

Undertakings for collective investment in transferable securities (UCITS): coordination of laws, regulations and administrative provisions. Recast

2008/0153(COD) - 16/07/2008 - Legislative proposal

PURPOSE: to codify the successive changes introduced to the UCITS Directive since 1985 and to incorporate measures announced in the 2006 White Paper.

PROPOSED ACT: Directive of the European Parliament and of the Council

CONTENT: Council Directive 85/611/EEC (the UCITS Directive) aimed to offer greater business and investment opportunities for both industry and investors by integrating the EU market for investment funds. The Directive has been key to the development of European investment funds. In June 2007, UCITS assets under management amounted to EUR 6trillion. UCITS represent about 75% of the EU investment fund market. Strong in-built investor protection safeguards have also achieved UCITS broad recognition beyond EU borders.

Despite this positive evolution, it became evident over the years that the Directive was excessively constraining and prevented fund managers from fully exploiting their development possibilities. Amendments in 2001 enlarged the investment powers available to

UCITS but did not tackle bottlenecks to industry efficiency. Estimated potential annual savings amount to several billion euros. In 2005, the Commission Green Paper on investment funds launched a public debate on the need for EU level action (and its scope), and the [White Paper](#) in 2006 announced a set of targeted modifications to the UCITS Directive.

Concretely, the proposal has two objectives:

- 1) the introduction of new freedoms in order to improve the efficiency and integration of the UCITS Internal Market;
- 2) to streamline the working of current provisions regarding the cross-border marketing of UCITS and disclosure obligations.

The new provisions will increase the efficiency of the current legislative framework in a number of key areas :

- they will allow UCITS managers to develop their cross-border activities and generate savings consolidation and economies of scale. Currently EU funds are on average 5 times smaller than US funds and the cost of managing them are twice as high as in the US;
- investors will benefit from a greater choice of investment funds operating at lower costs;
- the proposal also seeks to improve investor protection by making sure that retail investors receive clear, easily understandable and relevant information when investing in UCITS. These improvements will help reinforcing the competitiveness of UCITS on global markets. Currently 40 % of UCITS originating in the EU are sold in third countries, mainly Asia, the Gulf region and Latin America. As part of the Commission's Better Regulation Strategy and its firm commitment to simplify the regulatory environment, the new Directive will replace 10 existing directives with a single text.

The proposed changes to the UCITS Directive will:

- remove administrative barriers to the cross-border distribution of UCITS funds: current notification procedures can take several months before completed. Administrative costs are estimated at EUR 45 million. The new notification procedure will be reduced to a simple, electronic, regulator-to-regulator communication. The distribution of units of funds will start immediately after such communication;
- create a framework for mergers between UCITS funds and allow the use of master-feeder structures: fund mergers will be allowed, on both a domestic and a cross-border basis, and their authorisation procedure will be harmonised, as will the required level of information to be provided to investors. Subject to approval and the appropriate information of investors, a UCITS fund (feeder) will be allowed to fully invest its assets into another fund (master). It is estimated that these new management opportunities will allow UCITS to make up to EUR 6 billion in savings and economies of scale. These could in turn be shared with investors in the form of lower investment costs;
- replace the Simplified Prospectus by a new concept of Key Investor Information (KII): KII will be contained in a short document conveying key facts to retail investors in a clear and understandable manner so as to assist them in taking an informed investment decision;
- improve cooperation mechanisms between national supervisors: as regards the "management company passport" (i.e. the possibility for funds authorised in one Member State to be managed remotely by a management company established in another Member State), the most recent consultation process has revealed that there are a series of potential supervisory and investor protection concerns. These need to be tackled if the MCP is not to lessen the protection of retail investors or endanger the UCITS brand - traditionally considered to be a European "gold standard" for investor protection. The Commission has therefore decided to consult the Committee of European Securities Regulators (CESR) on these issues. CESR will be invited to provide advice that will help the Commission to develop provisions permitting the introduction of a management company passport under conditions that are consistent with high level of investor protection. In that regard CESR will be invited to advise the Commission on the structure and principles which could guide potential future amendments to the UCITS directive which may be needed to give effect to the UCITS management company passport.