



European Communities

EUROPEAN PARLIAMENT**WORKING DOCUMENTS**

English Edition

1986-87

9 February 1987

SERIES A

DOCUMENT A 2-223/86

REPORT

drawn up on behalf of the Committee on Legal Affairs and
Citizens' Rights

on the proposal from the Commission of the European
Communities to the Council (COM(86) 315 final -
Doc. C 2-51/86) for a directive amending
Directive 85/611/EEC on the coordination of laws,
regulations and administrative provisions relating to
undertakings for collective investment in transferable
securities (UCITS) as far as concerns the investment
policy of certain UCITS

Rapporteur: Mr K. DE GUCHT

WG(VS1)5501E

PE 109.471/fin.
Or. Fr.

By letter of 24 June 1986 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 57, paragraph 2, of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive amending Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as far as concerns the investment policy of certain UCITS.

On 7 July 1986 the President of the European Parliament referred this proposal to the Committee on Legal Affairs and Citizens' Rights as the committee responsible, and the Committee on Economic and Monetary Affairs and Industrial Policy for its opinion.

At its meeting of 17 September 1986 the Committee on Legal Affairs and Citizens' Rights appointed Mr DE GUCHT as rapporteur.

At its meeting of 18 and 19 November 1986 the committee heard an introductory statement by the rapporteur. It considered the Commission proposal and the draft report at its meetings of 17 and 18 December 1986 and 28 and 29 January 1987. At this last meeting the committee decided unanimously to recommend that Parliament approve the Commission proposal and the amendments to it.

As the Commission was not represented during consideration of the draft report at the meeting of 28 and 29 January 1987, and thus could not express an opinion on these amendments, the committee decided to authorize its rapporteur to propose to Parliament, should the need arise, the application of Rule 36(2) of the Rules of Procedure.

The committee then unanimously adopted the motion for a resolution as a whole.

The following took part in the vote: Mr PROUT, chairman; Mrs VAYSSADE, Mr SARIDAKIS and Mr VERDE I ALDEA, vice-chairmen; Mr DE GUCHT, rapporteur; Mr BARZANTI, Mrs BOOT, Mr CABANILLAS GALLAS, Mr GAZIS, Mr HOON, Mrs MIRANDA DE LAGE, Mr PEGADO LIZ, Mr PORDEA, Mr PRICE, Graf STAUFFENBERG, Mr TZOUNIS, Mr VETTER and Mr ZAGARI.

The opinion of the Committee on Economic and Monetary Affairs and Industrial Policy is attached.

The report was tabled on 4 February 1987.

The deadline for tabling amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated.

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The Committee on Legal Affairs and Citizens' Rights hereby submits to the European Parliament the following amendments to the Commission's proposal and motion for a resolution together with explanatory statement :

Text proposed by the Commission of
the European Communities

Amendments tabled by the Committee on
Legal Affairs and Citizens' Rights

Article 1

Directive 85/611/EEC is hereby amended as follows :

1. The following paragraphs 4 and 5 are added to Article 22
(Paragraphs 4 and 5 unchanged)

2. The following Article 26a is inserted :

Amendment No. 1

Member States may authorize a UCITS (hereinafter referred to as a 'parallel UCITS') to invest its assets, notwithstanding Articles 19 to 26, in units issued by other UCITS provided that the following conditions are met :

Member States may authorize a UCITS (hereinafter referred to as a 'parallel UCITS') to invest its assets, notwithstanding Articles 19 to 26 and in particular Article 24, in units issued by other UCITS provided that the following conditions are met:

(paragraphs (a), (b), (c) and (d) unchanged)

(Article 2 unchanged)

Amendment No. 2

A new Article 2a is added to the proposal for a directive.

Article 2a

With the introduction of this directive, and having regard to the provisions of Article 26a, investment in the units of a unit trust managed by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding - within the meaning of Article 24(3) of Directive 85/611/EEC - shall cease to be subject to the limitations laid down in Article 24(2) of Directive 85/611/EEC. The provisions of Article 22 of Directive 85/611/EEC shall apply.

(rest unchanged)

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive amending Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as far as concerns the investment policy of certain UCITS

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹,
 - having been consulted by the Council pursuant to Article 57(2) of the EEC Treaty (Doc. C 2-51/86),
 - having regard to Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)²,
 - having regard to the report of the Committee on Legal Affairs and Citizens' Rights (Doc. A 2-223/86),
 - having regard to the result of the vote on the Commission proposal,
1. Welcomes the Commission's proposal for a directive, through which the latter recognizes that, in their present form, the provisions of Section V of Council Directive 85/611/EEC of 20 December 1985 considerably limit the discretionary powers of managers as regards the services which they may offer unit holders and the decisions which they may take as regards investment or borrowing on behalf of UCITS;
 2. Approves the Commission's proposal for a directive, which seeks to add new paragraphs 4 and 5 to Article 22 of Council Directive 85/611/EEC of 20 December 1985 and a new Article 26a to the same Directive, and considers that the extension of the scope of this Directive to cover other forms of saving represents an important step towards the achievement of the objectives of Article 57(2) of the EEC Treaty;

¹ OJ No. C 155, 21.6.1986, p. 4

² OJ No. L 375, 31.12.1985, p. 3 and p. 5

3. Attaches paramount importance, however, to ensuring that the new provisions in the Commission's proposal guarantee investors a level of protection equivalent to that offered by the provisions of Directive 85/611/EEC in their present form;

4. Calls on the Commission to adopt the amendments it proposes to Article 26a of the proposal for a directive, with the aim of ensuring better protection of the interests of investors and preventing traditional UCITS, which are already regulated by the above Directive 85/611/EEC, being placed at a disadvantage in the future.

EXPLANATORY STATEMENTI. INTRODUCTION

1. The proposal for a directive¹ which is the subject of this report follows the proposal for a directive COM(86) 193 final² in further supplementing Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)³. Its target is precisely that area of the investment policy of UCITS covered by the provisions of Section V of Directive 85/611/EEC. In the explanatory memorandum accompanying the proposal for a directive these provisions are criticized for considerably limiting the discretionary powers of managers as regards the services which they may offer unit holders and the decisions which they may take as regards investment or borrowing on behalf of UCITS⁴.

2. Having examined the current situation in Denmark and the United Kingdom the Commission reached the conclusion that in its present form, and as a result of the limitations it imposed on investment policy, Directive 85/611/EEC would no longer allow certain UCITS in those countries to continue to pursue particular investment policies if they wished to fall within the scope of the Directive and benefit from its provisions, in particular the freedom to market their units within the Community⁵.

In the light of this, the Commission - which feels it is preferable to give each Member State the option of legally authorizing their UCITS to engage in such practices, provided that certain rules and conditions are observed, thus guaranteeing investors equivalent protection - proposes the following two measures:

¹ Doc. C 2-51/86 - COM(86) 315 final; see also OJ No. C 155, 21.6.1986, p. 4

² OJ No. 129, 28.5.1986; on this proposal for a directive see the report by Mr DE GUCHT, drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights (Doc. A 2- /86)

³ OJ No. L 375, 31.12.1985, p. 3 and p. 5

⁴ See COM(86) 315 final, p. 1

⁵ Idem, p. 1

- Firstly, the option for UCITS to invest their assets to a maximum of 35% in the transferable securities of an issuer if these securities are bonds which are equivalent to transferrable securities 'issued or guaranteed by a Member State, by its local authorities, by a non-member state or by public international bodies of which one or more Member States are members'¹.
- Secondly, the enlargement of the scope of Directive 85/611/EEC, by way of derogation from Articles 19 to 26 (Section V), to common investment funds termed 'parallel UCITS', which invest savings raised from the public only in units issued by other UCITS managed or controlled by the same management company or by the same group of companies as that which manages or controls the fund.

II. INVESTMENT IN BONDS TREATED AS PUBLIC SECTOR BONDS

3. The first measure aims to take account of a practice which is very widespread in Denmark whereby mortgage credit bonds issued by Danish institutions specializing in mortgage lending are treated as equivalent to bonds issued or guaranteed by the state. That is why it is inappropriate to apply to them - or to similar bonds in the other Member States - the provisions of paragraphs 1 and 2 of Article 22 of Directive 85/611/EEC, which includes limitations - 5% and 10% respectively - on investment of the assets of a UCITS in the transferable securities issued by the same body. These limitations are dictated by a concern, as stressed by the Commission in its explanatory memorandum, to 'limit the impact on the UCITS's assets which a possible bankruptcy or cessation of payments on the part of an issuer whose securities are included in the portfolio may have'².

4. However, if the bonds in question offer the same guarantees as public sector bonds, the Commission proposes, by adding a new paragraph 4 to Article 22 of Directive 85/611/EEC, that they should benefit from the same advantages as transferable securities issued or guaranteed by a Member State or by its local authorities, i.e. those provided for in paragraph 3 of Article 22 of Directive 85/611/EEC which raises the limit laid down in Article 22, paragraph 1 to a maximum of 35%. The new paragraph 3 also institutes an information procedure in accordance with which 'Member States shall send to the Commission lists of the categories of bonds which they plan to treat as equivalent to the securities referred to in paragraph 3 (of Article 22)'.

5. The insertion of a new paragraph 5 - which limits the investments in transferable securities issued by the same body carried out in accordance with paragraphs 1, 2, 3 and 4 to a maximum of 35% of the assets of a UCITS - merely extends the general spirit of the provisions of Article 22 by conforming with the principle of risk spreading set out in the actual definition of UCITS in Article 1(2), first indent, of Directive 85/611/EEC.

¹ See Article 22(3) of Directive 85/611/EEC

² See COM(86) 315 final, p. 2

III. PARALLEL UCITS

6. In its explanatory memorandum the Commission describes 'parallel UCITS' as 'funds which invest savings raised from the public only in units issued by other UCITS managed or controlled by the same management company or by the same group of companies as that which manages or controls the fund'¹.

7. Parallel UCITS - which already operate in the United Kingdom where they are known as 'managed funds' - have the advantage of offering those purchasing their units a service which enables them to derive more comprehensive benefits from the professional management of their savings: it is the manager himself - and not the unit holders - who chooses the specialist UCITS in which the unit holders' savings are to be invested; that choice, moreover, is constantly reviewed in the light of the prospects of the various UCITS concerned.

8. As has already been mentioned in the introduction, this type of UCITS is not included in the scope of Directive 85/611/EEC in its present form because it does not comply with the investment rules laid down by Articles 19 to 26 of that directive. In the light of this, and by way of derogation from these articles, the Commission proposes the insertion in Section V of the Directive 85/611/EEC of a new Article 26a, which sets out the investment rules which must be observed by parallel UCITS.

9. Given the provisions of Article 24 of Directive 85/611/EEC, one might still be tempted to think that parallel UCITS were already covered by these provisions, even if only partially. Indeed, under paragraphs 2 and 3 of Article 24 a UCITS may invest up to 5% of its assets in the units of such undertakings, managed by the same management company or by any other company with which the UCITS are linked by common management². In fact this is merely a partial derogation from the principle which applies to traditional UCITS, whose principal role is to invest their assets in 'primary' transferable securities, these being quoted shares issued by the state or by industrial, commercial or financial companies. In contrast to traditional UCITS - which, under the provisions of Article 24 of Directive 85/611/EEC, may become 'mixed' funds with 95% primary shares and a maximum of 5% 'derived' shares - parallel UCITS must invest all their assets in derived shares, thus in units issued by other UCITS managed by the same company. For this reason, parallel UCITS are not covered by Article 24 of Directive 85/611/EEC, a fact which would benefit from being clarified in the text of Article 26a proposed by the Commission.

¹ See COM(86) 315 final, p. 4

² See in this connection Opinion of the Economic and Social Committee, point 3; Brussels, 10.11.1986, CES 698/86 final N-IP/CP/CV

10. Moreover, despite the fact that the Article 26a proposed by the Commission is aimed at a different type of common investment fund from that covered by Articles 19 to 26 and more particularly Article 24 of Directive 85/611/EEC, it should be noted that the benefits offered to unit holders by parallel UCITS have already been considered in the report by Lord ARDWICK - drawn up on behalf of the Committee on Legal Affairs - on the Commission proposal for a directive which eventually became, after its adoption by the Council, Directive 85/611/EEC of 20 December 1985 (Doc. 532/76)¹. It was with the precise aim of taking more account of these benefits that the report proposed an amendment, which Parliament adopted, to Article 27 of the proposal for a directive (equivalent to Article 24 of Directive 85/611/EEC), under the terms of which 'a unit trust may invest up to 15% of its assets in the units of other unit trusts managed by the same management company as its own'². However, by combining paragraphs 2 and 3 of Article 24 of Directive 85/611/EEC, the Council has not only limited this option to 5% of the assets of a UCITS, but also made it subject to other conditions (see Article 24(3) of Directive 85/611/EEC). In view of this, there is good reason to wonder if these limitations will have any purpose after the introduction of Article 26a as proposed by the Commission, and whether the insertion of this Article 26a in Section V of Directive 85/611/EEC will not eventually lead to traditional UCITS being placed at a disadvantage. This concern is reinforced by the fact that the policy regarding fees charged for financial services provided to buyers of units (or where commissions are charged for each investment) tends to be less transparent when practised by parallel UCITS rather than traditional UCITS. It would thus be appropriate if provision were made for 'compensation' measures in favour of the latter.

IV. CONCLUSIONS

11. In the light of the above observations the Committee on Legal Affairs and Citizens' Rights concludes that the Commission proposal seeks to extend the scope of Directive 85/611/EEC of 20 December 1985 to new areas of saving, which must be seen as a significant advance in the effort to coordinate national legislation on the protection of savings, as set out in Article 57(2) of the EEC Treaty.

12. In view of this the committee delivers a favourable opinion on the proposal for a directive from the Commission, which seeks to add new paragraphs 4 and 5 to Article 22 and a new Article 26a to Directive 85/611/EEC, at the same time stressing the particular importance of guaranteeing, through these provisions, a level of protection for investors which is equivalent to that offered by the provisions of the above directive. To this end, and in order to prevent traditional UCITS being placed at a disadvantage, the Committee on Legal Affairs and Citizens' Rights proposes some amendments to the Article 26a proposed by the Commission.

¹ For the resolution adopted by the European Parliament on 8 February 1977, see OJ No. C 57, 7.3.1977, p. 31

² See OJ No. C 57, 7.3.1977, p. 33

OPINION

(Rule 101 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs and Industrial Policy

Draftsman: Mr HERMAN

At its meeting of 26 November 1986 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr Herman draftsman.

At its meeting of 16 and 17 December 1986 the committee considered the draft opinion. On 17 December 1986 it adopted the conclusions contained in it by 20 votes to 2 with one abstention.

The following were present: Mr von BISMARCK, vice-chairman and acting chairman; Mr HERMAN, draftsman; Mr ALVAREZ DE EULATE (deputizing for Mr Lafuente Lopez), Mr AIGNER (deputizing for Mr Wedekind), Mr BONACCINI, Mr BRITO APOLONIA (deputizing for Mrs Trupia), Mr BUENO VICENTE, Mr DE CAMARET (deputizing for Mr Collinot), Mr CHRISTODOULOU (deputizing for Mr Raftery), Mr CRYER (deputizing for Mr Besse), Mr DIMITRIADIS, Mr FALCONER, Mr FOURÇANS, Mr FRANZ, Mr I. FRIEDRICH, Mr GARCIA-PAGAN ZAMORA, Mr LATAILLADE, Mr METTEN, Mr NOVELLI, Mr PATTERSON, Ms QUIN, Mr ROGALLA, Mr STARITA and Mr VON WOGAU.

1. Article 22 of Directive 85/611/EEC, which harmonizes the laws relating to UCITS so as to enable their units to circulate freely throughout the Community, stipulates that a UCITS may not, without derogation, invest more than 5% of its assets in the transferable securities issued by the same body. This ceiling can be raised to 35% if these securities are issued or guaranteed by a Member State or by public international bodies of which one of more Member States are members. The Committee on Economic and Monetary Affairs and Industrial Policy requests that the list proposed in Article 1, second indent, of the proposal for a directive adding a new paragraph 4 to Article 22 of Directive 85/611/EEC should be regularly updated in order to take account of new issues.

2. These limitations, prompted by the wish to protect the investor against the risk of a possible bankruptcy on the part of a UCITS, have been seen as too restrictive since transferable securities issued or guaranteed by the state are not unique in offering maximum protection to investors. Specifically, this has also been provided in Denmark by mortgage bonds and in the United Kingdom by parallel UCITS.

3. This is why this proposal for a directive introduces:

- (a) the principle of the equivalence of some transferable securities to those guaranteed by the state where they offer the same guarantees as the latter, but makes the individual Member States responsible for drawing up the list and forwarding it to the Commission and the other Member States.
- (b) the conditions which a UCITS must respect when it invests its assets in units issued by other UCITS.

CONCLUSIONS

4. The Committee on Economic and Monetary Affairs and Industrial Policy therefore draws the following conclusions:

- (i) Anxious to promote the integration of capital markets in order to attract savings and to assist investment finance, it approves and supports unreservedly this proposal for a directive which amends and improves Directive 85/611/EEC
- (ii) It expresses the wish that the Commission should draw up and submit as soon as possible a draft directive harmonizing the provisions governing other investment undertakings at present covered neither by Directive 85/611/EEC nor this proposal.