committee adopted the report (codecision procedure, first reading) by Olle SCHMIDT (ELDR, S) approving the Commission proposal subject to a number of amendments. One of these aimed to clarify certain points in connection with the delegation of activity, with a view to protecting investors. It introduced limits on the use of power to delegate and restricted the persons to whom decisions may be delegated. Another amendment aimed to extend the rules of conduct to investment advisory services and custody services too. As regards the provision of information, the committee adopted an amendment stating that prospectuses must include the information necessary for investors to be able to make an informed judgment, not only of the investment proposed to them, but also of the risks attached thereto. It felt that information about risks was an important feature of the provision of information in general and furthered consumer protection. ?

## Undertakings for collective investment in transferable securities UCITS: marketing (amend. Directive 85/611/EEC)

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The European Parliament adopted the report (co-decision, first reading) drafted by Mr. Olle Schmidt (ELDR, S) on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses. This report was adopted subject to amendment. These amendments concern, in particular, the issue of authorisation and the amount of capital: - Authorisation: the Member States' competent authorities shall not grant authorisation or withdraw authorisation from a UCITS where there is evidence that the entity has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State. - Amount of capital: it has initial capital of at least EUR 150 000. In addition, it shall maintain certain capital requirements that are at least equivalent to the higher of the following amounts: - an amount of capital to be determined in accordance with the rules laid in Directive 93/6/EEC, having regard to the nature of the services provided; - an amount of capital to be determined by applying the following scale to the total amount of the assets managed: - 0.1% up to EUR 1000 million managed; - EUR 1 000 000 plus 0.02% of assets managed in excess of EUR 1000 million, subject to a ceiling of EUR 10 million. Another amendment adopted relates to the management companies. The competent authorities of the home Member State may permit management companies to delegate specific investment decisions to intermediaries that are subject to prudential supervision, in accordance with investment-allocation criteria periodically laid down by the management companies. With respect to the prospectuses, these must include a clear and easily understandable explanation of the fund's risk profile (independent of whether or not derivatives are used and independent of the type of securities invested in).?

## Undertakings for collective investment in transferable securities UCITS: marketing (amend. Directive 85/611/EEC)

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In this amended proposal the Commission has made two types of amendments. Firstly, in response to the first reading by the European Parliament, a number of new provisions have been accepted, some with adapted wording. The majority of these serve either to reduce ambiguities or to elaborate further on the original proposal. Some new ideas expand on the original text but do not change the fundamental principles. Secondly, the Commission has made some changes to ensure consistency between this text and other applicable Community legislation and to ensure internal consistency within the text itself. The key changes are: - Over-the-counter (OTC) derivatives: these instruments were excluded on prudential grounds. Parliament, the Council Working Group and the Economic and Social Committee strongly insist on the inclusion of OTC derivatives. These are now included and prudential concerns are covered, through provisions which include a ceiling for OTC derivatives as proposed by Parliament. - index tracking funds: the Commission accepts Parliament's proposal to lower the single issuer limit of 35% and to extend the provision to debt securities indices. - investments in bank deposits: since Parliament expressed its concerns in regard to liquidity and counter-party risk of these deposits, the amended proposal includes the requirements proposed by Parliament. - Investments in units of non-harmonised funds: under the Commission's original proposal, a harmonised fund (UCITS) would have been able to invest all of its assets in a number of non-harmonised funds. The Parliament called for a more cautious 30% limit for investments of harmonised funds (UCITS) into the units of non-harmonised funds. The amended proposal integrates the 30% threshold.?

## Undertakings for collective investment in transferable securities UCITS: marketing (amend. Directive 85/611/EEC)

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In its common position, the Council included fully, partly or in essence 20 of the 24 European Parliament amendments, and has made some changes of its own. Those amendments that were accepted include: - UCITS to be permitted to invest in market instruments. - the principles governing certain choices of financial instrument and associated management techniques. As a general rule, UCITS should not invest more than 5% of their assets in transferable securities or money market instruments issued by the same body. The risk exposure to a single counterparty should not exceed 5% of the assets of the UCITS, unless the counterparty is a credit institution, in which case the Council has opted for the higher exposure limit of 10% in view of the lower risk involved. Certain amendments were not accepted: - the Council has decided not to set specific limit to UCIT's investment in OTC derivative instruments. - it is not necessary to include a specific provision on securities lending - The Council disagrees with Parliament over the appropriate investment limit for deposits, which the Council believes should be 20% in view of the low risk. ?

## Undertakings for collective investment in transferable securities UCITS: marketing (amend. Directive 85/611/EEC)

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The Commission considers that the common position preserves the essence of the initial proposal. It aims to modernise all the rules applicable to investments by UCITS: the widening of the range of authorised investments, subject to appropriate prudential restrictions, is matched by a tightening of requirements relating to risk monitoring and control and to information that is published or that is made available at the request of the subscriber. The common position takes account of the amendments proposed by Parliament, most of which were incorporated in full or in part in the amended proposal. While it reflects the same overall concern to strike a balance between modernisation of the rules and investor protection, the common position has nonetheless introduced certain changes, mainly relating to investment limits and rules. On the other hand it has consolidated the provisions on the prudential framework for authorised transactions and on investor information. ?

## Undertakings for collective investment in transferable securities UCITS: marketing (amend. Directive 85/611/EEC)

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The committee adopted the report by Olle SCHMIDT (ELDR, S) approving the Council's common position under the codecision procedure (2nd reading), subject to just one amendment aimed at aligning the review period for capital requirement with the general review of the functioning of the directive (three years).?

## Undertakings for collective investment in transferable securities UCITS: marketing (amend. Directive 85/611/EEC)

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The European Parliament approved the resolution drafted by Mr Olle SCHMIDT (ELDR, S) on the common position to expand the European market in unit trusts and other financial investments known as UCITS (Undertakings for Collective Investments in Transferable Securities) together with amendments. (Please refer to the previous text). It should be noted that the Parliament proposes to align the review period for capital requirement with the general review no later than three years after the entry into force of this Directive. Commissioner Fritz BOLKESTEIN stated that he could accept the amendments in a spirit of compromise. He also added that the legislation was broadly supported by the financial service industry.?

## Undertakings for collective investment in transferable securities UCITS: marketing (amend. Directive 85/611/EEC)

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Following its second reading in plenary, the European Parliament tabled one amendment. This has been accepted by the Commission. The amendment is divided into two paragraphs. The first, requests the Commission to carry out a five point review programme of analyses and possible proposals for further modifications to the UCITS Directives within three years of the entry into force of the present Directive. The second paragraph states that on the date of entry into force of this Directive, all existing UCITS have a period of no more than 60 months from that date to comply with the new legislation. In accepting this amendment, the Commission hopes for a swift adoption of the Directive.?

## Undertakings for collective investment in transferable securities UCITS: marketing (amend. Directive 85/611/EEC)

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**PURPOSE :** to ensure the free cross-border marketing of the UCITS of a wider range of collective investment undertakings, while providing a uniform minimum level of investor protection. **COMMUNITY MEASURE :** Directive 2001/108/EC of the European Parliament and of the Council amending Council Directive 85/611/EEC on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities (UCITS), with regard to investments of UCITS. **CONTENT :** the management or investment company must employ a risk-managed process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio. It must employ a process for an accurate and independent assessment of the value of over the counter (OTC) derivative instruments. It must communicate to the competent authorities regularly and in accordance with the detailed rules they shall define, the types of derivative instruments, the underlying risks, the quantitative limits and the methods which are chosen in order to estimate the risks associated with transactions in derivative instruments regarding each managed UCITS. The Member States may authorise UCITS to employ techniques and instruments relating to transferable securities and money market instrument under the conditions and within the limits which they lay down provided that such techniques and instruments are used for the purpose of efficient portfolio management. Under no circumstances shall these operations cause the UCITS to diverge from its investment objectives as laid down in the UCITS' fund rules, instruments of incorporation or prospectus. A UCITS shall ensure that its global exposure relating to derivative instruments does not exceed the total net value of its portfolio. The exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions. A UCITS may invest no more than 5% of its assets in transferable securities or money market instruments issued by the same body. A UCITS may not invest more than 20% of its assets in deposits made with the same body. The risk exposure to a counterparty of the UCITS in an OTC derivative transaction may not exceed: - 10% of its assets when the counterpart is a credit institution, or - 5% of assets, in other cases. Member States may raise the 5% limit to a maximum of 10%. However, the total value of the transferable securities and the money market instrument held by the UCITS in the issuing bodies in each of which it invests more than 5% of its assets must not exceed 40% of the value assets. The limitations does not apply to deposits and OTC derivative transactions made with financial institutions subject to prudential supervision. On the other hand, the Member States may raise the 5% limit to a maximum of 35% if the transferable securities or money market instruments are issued or guaranteed by a Member State, by its local authorities, by a non-Member State or by public international bodies to which one or more Member States belong. When a UCITS invests more than 5% of its assets in bonds issued by one issuer, the total value of these investments may not exceed 80% of the value of the assets of the UCITS. Member States shall send the Commission a list of the categories of bonds together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements to issue bonds complying with the criteria set out above. The Commission shall forward that information to the other Member States together with any comments it considers appropriate and shall make the information available to the public. No later than 13 February 2005, the Commission shall forward to the European Parliament and the Council a report on the application of Directive 85/611/EEC as amended and proposals for amendments, where appropriate. **ENTRY INTO FORCE :** 13/02/2002. **IMPLEMENTATION :** 13/08/2003. Member States shall apply these measures no later than 13/02/2004.?