

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

1998/0243(COD) - 21/01/2002 - Final act

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 employment 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 binds 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.