

**EUROPEAN ECONOMIC  
COMMUNITY**

**EUROPEAN ATOMIC ENERGY  
COMMUNITY**

**ECONOMIC AND SOCIAL COMMITTEE**

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Brussels, 14 February 1977

**REPORT**

of the Section for Industry, Commerce, Craft and Services

on the

Proposal for a Council Directive for the Coordination  
of Laws, Regulations and Administrative Provisions  
regarding Collective Investment Undertakings for  
Transferable Securities

COM (76) 152 final

Rapporteur: Mr. DE BRUYN

CES 146/77 fin

## INTRODUCTION

In a letter dated 13 May 1976, the Council of the European Communities asked the Economic and Social Committee for an Opinion on the Proposal for a Council Directive for the Co-ordination of Laws, Regulations and Administrative Provisions regarding Collective Investment Undertakings for Transferable Securities.

On 13 May 1976, the Bureau instructed the Section for Industry, Commerce, Crafts and Services to draw up an Opinion and Report on the matter.

The Section asked its Study Group on Establishment and Services to prepare draft versions of the Opinion and Report.

## GIST OF THE COMMISSION'S PROPOSAL

The proposal relates to collective investment undertakings for transferable securities other than those of the closed-end type. In other words it deals with investment companies and unit trusts :

- Whose object is the collective investment in transferable securities, or retention as liquid assets, of at least 80% of the capital they collect;
- Which accumulate this capital by means of offers to the public;
- Whose operations are based on the principle of risk spreading; and

- Whose shares or units are issued continuously or in blocks at short intervals and/or are directly or indirectly repurchased or redeemed when the holder so requests.

Under the proposal, a single set of rules will be introduced for these undertakings, irrespective of whether they operate only at national level or at Community level as well. Similarly, the authorization of these undertakings and the supervision of their activities will be governed by common provisions.

The proposal also lays down a number of common rules governing :

- the structure of investment companies and unit trusts;
- restrictions as regards their investment policies;
- the information which these undertakings must disclose;
- certain general obligations which they must fulfil, especially when they market their shares or units in a Member State other than that in which they are situated;
- the authorities responsible for authorizing these undertakings and supervising their activities;
- certain special types of collective investment undertakings for transferable securities;
- the setting up of a Contact Committee.

If the planned coordination is to be fully effective, concurrent steps must be taken to introduce free movement for shares and units issued by collective investment undertakings. Therefore, following consultation of the Monetary Committee, the Commission will be presenting the Council with a proposal to this end.

THE SECTION'S COMMENTS

I. GENERAL COMMENTS

(See points 1.1.0. to 1.5.2. in the Opinion).

II. SPECIFIC COMMENTS

In addition to the remarks made in the Opinion, the Section would also include the following comments that certain members made on some of the articles in the proposed directive.

Article 9

Some members would point out that a management company's capital often includes a few minor holdings, for the purpose of fulfilling legal requirements, for instance. Such holdings do not, by their very nature, have any influence on the company's decisions.

These members therefore propose that Article 9(1) should read as follows :

"The management company shall inform the competent authorities of the names of all its members holding more than 10% of its capital and state the amount of such members' holdings".

Article 15

Some members consider that limits should be placed on CIUTS' administration and operating expenditure.

Article 25(1)

Some members would stress that approval by the appropriate stock exchange authorities, in non-member countries is inadvisable.

Responsibility for choosing securities should still lie with the CIUTS. Normally it should be sufficient for the prospectus to mention stock exchanges in non-member countries.

Article 25 (2)(a)

Some members consider that the percentage laid down in this paragraph should be raised considerably, so as to allow CIUTS to invest more of their funds in transferable securities other than those referred to in Article 25(1).

Other members, however, feel that Article 25(2)(a) should be deleted, since it leaves the door open to all sorts of operations.

Yet other members are of the view that access to the options market is necessary in the interests of savers. But it is not clear whether the Commission wishes such investments to be permissible especially since Article 25 only includes direct acquisitions, and not

indirect acquisitions such as option buying. To avoid any misunderstanding, a new sub-paragraph c) should therefore be added, reading as follows:

"c) Member States may authorize forward transactions and option buying on official stock exchanges in a Member State."

A fourth group of members share these views, but propose that the new sub-paragraph c) should end as follows:

"... in a Member State or in a non-member country if access to these stock exchanges is authorised by the competent authorities."

#### Article 26(2)

Some members would prefer this paragraph to be deleted and that there should be strict compliance with the ceiling laid down in Article 26(1), for the proportion of a CIUTS' assets that may be invested in transferable securities of a single issuer.

#### Article 27

Some members have reservations about a CIUTS being allowed to invest in units issued by other CIUTS. They think that such investments should be authorised only when the investing CIUTS wishes to use its purchase as a means of participating in a securities market where it does not itself operate.

Other members feel that Article 27 should be deleted, since it runs contrary to savers' interests.

Article 29

Some members propose that there should be compliance with the general principle set out in Article 29(1) and ask that Article 29(2) should be deleted.

Article 30

Contrary to what is said in points 2.12. to 2.12.3. of the draft Opinion, some members consider that the exceptions listed in Article 30 are fully justified.

Article 31

Some members feel that the beginning of this Article should be worded as follows :

"The CIUTS shall make available to the public : ..."

Article 37(1)

Making it compulsory to submit annual and half-yearly reports for vetting would amount to granting a power of censure to the authorities responsible for such vetting. Article 5(3) of the proposal stipulates that directors are to be of good repute and professionally competent. In view of the responsibilities entrusted to these people, it is difficult to understand why they should not be made responsible for publishing correct reports. Moreover, this paragraph constitutes a discrimination against investment companies, since other financial institutions are not required to submit their annual reports for prior vetting by the competent authorities. Some Members:

therefore ask that the prior vetting of annual and interim reports at least should be removed from the proposal, especially since such a rule would undoubtedly make the competent authorities responsible for the content of reports.

Article 39

Some members consider that the information referred to in this Article could quite well be supplied by publishing the relevant figures in daily newspapers with a sufficiently high circulation.

Article 66

Some members feel that the Contact Committee provided for in this Article could include among its members, if only in a consultative capacity, representatives of trade associations competent in matters relating to CIUTS.

SCHEDULES

Some members make the general point that the sheer amount of detailed information to be inserted in the prospectus and periodical reports is not calculated to make things clearer for the unitholder.

Schedule A - Prospectus (Section 12 - Management Company)

Some members consider that information concerning the duties performed on the supervisory board by the directors and members of that body and information on the duties of these persons



in other companies should be given only if there is an interlocking, with respect to capital, between such companies and the management company.

Information concerning duties in companies that have no links with the management company are of no interest to savers. Listing such duties, particularly when the supervisory board has many members, is liable to make the prospectus less readable and confuse, rather than inform, the unitholder.

The Chairman  
of the Section for Industry,  
Commerce, Crafts and Services

The Rapporteur  
of the Section for Industry,  
Commerce, Crafts and Services

Carlo HEMMER

Jacques DE BRUYN

The Secretary-General  
of the Economic and Social Committee

Delfo DELFINI