

Undertakings for collective investment in transferable securities (UCITS): implementing powers conferred on the Commission

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The ECB has decided to submit an opinion concerning the proposed Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS). It is doing so on its own initiative.

To recall, the main purpose of the proposed implementing Directive is to clarify the meaning and scope of certain definitions under the UCITS Directive in order to ensure its uniform application throughout the EU and to improve the functioning of the UCITS product passport. Since implementation of the draft Directive is linked to the implementation of the euro area monetary policy the ECB has the authority to deliver an opinion based on Article 105(4) of the Treaty establishing the European Community.

The European short-term securities market is the least integrated money market in the EU. The ECB, therefore, follows with particular attention market led initiatives that seek to enhance the integration and transparency of short-term securities markets in Europe.

The ECB is dissatisfied that the implementing measure is being proposed as a Directive. The ECB states: a proposed implementing measure in the form of a Regulation, containing detailed provisions capable of direct application to all UCITS, would be more appropriate and better placed to remedy the current uneven application of some general principles contained in the UCITS Directive – such as the rules on the eligibility of money market instruments.

The ECB also makes a number of specific comments that relate to:

- **disclosure and information requirements:** In general, the ECB considers that for the smooth and efficient functioning of the market it is important that standardised and adequate information, as well as standardised statistics, are accessible to market participants;
- **the inclusion of money market instruments issued by a Member State's local or regional authority that are not guaranteed by the Member State:** The ECB asks the Commission to consider deleting references to local, regional and federal authorities, as well as public international bodies, in order to treat all such public entities in the same way;
- **the need for reliable statistics on the issue of issuance programmes:** The ECB asks that references to “or other data enabling an appropriate assessment of the credit risks related to the investment in such instruments be deleted.
- **the control of information by an appropriately qualified third party:** The ECB considers that the introduction of unspecified information control mechanisms by “an appropriately qualified third party” into the proposed Directive would seem to approximate the information requirements for **money market instrument** with those for **formal prospectuses**. The ECB considers that prospectus requirements appear to be exhaustively covered by the Prospectus Directive, under which money market instruments are exempted from the definition of securities. The ECB, therefore, proposes that this provision be dropped altogether;
- **information on the issue of issuance programme or on the legal and financial situation of the issuer prior to the issue of money market instruments:** The ECB suggests that all money market instruments issued by either the ECB or a Member State central bank should be excluded from the application of this provision.

- **The definition of “money market instruments as instrument normally dealt in on the money market”** (Article 3(2): The ECB suggests that the Commission should return to solutions proposed in earlier drafts, whereby the maturity period of one year is set “without prejudice to any additional delay for settlement as provided for in the issue or the issuance programme”.