

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

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The Committee on Economic and Monetary Affairs adopted a report drafted by Wolf KLINZ (ALDE, DE) and amended the proposal for a directive of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast).

The main amendments ? made in 1st reading of codecision procedure ? are as follows :

Management company passport: the Management Company Passport (MCP) is aimed at giving management companies the right to passport their collective portfolio management services across the EU according to the principle of freedom to provide services as set out in the Treaty. Whilst this was not in the original Commission proposal, the committee introduced provisions for a management company passport at Level 1 provisions in order to allow for a passporting of collective portfolio management services. It stated that discrimination on grounds of the nationality of a management company should not be allowed, nor should possible protectionist delays in the approval be possible. It was certain that the MCP would contribute to the establishment of a true common market for the fund industry and lead to substantial economic benefits while allowing for the same high level of investor protection.

Mergers: by 31 December 2010 (i.e before this Directive is implemented) and in order to provide a binding framework of tax neutrality, the Commission should propose a directive for taxation of fund mergers following the principle of tax neutrality laid down in Council Directive 90/434/EEC on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office, of an SE or SCE, between Member States and Directive 2005/56/EC on cross-border mergers of limited liability companies. A Commission Communication and bilateral agreements between Member States should address the existing difficulties in the meantime. The committee felt that clear rules are needed to ensure that the benefits of the proposed merger framework can be exploited leading to market consolidation, improved efficiency and lower costs to the investor.

Notification: Members felt that a one month time period given to the UCITS home supervisor for checking completeness of files and attesting compliance with the Directive is unjustifiably long and not in line with provisions on notification for other products. Accordingly, they inserted a provision stating that the competent authorities of the UCITS home Member State shall transmit complete documentation to the competent authorities of the Member State in which the UCITS proposes to market its units, no later than 5 working days after the date of receipt of the notification letter and the complete documentation provided for in the text.

Key investor information: the key investor information (KII) is to replace the existing simplified prospectus. The committee proposed that key investor information should be provided as a specific document to investors free of charge, in good time before the subscription of the UCITS. The competent authorities of each Member State may make available to the public, in a dedicated section of their website, key investor information concerning all UCITS constituted and authorised in that Member State. The committee further stated that the European Commission must adopt implementing measures. It introduced amendments to ensure that the information requirements are in line with the wording and provisions in MiFID. Supplementary documents should be prohibited from being attached to the KII.

Master/Feeder: the Commission has introduced new provisions on the pooling of funds. Via master/feeder structures a UCITS fund may invest 85% or more into a master UCITS (which is not itself a feeder UCITS) allowing for cost savings due to combined management of the fund's assets. The committee has simplified some of the provisions, and introduced further streamlining of the regulatory exchange of information and documents. It also inserted provisions that strengthen investor protection in the case of liquidation. In addition, the master UCITS and the feeder UCITS must take appropriate measures to coordinate the timing of their net asset value calculation and publication, or employ other recognised techniques in order to avoid market timing in their fund units and prevent arbitrage.