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COMMISSION OF THE EUROPEAN COMMUNITIES

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2008/0153 (COD)

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)**

(presented by the Commission)

{SEC(2008) 2263}

{SEC(2008) 2264}

EXPLANATORY MEMORANDUM

1. GENERAL COMMENTS

The UCITS Directive¹ adopted in 1985 aimed to offer greater business and investment opportunities for both industry and investors by integrating the EU market for investment funds. The Directive has been key to the development of European investment funds. In June 2007, UCITS assets under management amounted to € 6tr. UCITS represent about 75% of the EU investment fund market. Strong in-built investor protection safeguards have also achieved UCITS broad recognition beyond EU borders.

Despite this positive evolution, it became evident over the years that the Directive was excessively constraining and prevented fund managers from fully exploiting their development possibilities. Amendments in 2001 enlarged the investment powers available to UCITS but did not tackle bottlenecks to industry efficiency. Important missed opportunities have been identified. Estimated potential annual savings amount to several billion euros.

In 2005, the Commission Green Paper on investment funds² launched a public debate on the need for EU level action (and its scope). One year later, the White Paper on investment funds³ announced, among other measures, a set of targeted modifications to the UCITS Directive.

This proposal has two objectives. One is to codify the successive changes introduced to the UCITS Directive since 1985. The other is to translate the measures announced in the White Paper into concrete legislative provisions.

2. CONSULTATION OF THE STAKEHOLDERS AND INTERESTED PARTIES

2.1. Consultation of the stakeholders and interested parties

Throughout the whole process of revision of the UCITS framework Commission Services have maintained a regular dialogue with stakeholders. The objective was to gather the views from different sides of the fund market (investors, industry and public authorities) in order to design solutions that would effectively address the concerns and expectations of all interested parties.

That dialogue took place through a variety of channels including two expert groups, three open hearings, two workshops on the simplified prospectus and four public consultations (described in the table below).

Year	Consultation on	Content	Time limits	Responses feedback
2004	Asset Management expert group report	Recommended list of actions in the area of	06/05 – 10/09	Published in Nov. 2004

¹ 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 (OJ L 375, 31.12.1985, p. 3, as amended) (see footnote 5).

² Green Paper on enhancing the European framework for investment funds - COM(2005) 314.

³ White Paper on enhancing the Single Market framework for investment funds - COM(2006) 686.

		investment funds		
2005	Green Paper	Analysis of the UCITS framework and questionnaire on possible solutions	12/07 – 15/11	Published on 13/02/06
2006	Market Efficiency expert group report	Recommendations on the main features of five proposed efficiency measures	04/07 – 20/09	Published on 16/11/06
2007	Exposure draft	Possible drafting of the UCITS Directive new legal provisions	22/03 – 15/06	Published on 07/09/07

2.2. Impact assessment

In 2004, the Expert Group on Asset Management identified a clear need to improve the efficiency of the European market for investment funds. Subsequent work has therefore concentrated on singling out the areas in which EU level action was required and on determining the scope of that action. Extensive consultation with all stakeholders has substantially contributed to the prioritisation and design of the possible solutions.

These solutions have been analysed at two stages. A first impact assessment was carried out in 2006 ahead of the White Paper on investment funds. That first impact assessment identified the areas requiring changes to the UCITS Directive. A second impact assessment has been developed in preparation of the draft legislative proposal.

The impact assessment analyses two types of legislative changes: those aiming to enhance the working of existing provisions (namely in relation to the notification procedure, the management company passport and the simplified prospectus); and those aiming to introduce new single market freedoms (by creating a facilitating framework for fund mergers and asset pooling). The guiding principles of this analysis have been market efficiency and investor protection. Particular attention has been given to the need to reduce administrative burdens.

2.2.1. The Management Company Passport

The Commission recognises the value a Management Company Passport could provide in terms of efficiency and greater flexibility to conduct its business for the European industry. However, the impact assessment work has highlighted certain difficulties in giving effect to the Management Company Passport (possibility for a fund manager to manage/administer a fund domiciled in another Member State). Intensive preparatory work by Commission services on this point has revealed so far that:

- Risks: It is necessary to distinguish the business functions and related rules which should belong in the Member State of the manager and that of the fund. Failure to do so risks creating regulatory conflict, overlap or supervisory gaps which could threaten the interests of funds investors;
- Enforcement: Problems in allocating responsibilities between different supervisors could hamper the effective enforcement of rules, in particular in the case of cross-border

management of contractual funds – which account for the majority of funds and the only fund type in many Member States;

- **Cost:** Multiple reporting lines and accountability to different supervisors/actors risk generating high compliance costs which could outweigh the expected capital savings from the passport.

It is therefore necessary to seek advice from CESR on how best to address the supervisory and risk management issues. CESR will be invited to provide advice that will help the Commission to develop provisions permitting the introduction of a management company passport under conditions that are consistent with high level of investor protection. In that regard CESR will be invited to advise the Commission by 1 November 2008 on the structure and principles which could guide potential future amendments to the UCITS directive which may be needed to give effect to the UCITS management company passport. Following that advice the Commission will come forward with an appropriate proposal in time to allow for its adoption during the current legislature.

2.2.2. Expected benefits

The economic savings to be expected from the proposed measures take the form of both static costs savings for industry and investors and dynamic benefits linked to increased competition and productivity gains. Direct annual benefits amount to several euro billion. Greater flexibility to organise and conduct the fund business and simplified procedures should create new business opportunities and, increase the fund industry's competitiveness. A more integrated investment fund market will also offer the European investor an enlarged choice of better performing funds. Over the long run, these positive effects will contribute to the enhanced economic efficiency and competitiveness and thus give effect to the Lisbon strategy goals in this important sector.

3. ADDITIONAL INFORMATION

3.1. Simplification

The proposal forms part of the Commission's simplification rolling programme. It delivers on the commitment made by the Commission to codify the *acquis* in the area of financial services⁴. Concretely, the proposed amendments have two objectives: a) the introduction of new freedoms in order to improve the efficiency and integration of the UCITS Internal Market and b) to streamline the working of current provisions regarding the cross-border marketing of UCITS and disclosure obligations.

The harmonisation of the merger procedure sought by the new provisions will considerably reduce the administrative burden actually borne by fund promoters wishing to merge funds across borders. It will remove the need to comply with different sets of national requirements and thus lead to a considerable reduction of the delays and costs associated with the merger process. Both fund industry (directly) and investors (indirectly) should benefit from this harmonised procedure. In addition, recommendations in relation to both fund mergers and

⁴ Commission working document: First progress report on the strategy for the simplification of the regulatory environment - COM(2006) 690.

asset pooling aim at rationalising to a maximum the proposed framework by clearly identifying the respective responsibilities of industry and competent authorities.

As regards, to amendments to existing provisions the table below provides a summarised overview of the main simplification effects.

Issue	Existing obligations	Simplification measures	Anticipated benefits and beneficiaries
Notification procedure	UCITS wishing to be marketed in another MS need to notify this intention to that MS' competent authorities. This includes the submission of a number of documents. The competent authorities of the host MS have 2 months to approve the marketing into its territory of the foreign UCITS.	• Notification file: content harmonised • Host MS: no power to ask for additional documents or request changes • Reduction of delays (marketing immediately after notification) • Simpler translation requirements • Electronic transmission	<u>Industry:</u> more business opportunities; less costs <u>Investors:</u> more choice, less costs <u>Single Market:</u> more integration and competition
Simplified prospectus	Obligation to provide a simplified prospectus explaining the investment characteristics to the investor prior to his/her subscription into the fund.	• Content harmonised (only change admitted: translation) • Short and simple document • Liability clarified • Possibility of using electronic delivery	<u>Industry:</u> less costs <u>Investors:</u> more protection, less costs <u>Single Market:</u> more integration and competition

3.2. Recast and repeal of existing legislation

The proposal takes the form of a recast version of the 1985 Directive and of its subsequent amendments⁵. It follows the 're-casting technique' (Inter-institutional Agreement 2002/C

⁵ Directive 85/611/EEC was amended by the following acts: Directive 95/26/EC of the European Parliament and of the Council of 29 June 1995 (OJ L 168, 18.7.1995, p. 7), Directive 2000/64/EC of the

77/01) which enables substantive amendments to existing legislation while codifying other provisions which remain untouched in their substance. Articles or parts of articles which have become obsolete have been deleted. All changes are clearly marked in the text. New and substantial amendments to the UCITS legislative framework are clearly identified as such.

The numerous amendments to 1985 UCITS Directive have considerably increased the complexity of the UCITS legislative framework. The current 'acquis' is made of 9 directives amounting to around 100 pages in the Official Journal.

While facilitating the exercise of their Internal Market freedoms by the UCITS, this acquis imposes several important obligations on them in particular regarding investor disclosure and the type of investments in which the UCITS can engage. The UCITS acquis also imposes significant obligations on the Member States competent authorities, in particular in terms of authorization procedures and on-going supervision of the UCITS. It is therefore crucial that the legislative framework remains up-to-date and easily accessible and understandable by the stakeholders. A recast UCITS Directive will constitute an essential progress in this respect.

4. LEGAL BASIS

The proposal is based on Article 47(2) of the Treaty, which is the legal basis to adopt Community measures aimed at achieving an Internal Market in financial services. The chosen instrument is a Directive as this is the most appropriate legal instrument to achieve the objectives while keeping a certain margin of manoeuvre for Member States. The proposed new provisions do not go beyond what it is necessary and proportionate to achieve the objectives pursued.

The Directive confers extended implementing powers on the Commission in line with the Lamfalussy approach which has been extended to the UCITS Directive by Directive 2005/1⁶. The scope of these implementing powers is defined in each relevant article. They will be used to further define the principles set out in this Directive as to enhance harmonisation and supervisory convergence.

In exercising these implementing powers, the Commission will be assisted by the European Securities Committee. The measures to be adopted by the Commission will be subject to the regulatory procedure and to the regulatory procedure with scrutiny laid down in Articles 5, 5(a)(1) to (4), and 7 of Decision 1999/468/EC. They will be developed on the basis of

European Parliament and of the Council of 7 November 2000 (OJ L 290, 17.11.2000, p. 27), Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 (OJ L 41, 13.2.2002, p. 20), Directive 2001/108/EC of the European Parliament and of the Council of 21 January 2002 (OJ L 41, 13.2.2002, p. 35); Directive 2004/39/EC of the European Parliament and of the Council of 9 March 2005 (OJ L 145, 30.4.2004, p. 1), Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees (OJ L 79, 24.3.2005, p. 9) and Directive 2008/18/EC of the European Parliament and of the Council amending Directive 85/611/EC as regards implementing powers conferred upon the Commission (OJ L 76, 19.3.2008, p. 42).

⁶

See footnote 5.

mandates given by the Commission to the Committee of European Securities Regulators (CESR)⁷.

5. COMMENTS ON THE ARTICLES

The following comments detail the substantial changes introduced by the recast of the UCITS Directive. The following Articles remain substantially unchanged: 1(1),1(2), 1(3)(a), 1(4) to 1(7), 2(1)(a) to (d), 2(1)(g) to (m), 2(1)(o), 2(1)(p), 2(2) to (7), 3, 5(1), 5(3) to (5), 6 to 15, 16(1) to (4), 16(6), 16(7), 17, 18, 19(2), 19(3)(b), 19(3)(c), 20 to 33, 45(1)(a) to (h), 45(2), 46 to 48, 49(1), 49(2), 50, 51(2) first subparagraph points (a) to (c), 51(2) second subparagraph, 52, 63(2), 65(1), 65(4), 68, 71, 78(1) except 78(1)(b), 78(2)(a) except second indent, 79, 80, 82, 83(1) except 83(1)(b), 83(2), 84 except 84(b), 97 to 99, 100, 101, 102(1), 102(2), 103(2), 104, 106, 107, 108, 109 and Annexes II, III and IV. In order to correct a material error in the English version of the Directive, and taking into account Article 1(3), it is necessary to change all subsequent mentions of 'unit trusts' by mentions of 'common funds'. It is also necessary to correct material errors in the Latvian, Bulgarian, French, Spanish and Italian version of the Directive.

5.1. New rules on mergers

The proposal offers the possibility for UCITS to achieve greater economies of scale by introducing into the UCITS Directive a legal framework for both national and cross-border mergers. Different types of mergers will be possible based on existing national rules and practices including those known in common law Member States (scheme of amalgamation/arrangement).

5.1.1. Principle, authorisation and approval (Chapter VI section 1)

Article 35 provides for the basic principle that all UCITS (and investment compartments thereof), irrespective of their legal form, are entitled to merge. This new merger regime, including its safeguards for investors, will cover both cross-border mergers and domestic mergers (the latter may impact on investors based in other Member States).

Article 36 sets up the principle of prior authorisation of the merger (to be issued within 30 days), by the competent authorities of the merging UCITS (i.e. the entity which ceases to exist), before its presentation to unit-holders. During that process, they will have to assess the potential impact of the merger on the unit-holders of both the merging UCITS and the receiving UCITS. The competent authorities of the receiving UCITS have to be informed of the decision reached in this respect. This should allow them to check whether the required disclosure to investors of the receiving UCITS is made in conformity with the Directive.

If the merger involves more than one merging UCITS and such UCITS are domiciled in different Member States, the competent authorities of each merging UCITS will need to approve the merger, in close cooperation with each other.

Article 37 provides for the obligation to draw up draft terms of merger (including a minimum set of compulsory provisions), in the same terms, for each of the UCITS involved in the merger.

⁷

As established by Commission Decision 2001/527/EC of 6 June 2001, (OJ L 191, 13.7.2001, p. 43).

5.1.2. Third party control, information of unit-holders and other unit-holders' rights (Chapter VI section 2)

Article 38 provides that the depositaries of the merging UCITS and the receiving UCITS should review the common draft terms of merger on their conformity with the relevant provisions of the Directive and their respective constitutional documents. The role of the depositaries is however not to verify whether the proposed merger is in the interest of the investors.

Article 39 provides that an independent auditor should validate the criteria used for valuating the assets and liabilities of the funds involved in the merger and for calculating the exchange ratio.

Article 40 foresees that the merging UCITS should provide appropriate and accurate information on the proposed merger to its/their unit-holders so as to enable them to make an informed decision on the impact of the proposed merger on their investment. Should the competent authorities of the merging UCITS decide that the proposed merger may impact on the unit-holders of the receiving UCITS, the latter will also be requested to provide similar information to its unit-holders. This Article also defines basic principles of investor disclosure to the unit-holders of the merging UCITS and the receiving UCITS; details of which will be developed through implementing measures. For investor protection reasons, a provision specifies the language in which the information is provided to investors situated in the Member States where a UCITS has been notified to market its units.

Article 41 confirms that approval by unit-holders is only required if provided for by national law. If so, a maximum threshold/ceiling of 75% of the votes cast by unit-holders is foreseen.

Article 42 foresees the right of unit-holders (of both the merging UCITS and the receiving UCITS) to redeem units or shares without costs prior to the merger, as from the moment the UCITS have informed them of the proposed merger.

5.1.3. Costs and entry into effect (Chapter VI Section 3)

Article 43 ensures investor protection by clarifying that the responsibility for the costs of the merger should not lie with the unit-holders of the merging and/or receiving UCITS. Such costs should be borne by the manager/fund promoter.

Article 44 provides that a merger takes effect once the transfer of assets and/or liabilities (depending on the merger technique used) and the exchange of units have taken place. It confirms the role and responsibility of the depositaries of both the merging UCITS and the receiving UCITS to carry out the actual transfer of assets/liabilities. Investors and other third parties should then be informed that the merger has taken effect. Completion of the merger is to be publicized.

5.2. New rules on a master/feeder structure (Chapter VIII of the Directive)

The introduction into the UCITS Directive of the possibility to set up master-feeder structures will open new business opportunities for UCITS managers. It will allow them to rationalise and increase the efficiency of their investment policy.

A master-feeder-structure is characterised by the feeder UCITS' investment of all or almost all of its assets in one other UCITS, the master UCITS. Article 53(1) sets a minimum of 85% of

the assets to be invested in a master UCITS. It also prevents feeders UCITS from investing in more than one (master) UCITS. The remaining 15% should allow the feeder UCITS to hold ancillary liquid assets. The feeder UCITS may hold no other assets than those mentioned in Article 53(1) and (2).

A master UCITS is a UCITS which pursuant to Article 53(3) has at least one feeder UCITS as investor. To avoid opaque cascade structures, the master UCITS may neither itself be a feeder UCITS nor invest into a feeder UCITS.

Article 54(1) provides that the specific investment policy of a feeder UCITS needs to be approved by the competent authorities of the feeder UCITS' home Member State. The approval is subject to the conditions set out in Chapter VIII. No additional condition or document may be required.

Article 55 requires the feeder UCITS and the master UCITS to enter into a legally binding agreement. Such agreement shall enable the feeder UCITS to accomplish its duties.

If the feeder UCITS and the master UCITS have different depositaries⁸ or auditors, Articles 56 and 57 require the latter to enter into an information-sharing agreement.

Article 58 ensures that both the prospectus and the key investor information of the feeder UCITS disclose the fact that the UCITS is a feeder of a given master and explain the specificities of this two-layer investment.

Article 59 sets up the requirements for a conversion of an existing UCITS into a feeder UCITS. To protect unit-holders, converting UCITS have to inform all unit-holders in advance. All unit-holders are entitled to re-purchase or to redeem the units of the feeder UCITS free of charge within 30 days.

Pursuant to Article 60(2) the feeder UCITS must act in the best interests of its investors and therefore has to monitor effectively the master UCITS.

Article 60(3) deals with retrocession arrangements and requires, where applicable, that all kinds of commissions obtained from the master UCITS or its management company is paid into the feeder UCITS' assets.

Article 61(2) prevents the master UCITS from charging the feeder UCITS subscription and redemption fees.

5.3. New rules on Key Investor Information

These new provisions aim at simplifying the content and conditions under which information is given to potential investors in UCITS. The objective is to enable retail investors to take a well-informed investment decision. For that purpose, the Directive replaces the previous obligation to offer a simplified prospectus, free of charge to subscribers before the conclusion of the contract, by the concept of 'key investor information'. To reduce costs, the new provisions also seek to ensure that the key investor information can be used without modifications all across the Internal Market.

⁸ Pursuant to the UCITS Directive the feeder UCITS and the master UCITS may only have the same depositary if they are established in the same Member State.

5.3.1. Some general improvement on disclosure rules and marketing communications

Articles 64 to 70 set out the rules applicable to the information to be provided at any time, on request, to investors (prospectus, annual and half-yearly reports).

Article 72 sets the principle that the information contained in marketing communications should be fair, clear and not misleading. It should also be consistent with the information contained in the obligatory disclosures (eg. key investor information) provided for by the UCITS Directive.

5.3.2. Key investor information (Section 3)

Article 73 requires the investment company or the management company (where applicable) to draw up a short document containing key investor information that will be valid in all Member States. Rules regarding the delivery of the key investor information are set by Article 75 (which distinguishes between direct and indirect sales).

Key investor information should provide information about the essential characteristics of the proposed investment and specify how/where investors can obtain additional information on the proposed investment and certain practical elements. More specific rules (ex. format and content of key investor information) will be adopted through implementing measures.

To effectively assist retail investors in their decision, key investor information should be short and concise, use clear and comprehensible wording, and be presented in an understandable format. It should be fair, clear and not misleading (article 74) and, therefore, consistent with the relevant parts of the prospectus.

Article 74 also clarifies that the key investor information constitutes pre-contractual information only. No civil liability should be attached to any person solely on its basis, unless such information is misleading, inaccurate or inconsistent with the prospectus.

5.4. Simplification and improvement of the rules on notification

5.4.1. Improved market access for UCITS

The current UCITS Directive sets out common rules which allow a UCITS authorised and supervised in one Member State to market its units in any other Member State. Before a UCITS starts marketing its units, it must complete a notification procedure. The current procedure has become burdensome and time consuming for fund promoters. Current delays between the moment of the notification and the actual marketing of the UCITS are a serious disadvantage when compared with other financial products for retail investors, which are often subject to less strict information or investor protection requirements.

To tackle that problem, Article 88 proposes a new streamlined procedure based on a regulator-to-regulator communication. Under the new rules, a UCITS wishing to market its units in another Member State will file a notification letter with its home competent authorities. This letter will have a harmonised content and will mainly describe the arrangements made for marketing the UCITS in the Member State concerned. Several documents will be attached to that letter (fund rules, key investor information). After verification of the completeness of the file, the competent authorities of the home Member State will automatically transmit it to the host Member State authority together with an attestation confirming that the UCITS fulfils its obligations under the Directive. The

competent authorities of the host Member State will not be entitled to review, challenge or discuss the merits of the UCITS authorisation granted in the home Member State.

5.4.2. Clarification of responsibilities between the competent authorities

The amendments underline the fundamental principle according to which it is not possible for the host Member State to challenge the exclusive responsibility of the home Member State over the fields governed by the Directive.

In order to facilitate direct and immediate access to the market of another Member State, the control of compliance of the marketing arrangements with the rules applicable in a host Member State will take place on an on-going basis, but only after the UCITS has placed its units on the market of a host Member State. The Directive also seeks to enhance transparency regarding local marketing rules (obligation on Member States to publish on their websites all applicable marketing rules).

5.4.3. Improved communication and co-operation between competent authorities

The new notification procedure requires improved communication between competent authorities in order to be successful. Therefore, electronic transmission of information about UCITS and their marketing arrangements is foreseen. This should allow host authorities to better prepare for on-going monitoring of compliance with marketing rules. UCITS will however be obliged to directly inform the host authorities of any amendments to their marketing arrangements. In this field, several detailed rules will be adopted through implementing measures.

5.4.4. Methods of distribution of obligatory disclosures in the host Member States

Article 89 introduces a new language regime, whereby UCITS must translate only the key investor information in the local language. It is up to the UCITS to decide whether other obligatory disclosures are to be translated into the language of the host Member State or in a language customary in the sphere of international finance. Investors will be aware in which language the prospectus and the annual or half-yearly reports are available because this will be specified in the key investor information. The translation (under the sole responsibility of the UCITS) of documents other than the key investor information into the language of a host Member State will therefore be a market driven decision (in line with the language regime of the Prospectus Directive).

5.5. Rules aimed at strengthening supervisory cooperation

Successful implementation of the provisions introduced by this proposal cannot compromise on the high level of investor protection offered by the UCITS Directive. Therefore, the proposed adjustments are complemented by measures which enhance the existing mechanisms for supervisory cooperation and provide additional tools for supervisors to allow them to discharge their duties efficiently. These measures are largely inspired by provisions already in force in other financial services directives.

Proposal for a

DIRECTIVE ../.../EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of [...]

on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article ~~57(2)~~  47(2)  thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁹,

Whereas:

↓ new

(1) Council Directive of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)¹⁰ has been substantially amended several times¹¹. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) Directive 85/611/EEC has largely contributed to the development and success of the European investment funds industry. However, despite the improvements introduced since its adoption and in particular in 2001, it has steadily become clear that changes need to be introduced into the UCITS legal framework in order to adapt it to the 21st century financial markets. The 2005 Commission Green Paper on Investments Funds¹² launched a public debate on the way the Directive should be adapted in order to meet

⁹ OJ C , , p. .

¹⁰ OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2008/18/EC (OJ L 76, 19.03.2008, p.42)

¹¹ See Annex III, Part A.

¹² COM (2005) 314 final.

these new challenges. This intense consultation process led to the largely shared conclusion that substantial amendments are needed.

↓ 85/611 Recital 1 (adapted)

~~The laws of the Member States relating to collective investment undertakings differ appreciably from one state to another, particularly as regards the obligations and controls which are imposed on those undertakings. Those differences distort the conditions of competition between those undertakings and do not ensure equivalent protection for unit-holders.~~

↓ 85/611/EEC Recital 2 and 3 (adapted)

- (3) National laws governing collective investment undertakings should be coordinated with a view to approximating the conditions of competition between those undertakings at Community level, while at the same time ensuring more effective and more uniform protection for unit-holders. Such coordination ~~will make it easier for a collective investment undertaking situated in one Member State to market its units in other Member States. The attainment of these objectives will~~ facilitates the removal of the restrictions on the free circulation ☒ movement ☒ of the units of ☒ UCITS ☒ ~~collective investment undertakings in the Community, and such coordination will help to bring about a European capital market.~~

↓ 85/611/EEC Recital 4 (adapted)

- (4) Having regard to these objectives, it is desirable ☒ to provide for ☒ ~~that~~ common basic rules ~~be established~~ for the authorisation, supervision, structure and activities of ☒ UCITS ☒ ~~collective investment undertakings~~ ☒ established ☒ ~~situated~~ in the Member States and the information they must publish.

↓ 85/611/EEC Recital 5 (adapted)

~~The application of these common rules is a sufficient guarantee to permit collective investment undertakings situated in Member States, subject to the applicable provisions relating to capital movements, to market their units in other Member States without those Member States' being able to subject those undertakings or their units to any provision whatsoever other than provisions which, in those states, do not fall within the field covered by this Directive. Nevertheless, if a collective investment undertaking situated in one Member State markets its units in a different Member State it must take all necessary steps to ensure that unit-holders in that other Member State can exercise their financial rights there with ease and are provided with the necessary information.~~

↓ 85/611/EEC Recital 6 (adapted)
and 2001/108/EC Recital 2
(adapted)

- (5) The coordination of the laws of the Member States should be confined initially to ☒ UCITS ☒ collective investment undertakings other than of the closed-ended type which promote the sale of their units to the public in the Community. ~~and the sole object of which is investment in transferable securities (which are essentially transferable securities officially listed on stock exchanges or similar regulated markets). Regulation of the collective investment undertakings not covered by the Directive poses a variety of problems which must be dealt with by means of other provisions, and such undertakings will accordingly be the subject of coordination at a later stage. Pending such coordination any Member State may, *inter alia*, prescribe those categories of undertakings for collective investment in transferable securities (UCITS) excluded from this Directive's scope on account of their investment and borrowing policies and lay down those specific rules to which such UCITS are subject in carrying on their business within its territory. Taking into account market developments, it is desirable that the investment objective of UCITS ☒ should be permitted as part of their investment objective ☒ be widened in order to permit them to invest in financial instruments, other than transferable securities, which are sufficiently liquid. The financial instruments which are eligible to be investment assets of the portfolio of the UCITS ☒ should be ☒ are listed in this Directive. The selection of investments for a portfolio by means of an index is a management technique.~~

↓ 2001/107/EC Recital 3
(adapted)

- (6) Authorisation granted ☒ to ☒ in the management company's ☒ in its ☒ home Member State should ensure investor protection and the solvency of management companies, with a view to contributing to the stability of the financial system. The approach adopted is to ensure the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and of prudential supervision systems, making possible the grant of a single authorisation valid throughout the ☒ Community ☒ European Union and the application of the home Member State supervision.

↓ 2001/107/EC Recital 4

- (7) It is necessary, for the protection of investors, to guarantee the internal overview of every management company in particular by means of a two-man management and by adequate internal control mechanisms.

↓ 2001/107/EC Recital 5
(adapted)

- (8) In order to ensure that the management company will be able to fulfil the obligations arising from its activities and thus to ensure its stability, initial capital and an additional amount of own funds are required. To take account of developments, particularly those pertaining to capital charges on operational risk within the ☒ Community ☒ ~~European Union~~ and other international fora, these requirements, including the use of guarantees, ☒ should ☒ ~~will have to~~ be reviewed ~~within three years~~.

↓ 2001/107/EC Recital 6
(adapted)

- (9) By virtue of ☒ the principle of home Member State supervision ☒ ~~mutual recognition~~, management companies authorised in their home Member States should be permitted to carry on the services for which they have received authorisation throughout the ☒ Community ☒ ~~European Union~~ by establishing branches or under the freedom to provide services. The approval of the fund rules of common funds/unit trusts falls within the competence of the management company's home Member State.

↓ 2001/107/EC Recital 7

- (10) With regard to collective portfolio management (management of unit trusts/common funds and investment companies), the authorisation granted to a management company authorised in its home Member State should permit the company to carry on in host Member States the following activities: to distribute the units of the harmonised unit trusts/common funds managed by the company in its home Member State; to distribute the shares of the harmonised investment companies, managed by such a company; to perform all the other functions and tasks included in the activity of collective portfolio management; to manage the assets of investment companies incorporated in Member States other than its home Member State; to perform, on the basis of mandates, on behalf of management companies incorporated in Member States other than its home Member State, the functions included in the activity of collective portfolio management.

↓ 2001/107/EC Recital 8
(adapted)

- (11) The principles of ~~mutual recognition and~~ of home Member State supervision ~~require~~ ☒ requires ☒ that the ~~Member States'~~ competent authorities should not grant or should withdraw authorisation where factors, such as the content of programmes of operations, the geographical distribution or the activities actually carried on indicate clearly that a management company has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of

its activities. For the purpose of this Directive, a management company should be authorised in the Member State in which it has its registered office. In accordance with the principle of the home country control, only the Member State in which the management company has its registered office can be considered competent to approve the fund rules of unit trusts/common funds set up by such a company and the choice of the depositary. In order to prevent supervisory arbitrage and to promote confidence in the effectiveness of supervision by the home Member State authorities, a requirement for authorisation of a UCITS should be that it should not be prevented in any legal way from being marketed in its home Member State. This does not affect the free decision, once the UCITS has been authorised, to choose the Member State(s) where the units of the UCITS are to be marketed in accordance with this Directive.

↓ 2001/107/EC Recital 9
(adapted)

- (12) ~~Directive 85/611/EEC limits~~ ☒ With regard to ☒ the scope of ☒ activity of ☒ management companies ~~to the sole activity of management of unit trusts/common funds and of investment companies (collective portfolio management). In ☒ and in ☒ order to take into account recent developments in national legislation of Member States and to permit such companies to achieve important economies of scale, it is desirable to revise this restriction. It is therefore desirable to permit such companies to carry out also the activity of management of portfolios of investments on a client-by-client basis (individual portfolio management) including the management of pension funds as well as some specific non-core activities linked to the main business. Such an extension of the scope of the activity of the management company would not prejudice ☒ prejudice ☒ the stability of such companies. However, specific rules should be introduced ☒ laid down ☒ preventing conflicts of interest when management companies are authorised to carry on both the business of collective and individual portfolio management.~~

↓ 2001/107/EC Recital 10
(adapted)

- (13) The activity of management of ☒ individual ☒ portfolios of investments is an investment service ~~already~~ covered by Council Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC¹³ 93/22/EEC of 10 May 1993 on investment services in the securities field¹⁴. In order to ensure a homogeneous regulatory framework in this area, it is desirable to subject management companies, the authorisation of which also covers that service, to the operating conditions laid down in that Directive.

¹³ OJ L 145, 30.4.2004, p. 1. Directive as amended by Directive 2006/31/EC (OJ L 114, 27.4.2006, p. 60).

¹⁴ OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2000/64/EC.

↓ 2001/107/EC Recital 11

- (14) A home Member State may, as a general rule, establish rules stricter than those laid down in this Directive, in particular as regards authorisation conditions, prudential requirements and the rules on reporting and the ~~full~~ prospectus.
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↓ 2001/107/EC Recital 12
(adapted)

- (15) It is desirable to lay down rules defining the preconditions under which a management company may delegate, on the basis of mandates, specific tasks and functions to third parties so as to increase the efficiency of the conduct of its business. In order to ensure the correct functioning of the principle of ~~mutual recognition of the authorisation and of the~~ ☒ home Member State supervision ~~country control~~, Member States permitting such delegations should ensure that the management company to which they granted an authorisation does not delegate globally its functions to one or more third parties, so as to become a letter box entity, and ☒ that ☒ the existence of mandates does not hinder an effective supervision over the management company. However, the fact that the management company has delegated its own functions should in no case affect the liabilities of that company and of the depositary vis-à-vis the unit holders and the competent authorities.
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↓ 2001/107/EC Recital 13

- (16) To safeguard shareholders' interests and to secure a level playing field in the market for harmonised collective investment undertakings, an initial capital is required for investment companies. However, investment companies which have designated a management company will be covered through the management company's additional amount of own funds.
-

↓ 2001/107/EC Recital 14
(adapted)

- (17) Articles ☒ 13 ☒ 5g and ☒ 14 ☒ 5h should always be complied with by authorised investment companies, either by the company directly according to Article ☒ 27 ☒ 13b or indirectly, due to the fact that if an authorised investment company chooses to designate a management company, that management company should be authorised in accordance with ~~the~~ ☒ this ☒ Directive and thus obliged to comply with Articles ☒ 13 ☒ 5g and ☒ 14 ☒ 5h.
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↓ new

- (18) Despite the need for consolidation between UCITS, mergers of UCITS encounter many legislative and administrative difficulties in the Community. It is therefore necessary, in order to improve the functioning of the Internal Market, to lay down

Community provisions facilitating mergers between UCITS (and investment compartments thereof). Although some Member States have authorised only contractual funds, mergers between all types of funds (contractual, corporate and unit trusts) should be allowed and recognised by the laws of each Member State. This Directive covers those merger techniques which are most commonly used in the Member States. It does not prevent UCITS from using other techniques on a domestic or cross-border basis. These will however remain subject to the relevant provisions of national law.

- (19) In order to safeguard investors' interests, Member States should require proposed mergers between UCITS either within their jurisdiction or on a cross-border basis to be subject to authorisation by their competent authorities. For cross-border mergers, the competent authorities of the home Member State of the UCITS that will cease to exist (the merging UCITS) should approve the merger so as to ensure that the interests of the unit-holders who effectively change funds are duly protected. If the merger involves more than one merging UCITS and such UCITS are domiciled in different Member States, the competent authorities of each merging UCITS will need to approve the merger, in close cooperation with each other. Since the interests of the unit-holders of the UCITS which continues to exist after the merger (the receiving UCITS) also need to be adequately safeguarded, they should be taken into account by the competent authorities of the merging UCITS' home Member State when approving a cross-border merger.
- (20) It is necessary to ensure additional third-party control of mergers. The depositaries of each of the UCITS involved in the merger should verify the conformity of the common draft terms of the merger with the relevant provisions of this Directive and of the UCITS fund rules. An independent auditor should draw-up a report on behalf of all the UCITS involved in the merger validating the valuation methods of the assets and liabilities of such UCITS and the calculation method of the exchange ratio as set forth by the management and/or administrative body of such UCITS in the common draft terms of merger. In order to limit costs connected with cross-border mergers, it should be possible to draw up a single report for all UCITS involved and the statutory auditor of the merging UCITS and/or the receiving UCITS should be enabled to do so. For investor protection reasons, unit-holders should be offered the possibility to obtain a copy of such report free of charge.
- (21) It is particularly important that the unit-holders are adequately informed about the proposed merger and that their rights are sufficiently protected. Although unit-holders of the merging UCITS are most concerned, the interests of the unit-holders of the receiving UCITS should also be safeguarded in such situations where the proposed merger could have a substantial impact on their investment.
- (22) The provisions on mergers laid down in this Directive are without prejudice to the application of the legislation on control of concentrations between undertakings, in particular Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)¹⁵.

¹⁵ OJ L 24, 29.1.2004, p.1.

↓ 85/611/EEC Recital 7 (adapted)

- (23) The free marketing of the units issued by UCITS authorised to invest up to 100 % of their assets in transferable securities issued by the same body (State, local authority, etc.) may not have the direct or indirect effect of disturbing the functioning of the capital market or the financing of the Member States. ~~or of creating economic situations similar to those which Article 68(3) of the Treaty seeks to prevent.~~
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↓ 85/611/EEC Recital 8 (adapted)

~~Whereas account should be taken of the special situations of the Hellenic Republic's and Portuguese Republic's financial markets by allowing those countries and additional period in which to implement this Directive,~~

↓ 2001/108/EC Recital 3

- (24) The definition of transferable securities included in this Directive is valid only for this Directive and in no way affects the various definitions used in national legislation for other purposes such as taxation. Consequently, shares and other securities equivalent to shares issued by bodies such as building societies and industrial and provident societies, the ownership of which cannot in practice be transferred except by the issuing body buying them back, are not covered by this definition.
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↓ 2001/108/EC Recital 4

- (25) Money market instruments cover those transferable instruments which are normally not traded on regulated markets but dealt in on the money market, for example treasury and local authority bills, certificates of deposit, commercial papers, medium-term notes and bankers' acceptances.
-

↓ 2001/108/EC Recital 5

- (26) It is useful to ensure that the concept of regulated market in this Directive corresponds to that in Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field¹⁶ Directive 2004/39/EC.
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↓ 2001/108/EC Recital 6

- (27) It is desirable to permit a UCITS to invest its assets in units of UCITS and/or other collective investment undertakings of the open-ended type which also invest in liquid financial assets mentioned in this Directive and which operate on the principle of risk

¹⁶ OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2000/64/EC.

spreading. It is necessary that UCITS or other collective investment undertakings in which a UCITS invests be subject to effective supervision.

↓ 2001/108/EC Recital 7

- (28) The development of opportunities for a UCITS to invest in UCITS and in other collective investments undertakings should be facilitated. It is therefore essential to ensure that such investment activity does not diminish investor protection. Owing to the enhanced possibilities for UCITS to invest in the units of other UCITS and/or collective investment undertakings, it is necessary to lay down certain rules on quantitative limits, the disclosure of information and prevention of the cascade phenomenon.

↓ 2001/108/EC Recital 8
(adapted)

- (29) To take market developments into account and in consideration of the completion of economic and monetary union it is desirable to permit UCITS to invest in bank deposits. To ensure adequate liquidity of investments in deposits, these deposits are to be repayable on demand or have the right to be withdrawn. If the deposits are made with a credit institution the registered office of which is located in a ☒ third country ☒ ~~non-Member State~~, the credit institution should be subject to prudential rules equivalent to those laid down in Community legislation.

↓ 2001/108/EC Recital 9

- (30) In addition to the case in which a UCITS invests in bank deposits according to its fund rules or instruments of incorporation, it may be necessary to allow all UCITS to hold ancillary liquid assets, such as bank deposits at sight. The holding of such ancillary liquid assets may be justified, for example, in the following cases: in order to cover current or exceptional payments; in the case of sales, for the time necessary to reinvest in transferable securities, money market instruments and/or in other financial assets provided for in this Directive; for a period of time strictly necessary when, because of unfavourable market conditions, the investment in transferable securities, money market instruments and in other financial assets must be suspended.

↓ 2001/108/EC Recital 10
(adapted)

- (31) For prudential reasons it is necessary to avoid excessive concentration by a UCITS in investments which expose ~~them~~ ☒ it ☒ to counterparty risk to the same entity or to entities belonging to the same group.

↓ 2001/108/EC Recital 11

- (32) UCITS should be explicitly permitted, as part of their general investment policy and/or for hedging purposes in order to reach a set financial target or the risk profile indicated in the prospectus, to invest in financial derivative instruments. In order to ensure investor protection, it is necessary to limit the maximum potential exposure relating to derivative instruments so that it does not exceed the total net value of the UCITS's portfolio. In order to ensure constant awareness of the risks and commitments arising from derivative transactions and to check compliance with investment limits, these risks and commitments will have to be measured and monitored on an ongoing basis. Finally, in order to ensure investor protection through disclosure, UCITS should describe their strategies, techniques and investment limits governing their derivative operations.

↓ 2001/108/EC Recital 12
(adapted)

- (33) With regard to over-the-counter (OTC) derivatives, ~~additional~~ requirements should be set in terms of the eligibility of counterparties and instruments, liquidity and ongoing assessment of the position. The purpose of such ~~additional~~ requirements is to ensure an adequate level of investor protection, close to that which they obtain when they acquire derivatives dealt in on regulated markets.

↓ 2001/108/EC Recital 13

- (34) Operations in derivatives may never be used to circumvent the principles and rules set out in this Directive. With regard to OTC derivatives, additional risk-spreading rules should apply to exposures to a single counterparty or group of counterparties.

↓ 2001/108/EC Recital 14

- (35) Some portfolio management techniques for collective investment undertakings investing primarily in shares and/or debt securities are based on the replication of stock indices and/or debt-security indices. It is desirable to permit UCITS to replicate well-known and recognised stock indices and/or debt-security indices. It may therefore be necessary to introduce more flexible risk-spreading rules for UCITS investing in shares and/or debt securities to this end.

↓ 2001/108/EC Recital 15
(adapted)

- (36) Collective investment undertakings falling within the scope of this Directive should not be used for purposes other than the collective investment of the money raised from the public according to the rules laid down in this Directive. In the cases identified by this Directive a UCITS may have subsidiaries only when necessary to carry out

effectively on behalf of that UCITS certain activities, also defined in this Directive. It is necessary to ensure an effective supervision of UCITS. Therefore the establishment of a subsidiary of a UCITS in a third country should be permitted only in the cases and under the conditions identified in ~~the~~ ☒ this ☒ Directive. The general obligation to act solely in the interests of unit-holders and, in particular, the objective of increasing cost efficiencies, never justify a UCITS undertaking measures which may hinder the competent authorities from exercising effectively their supervisory functions.

↓ 88/220/EEC Recitals 4 and 5
(adapted)

- (37) ~~Article 22(3) of Directive 85/611/EEC derogates from paragraphs 1 and 2 of that Article~~ ☒ The original version of Directive 85/611/EEC contained a derogation from the restriction on the percentage of its assets that a UCITS can invest in transferable securities issued by the same body, which applied ☒ in the case of bonds issued or guaranteed by a Member State. ☒ This derogation ☒ and authorises allowed UCITS to invest in particular up to 35 % of their assets in such bonds. A similar derogation, but of a more limited extent is justified with regard to private sector bonds which, even in the absence of a State guarantee, nevertheless offer special guarantees to the investor under the specific rules applicable thereto. It is necessary therefore to extend such a derogation to the totality of such bonds which fulfil jointly fixed criteria, while leaving it to the Member States to draw up the list of bonds to which they intend, where appropriate, to grant a derogation, ~~and providing for a procedure for informing the other Member States identical to that provided for in Article 20 of Directive 85/611/EEC,~~

↓ new

- (38) Several Member States have enacted provisions that enable non-coordinated collective investment undertakings to pool their assets in one so-called master fund. In order to allow UCITS to make use of these structures, it is necessary to exempt "feeder UCITS" wishing to pool their assets in a "master UCITS", from the prohibition to invest more than 10% or, as the case may be 20% in one investment fund. This exemption is justified as the feeder UCITS invests all or almost all of its assets into the diversified portfolio of the master UCITS which itself is subject to UCITS diversification rules.
- (39) In order to facilitate the effective operation of the Internal Market and to ensure the same level of investor protection throughout the Community, both master-feeder-structures where the master and the feeder are established in the same Member State and where they are established in different Member States should be allowed. In order to allow investors to better understand master-feeder-structures and regulators to supervise them more easily, notably in a cross-border context, no feeder UCITS should be able to invest into more than one master. In order to ensure the same level of investor protection throughout the Community the master should be itself an authorised UCITS.

- (40) In order to protect the feeder UCITS' investors, the feeder UCITS' investment into the master UCITS should be subject to prior approval of the competent authorities of the feeder UCITS' home Member State.
- (41) In order to allow the feeder UCITS to act in the best interests of its unit-holders and notably place it in a position to obtain from the master UCITS all information and documents necessary to perform its obligations, the feeder UCITS and the master UCITS should enter into a binding and enforceable agreement. In a similar way the information-sharing agreement between the depositaries or, respectively, the auditors of the feeder UCITS and the master UCITS should ensure the flow of information and documents that is needed for the feeder UCITS' depositary or auditor to fulfil its duties.
- (42) In order to ensure a high level of protection of the interests of the feeder UCITS' investors, the prospectus, the key investor information as referred to in Article 73, as well as all marketing communications should be adapted to the specificities of master-feeder-structures.
- (43) The prohibition that master UCITS may not charge feeder UCITS subscription and redemption fees should protect unit-holders from unjustified additional costs.
- (44) The conversion rules should enable an existing UCITS to convert into a feeder UCITS. At the same time they should sufficiently protect unit-holders. As such a conversion is a fundamental change of the investment policy, the converting feeder UCITS should be required to provide its unit-holders with sufficient information as to enable them to decide whether to maintain their investment or not.
- (45) Member States should make a clear distinction between marketing communications and obligatory investor disclosures provided for under this Directive. Obligatory investor disclosures include key investor information, prospectus and annual and half-yearly reports.
- (46) Key investor information should be provided to investors, at a pre-contractual stage, in order to help them to reach informed investment decisions. It should contain only the essential elements for making such decisions. The nature of the information to be found in the key investor information should be harmonised to the highest extent so as to ensure adequate investor protection and comparability. Key investor information should be presented in a short format. A single document of limited length presenting the information in a specified order is the most appropriate way to achieve the clarity and simplicity of presentation that is required by retail investors, and should allow for useful comparisons.
- (47) Key investor information should be produced for all UCITS. Management companies or, where applicable, investment companies should deliver the key investor information to the relevant entities, depending on the distribution method used (direct sales or intermediated sales). Regulation on how the key investor information is used by intermediaries at the point of sale is to be left to the relevant legislation covering such intermediaries, such as Directive 2004/39/EC.
- (48) The right for UCITS to sell their units in other Member States should be subject to a notification procedure based on improved communication between the competent

authorities of the Member States. Following transmission of a complete notification file by the competent authorities of the UCITS home Member State, the UCITS host Member State should not be in the position to oppose access to its market by a UCITS established in another Member State or challenge the authorisation given by that other Member State.

- (49) In order to facilitate cross-border marketing of units of UCITS, control of compliance of arrangements made for marketing of units of UCITS with laws regulations and administrative procedures applicable in the UCITS host Member State, should be performed on a on-going basis after the UCITS has started marketing its units in that Member State. This control can cover, in particular, the obligation for marketing communications to be presented in a fair, clear and not-misleading way.
- (50) For the purpose of legal certainty there is a need to ensure that a UCITS which markets its units on a cross-border basis has an easy access, in the form of an electronic publication, to complete information on the laws, regulations and administrative provisions applicable in the UCITS host Member State and related to the marketing of UCITS.
- (51) To facilitate cross-border marketing of units of UCITS, a UCITS should be required to translate only the key investor information into the official language or one of the official languages of a UCITS host Member State or a language approved by its competent authority. Key investor information should specify the language(s) in which other obligatory disclosure documents and additional information are available.
- (52) It is necessary to enhance convergence of powers at the disposal of competent authorities so as to bring about an equal enforcement of the Directive throughout the Member States. A common minimum set of powers, consistent with those conferred upon competent authorities by other Community financial services legislation should guarantee supervisory effectiveness.
- (53) It is necessary to reinforce provisions on exchange of information between national competent authorities and to strengthen the duties of assistance and cooperation between them.

↓ 95/26/EC Recital 6 (adapted)
 ➔₁ 95/26/EC Art. 1 fourth indent

- (54) The reference to the supervisory authorities' effective exercise of their supervisory functions covers supervision on a consolidated basis which must be exercised over a ➔₁ ☒ UCITS ☒ ~~undertaking for collective investment in transferable securities (Ucits)~~ or an undertaking contributing towards its business activity ← where the provisions of Community law so provide. In such cases, the authorities applied to for authorisation must be able to identify the authorities competent to exercise supervision on a consolidated basis over that ➔₁ ☒ UCITS ☒ ~~undertaking for collective investment in transferable securities (Ucits)~~ or an undertaking contributing towards its business activity ←.

↓ 95/26/EC Recital 7 (adapted)
→₁ 95/26/EC Art. 1 fourth indent

- (55) The principles of ~~mutual recognition and of~~ home Member State supervision requires that ~~the Member States'~~ competent authorities should not grant or should withdraw authorisation where factors such as the content of programmes of operations, the geographical distribution of ☒ or ☒ the activities actually carried on indicate clearly that a →₁ ☒ UCITS ☒ ~~undertaking for collective investment in transferable securities (Ucits)~~ or an undertaking contributing towards its business activity ← has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within whose territory it carries on or intends to carry on the greater part of its activities. A →₁ ☒ UCITS ☒ ~~undertaking for collective investment in transferable securities (Ucits)~~ or an undertaking contributing towards its business activity ← which is a legal person must be authorised in the Member State in which it has its registered office. A →₁ ☒ UCITS ☒ ~~undertaking for collective investment in transferable securities (Ucits)~~ or an undertaking contributing towards its business activity ← which is not a legal person must have its head office in the Member State in which it has been authorised. In addition, Member States must require that a →₁ ☒ UCITS' ☒ ~~undertaking for collective investment in transferable securities (Ucits)~~'s head office or ☒ a head office of ☒ an undertaking contributing towards its business activity ← always be ☒ established ☒ ~~situated~~ in its home Member State and that it actually operates there.

↓ 95/26/EC Recital 8

- (56) It is appropriate to provide for the possibility of exchanges of information between the competent authorities and authorities or bodies which, by virtue of their function, help to strengthen the stability of the financial system. In order to preserve the confidential nature of the information forwarded, the list of addressees must remain within strict limits.

↓ 95/26/EC Recital 9 (adapted)

- (57) Certain behaviour, such as fraud and insider offenses, is liable to affect the stability, including integrity, of the financial system, even when involving undertakings other than ☒ UCITS or undertakings contributing towards their business activity ☒ ~~financial ones.~~

↓ 95/26/EC Recital 10

- (58) It is necessary to specify the conditions under which such exchanges of information are authorised.

↓ 95/26/EC Recital 11

- (59) Where it is stipulated that information may be disclosed only with the express agreement of the competent authorities, these may, where appropriate, make their agreement subject to compliance with strict conditions.

↓ 95/26/EC Recital 12

- (60) Exchanges of information between, on the one hand, the competent authorities and, on the other, central banks and other bodies with a similar function in their capacity as monetary authorities and, where appropriate, other public authorities responsible for supervising payment systems should also be authorised.

↓ 95/26/EC Recital 13 (adapted)

- (61) The same obligation of professional secrecy on the authorities responsible for authorising and supervising ☒ UCITS ☒ ~~Units~~ and the undertakings that take part in those activities and the same possibilities for exchanging information as those granted to the authorities responsible for authorising and supervising credit institutions, investment firms and insurance undertakings, should be included in ☒ this ☒ Directive ~~85/611/EEC~~.

↓ 95/26/EC Recital 15 (adapted)
→₁ 95/26/EC Art. 1 fourth indent

- (62) For the purpose of strengthening the prudential supervision of →₁ ☒ UCITS ☒ ~~undertakings for collective investment in transferable securities (Units)~~ or of undertakings contributing towards their business activity ← and protection of clients of →₁ ☒ UCITS ☒ ~~undertakings for collective investment in transferable securities (Units)~~ or of undertakings contributing towards their business activity ←, it should be stipulated that an auditor must have a duty to report promptly to the competent authorities, wherever, as provided for by this Directive, he becomes aware, while carrying out his tasks, of certain facts which are liable to have a serious effect on the financial situation or the administrative and accounting organisation of a →₁ ☒ UCITS ☒ ~~undertaking for collective investment in transferable securities (Units)~~ or an undertaking contributing towards its business activity ←.

↓ 95/26/EC Recital 16 (adapted)
→₁ 95/26/EC Art. 1 fourth indent

- (63) Having regard to the aim in view, it is desirable for Member States to provide that such a duty should apply in all circumstances where such facts are discovered by an auditor during the performance of his tasks in an undertaking which has close links with a →₁ ☒ UCITS ☒ ~~undertaking for collective investment in transferable securities (Units)~~ or an undertaking contributing towards its business activity. ←

↓ 95/26/EC Recital 17 (adapted)
→₁ 95/26/EC Art. 1 fourth indent

- (64) The duty of auditors to communicate, where appropriate, to the competent authorities certain facts and decisions concerning a →₁ ☒ UCITS ☒ ~~undertaking for collective investment in transferable securities (Ucits)~~ or an undertaking contributing towards its business activity ← which they discover during the performance of their tasks in ☒ an entity which is neither a ☒ ~~non- →₁ ☒ UCITS ☒ ~~undertaking for collective investment in transferable securities (Ucits)~~~~ ☒ nor ☒ an undertaking contributing towards ~~its~~ ☒ the ☒ business activity ☒ of a UCITS ☒ ← does not in itself change the nature of their tasks in that undertaking nor the manner in which they must perform those tasks in that undertaking.

↓ new

- (65) The Commission should be empowered to adopt the measures necessary for the implementation of this Directive. Concerning mergers, those measures are designed to specify detailed content and way to provide information to unit-holders. Concerning master-feeder structures, those measures are designed to specify the particulars to be included in the agreement between master and feeder, their depositories and their auditors, the definition of measures appropriate to prevent late trading risks, the impact of the merger of the master on the authorisation of the feeder, the type of irregularities originating from the master to be reported to the feeder, the way and format of the information to be provided to unit-holders in case of conversion from a UCITS to a feeder UCITS, the procedure for valuating and auditing the transfer of assets from a feeder to a master and the role of the depository of the feeder in this process. Concerning the provisions on disclosure, those measures are designed to specify the specific conditions to be met when the prospectus is provided in a durable medium other than paper and by means of a website which does not constitute a durable medium, the detailed content, form and presentation of the key investor information taking into account the different nature or components of the UCITS concerned, and the specific conditions for delivering key investor information in a durable medium other than paper and by means of a website which does not constitute a durable medium. Concerning notification, those measures are designed to specify the format and scope of the information on the applicable local rules to be published by host authorities, the application of the notification procedure to the marketing of compartments of UCITS and new share classes, and the technical details on access by host authorities to updated fund documents stored by home authorities. Those measures are also designed to clarify definitions and to align terminology and framing definitions in accordance with subsequent acts on UCITS and related matters. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC¹⁷. Powers not falling under the above category should be subject to the regulatory procedure provided in Article 5 of the same

¹⁷ OJ L184, 17.7.1999, p. 23. Decisions as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

Decision. Those measures are designed to specify the form and content of the standardised notification letter, the standard model of attestation and the procedure for the exchange of information and the use of electronic communication during the notification process. They are also designed to detail the procedures for on-the-spot verifications and investigations exchange of information between competent authorities.

↓ 95/26/EC Recital 18 (adapted)

(66) ☒ Since the objectives of the action to be taken cannot be sufficiently achieved by the Member States in so far they involve the adoption of rules with common features applicable at transnational level and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives. ☒ ~~Adopting this Directive is the most appropriate means of achieving the objectives in view, and in particular of reinforcing the powers of the competent authorities. This Directive restricts itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose.~~

↓ new

(67) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(68) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex III, Part B,

↓ 85/611/EEC

HAVE ADOPTED THIS DIRECTIVE:

↓

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↓ 85/611/EEC (adapted)

CHAPTER Section I

General provisions and scope

Article 1

1. ~~The~~ Member States shall apply this Directive to undertakings for collective investment in transferable securities (hereinafter referred to as UCITS) ☒ established ☒ ~~situated~~ within their territories.

2. For the purposes of this Directive, and subject to Article ☒ 3, ☒ ~~2~~ UCITS shall be undertakings:

↓ 2001/108/EC Art. 1 pt. 1
(adapted)

☒ (a) ☒ the sole object of which is the collective investment in transferable securities and/or in other liquid financial assets referred to in Article ☒ 45(1) ☒ ~~19(1)~~ of capital raised from the public and which operates on the principle of risk-spreading, and

↓ 85/611/EEC (adapted)

☒ (b) ☒ the units of which are, at the request of holders, re-purchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such re-purchase or redemption.

3. ☒ The ☒ ~~Such~~ undertakings ☒ referred to in paragraph 2 ☒ may be constituted according to law, either under the law of contract (as common funds managed by management companies) or trust law (as unit trusts) or under statute (as investment companies).

For the purposes of this Directive:

(a) ~~"common funds"~~ shall also include unit trusts;

↓ new

(b) "units" of UCITS shall also include shares of UCITS.

↓ 85/611/EEC (adapted)

4. Investment companies the assets of which are invested through the intermediary of subsidiary companies mainly otherwise than in transferable securities shall not, ~~however~~, be subject to this Directive.

↓ 85/611/EEC

5. The Member States shall prohibit UCITS which are subject to this Directive from transforming themselves into collective investment undertakings which are not covered by this Directive.

↓ 85/611/EEC (adapted)

6. Subject to the provisions governing capital movements and to Articles ~~☒~~ 86, 87 and 103(1), subparagraph 2, ~~☒ 44, 45 and 52(2)~~ no Member State may apply any other provisions whatsoever in the field covered by this Directive to UCITS ~~☒~~ established ~~☒~~ ~~situated~~ in another Member State or to the units issued by such UCITS, where they market their units within its territory.

7. ~~☒~~ With exception of Articles 1 to 4 and ~~☒~~ ~~Ww~~ without prejudice to paragraph 6, a Member State may apply to UCITS ~~☒~~ established ~~☒~~ ~~situated~~ within its territory requirements which are stricter than or additional to those laid down in ~~Article 4 et seq of~~ this Directive, provided that they are of general application and do not conflict with the provisions of this Directive.

↓ 2001/107/EC Art. 1 pt. 1
(adapted)
⇒ new

Article 2 ~~1a~~

~~☒~~ 1. ~~☒~~ For the purposes of this Directive ~~☒~~ the following definitions shall apply ~~☒~~ :

~~(1)~~ ~~☒~~ (a) ~~☒~~ ~~"depository" shall mean~~ ~~☒~~ means ~~☒~~ any institution entrusted with the duties mentioned in Articles ~~☒~~ 19 and 29 ~~☒ 7 and 14~~ and subject to the other provisions laid down in ~~☒~~ Chapter IV and Section 3 of Chapter V ~~☒ Sections IIIa and IVa;~~

~~(2)~~ ~~☒~~ (b) ~~☒~~ ~~"management company" shall mean~~ ~~☒~~ means ~~☒~~ any company, the regular business of which is the management of UCITS in the form of ~~unit trusts/~~common funds and/or of investment companies (collective portfolio management of UCITS);~~this includes the functions mentioned in Annex II;~~

~~(3)~~ ~~☒~~ (c) ~~☒~~ a ~~"management company's home Member State" shall mean~~ ~~☒~~ means ~~☒~~ the Member State~~;~~ in which the management company's ~~☒~~ has its ~~☒~~ registered office ~~is situated;~~

~~(4)~~ ~~☒~~ (d) ~~☒~~ a ~~☒~~ ~~"management company's host Member State"~~ ~~shall mean~~ ~~☒~~ means ~~☒~~ the Member State, other than the home Member State, within the territory of which a management company has a branch or provides services;

~~(5)~~ ~~☒~~ (e) ~~☒~~ a ~~☒~~ ~~"UCITS home Member State"~~ ~~shall mean~~:

~~(a) with regard to a UCITS constituted as unit trust/common fund, the Member State in which the management company's registered office is situated;~~

~~(b) with regard to a UCITS constituted as an investment company, the Member State in which the investment company's registered office is situated~~ ⇒ the Member State in which the UCITS is authorised pursuant to Article 5; ⇐

↓ new

(f) "investment company's home Member State" means the Member State in which the investment company has its registered office;

↓ 2001/107/EC Art. 1 pt. 1
(adapted)

~~(6)~~ ~~☒~~ (g) ~~☒~~ a ~~☒~~ ~~"UCITS host Member State"~~ ~~shall mean~~ ~~☒~~ means ~~☒~~ the Member State, other than the UCITS home Member State, in which the units of the common fund/~~unit trust~~ or of the investment company are marketed;

~~(7)~~ ~~☒~~ (h) ~~☒~~ ~~"branch"~~ ~~shall mean~~ ~~☒~~ means ~~☒~~ a place of business which is a part of the management company, which has no legal personality and which provides the services for which the management company has been authorised; ~~all the places of business set up in the same Member State by a management company with headquarters in another Member State shall be regarded as a single branch;~~

~~(8)~~ ~~☒~~ (i) ~~☒~~ ~~"competent authorities"~~ ~~shall mean~~ ~~☒~~ means ~~☒~~ the authorities which each Member State designates under Article ~~☒~~ 92 ~~☒~~ 49 of this Directive;

~~(9)~~ ~~☒~~ (j) ~~☒~~ ~~"close links"~~ ~~shall mean~~ ~~☒~~ means ~~☒~~ a situation ~~as defined in Article 2(1) of Directive 95/26/EC¹⁸~~; ~~☒~~ in which two or more natural or legal persons are linked by either of the following:

(i) "participation", which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;

(ii) "control", which means the relationship between a "parent undertaking" and a "subsidiary" as defined in Articles 1 and 2 of Council Directive 83/349/EEC¹⁹ and in all the cases referred to in Article 1 (1) and (2) of Directive 83/349/EEC,

¹⁸ OJ L 168, 18.7.1995, p. 7.

¹⁹ OJ L 193, 18.7.1983, p. 1.

↓ 2001/108/EC Art. 1 pt. 2 (adapted)

~~8. For the purposes of this Directive~~ "transferable securities" ~~shall~~ means:

- (i) = shares in companies and other securities equivalent to shares in companies ("shares");
- (ii) = bonds and other forms of securitised debt ("debt securities");
- (iii) = any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange.

~~excluding the techniques and instruments referred to in Article 21.~~

~~9. For the purposes of this Directive~~ "money market instruments" ~~shall~~ means instruments normally dealt in on the money market which are liquid and have a value which can be accurately determined at any time.

↓ 2001/107/EC Art. 1 pt. 1 (adapted)

2. For the purposes of paragraph 1(b), the regular business of a management company shall include the functions mentioned in Annex II.

3. For the purposes of paragraph 1(h), all the places of business set up in the same Member State by a management company with its head office in another Member State shall be regarded as a single branch.

4. For the purposes of paragraph 1(j)(ii), the following shall apply:

- (a) any subsidiary undertaking of a subsidiary undertaking shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings;
- (b) a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

5. For the purposes of paragraph 1(k), the voting rights referred to in Article 92 of Directive 2001/34/EC of the European Parliament and of the Council²⁵ shall be taken into account.

6. For the purposes of paragraph 1(m), Articles 13 to 16 of Directive 2006/49/EC of the European Parliament and the Council²⁶ shall apply *mutatis mutandis*.

²⁵ OJ L 184, 6.7.2001, p. 1.

²⁶ OJ L 177, 30.6.2006, p. 201.

7. For the purpose of paragraph 1(o), transferable securities shall exclude the techniques and instruments referred to in Article 46. ~~☒~~

↓ 85/611/EEC (adapted)
⇒ new

Article 3 ~~2~~

~~4~~ The following ~~☒~~ undertakings ~~☒~~ shall not be UCITS subject to this Directive:

- ~~☒~~ (a) ~~☒~~ UCITS of the closed-ended type;
- ~~☒~~ (b) ~~☒~~ UCITS which raise capital without promoting the sale of their units to the public within the Community or any part of it;
- ~~☒~~ (c) ~~☒~~ UCITS the units of which, under the fund rules or ~~☒~~ the instruments of incorporation of ~~☒~~ the investment company's instruments of incorporation, may be sold only to the public in ~~☒~~ third ~~☒~~ non-member countries;
- ~~☒~~ (d) ~~☒~~ categories of UCITS prescribed by the regulations of the Member States in which such UCITS are ~~☒~~ established ~~☒~~ situated, for which the rules laid down in ~~☒~~ Chapter VII ~~☒~~ Section ~~☒~~ 7 and Article ~~☒~~ 78 ~~☒~~ 36 are inappropriate in view of their investment and borrowing policies.

~~2. Five years after the implementation of this Directive the Commission shall submit to the Council a report on the implementation of paragraph 1 and, in particular, of its fourth indent. If necessary, it shall propose suitable measures to extend the scope.~~

Article 4 ~~2~~

For the purposes of this Directive, a UCITS shall be deemed to be ~~☒~~ established ~~☒~~ situated in the Member State in which the investment company or the management company of the ~~unit trust~~ ⇒ common fund ⇐ has its registered office. ~~The~~ The Member States ~~☒~~ shall ~~☒~~ ~~must~~ require that the head office be ~~situated~~ ~~☒~~ established ~~☒~~ in the same Member State as the registered office.

CHAPTER~~SECTION~~ II

Authorizisation of UCITS

Article 5 ~~4~~

1. No UCITS shall carry on activities as such unless it has been authorizised by the competent authorities of the Member State in which it is ~~situated~~ ~~☒~~ established ~~☒~~, hereinafter referred to as 'the competent authorities'.

↓ 85/611/EEC ⇒ new

Such authorisation shall be valid for all Member States.

2. A ~~unit trust~~ ⇒ common fund ⇐ shall be authorised only if the competent authorities have approved the management company, the fund rules and the choice of depositary. An investment company shall be authorised only if the competent authorities have approved both its instruments of incorporation and the choice of depositary.

↓ 2001/107/EC Art. 1 pt. 2 (adapted)

3. The competent authorities may not authorise a UCITS if the management company or the investment company ~~do~~ ☒ does ☒ not comply with the preconditions laid down ~~in this Directive~~, in ☒ Chapters ☒ Sections III and ☒ V ☒ ~~IV~~ respectively.

Moreover, the competent authorities may not authorise a UCITS if the directors of the depositary are not of sufficiently good repute or are not sufficiently experienced also in relation to the type of UCITS to be managed. To that end, the names of the directors of the depositary and of every person succeeding them in office ~~must~~ ☒ shall ☒ be communicated forthwith to the competent authorities.

Directors shall mean those persons who, under the law or the instruments of incorporation, represent the depositary, or who effectively determine the policy of the depositary.

☒ 4. ~~☒ 3a.~~ The competent authorities shall not grant authorisation if the UCITS is legally prevented (~~e.g.~~ ☒ for example, ☒ through a provision in the fund rules or instruments of incorporation) from marketing its units in its home Member State.

↓ 85/611/EEC (adapted)

☒ 5. ~~☒ 4.~~ Neither the management company nor the depositary may be replaced, nor may the fund rules or ☒ the instruments of incorporation of ☒ the investment company's ~~instruments of incorporation~~ be amended, without the approval of the competent authorities.

CHAPTER ~~SECTION~~ III

Obligations regarding management companies

SECTION I ~~TITLE A~~

CONDITIONS FOR TAKING UP BUSINESS

Article ~~6~~ 5

1. Access to the business of management companies ~~is~~ ☒ shall be ☒ subject to prior official authorisation to be granted by ☒ the competent authorities of ☒ the ☒ UCITS ☒ home Member State's ~~competent authorities~~. Authorisation granted under this Directive to a management company shall be valid for all Member States.

2. No management company may engage in activities other than the management of UCITS authorised according to this Directive except the additional management of other collective investment undertakings which are not covered by this Directive and for which the management company is subject to prudential supervision but which cannot be marketed in other Member States under this Directive.

The activity of management of ~~unit trusts/~~ common funds and of investment companies ~~includes~~ ☒ shall include ☒ , for the purpose of this Directive, the functions mentioned in Annex II, ~~which are not exhaustive~~.

3. By way of derogation from paragraph 2, Member States may authorise management companies to provide, in addition to the management of ~~unit trusts/~~ common funds and of investment companies, the following services:

(a) management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in ☒ Annex I, Section C to Directive 2004/39/EC ☒ ~~Section B of the Annex to the ISD;~~

(b) as non-core services:

☒ (i) ☒ investment advice concerning one or more of the instruments listed in ☒ Annex I, Section C to Directive 2004/39/EC ☒ ~~Section B of the Annex to the ISD,~~

☒ (ii) ☒ safekeeping and administration in relation to units of collective investment undertakings.

Management companies may in no case be authorised under this Directive to provide only the services mentioned in this paragraph or to provide non-core services without being authorised for the service referred to in point (a) ~~☒~~ of the first subparagraph ~~☒~~ .

↓ 2004/39/EC Art. 66 (adapted)
→₁ Corrigendum 2004/39/EC (OJ L 45, 16.2.2005, p. 18)

4. Articles 2(2), 12, 13 and 19 of →₁ Directive 2004/39/EC ~~of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments~~²⁷ ←₂ shall apply to the provision of the services referred to in paragraph 3 of this Article by management companies.

↓ 2001/107/EC Art. 1 pt. 3
(adapted)

Article ~~7~~ 5a

1. Without prejudice to other conditions of general application laid down by national law, the competent authorities shall not grant authorisation to a management company unless ~~☒~~ the following conditions are met ~~☒~~ :

(a) the management company has an initial capital of at least EUR 125 000 ~~☒~~ , taking into account the following ~~☒~~ :

~~☒~~ (i) ~~☒~~ ~~When~~ the value of the portfolios of the management company~~2~~ exceeds EUR 250 000 000, the management company shall be required to provide an additional amount of own funds~~2~~; ~~this~~ additional amount of own funds shall be equal to 0,02 % of the amount by which the value of the portfolios of the management company exceeds EUR 250 000 000~~2~~; ~~the~~ required total of the initial capital and the additional amount shall not, however, exceed EUR 10 000 000~~2~~;

~~☒~~ (ii) ~~☒~~ ~~For~~ the purpose of this paragraph, the following portfolios shall be deemed to be the portfolios of the management company:

- ~~(i) unit trusts/~~common funds managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation~~2~~;
- ~~(ii)~~ investment companies for which the management company is the designated management company~~2~~;
- ~~(iii)~~ other collective investment undertakings managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation~~2~~;

²⁷ ~~OJ L 145, 30.4.2004, p. 1.~~

~~ⓧ~~ (iii) ~~ⓧ~~ Irrespective of the amount of these requirements, the own funds of the management company shall never be less than the amount prescribed in ~~ⓧ~~ Article 21 of Directive 2006/49/EC ~~ⓧ~~ Annex IV of Directive 93/6/EEC;

~~ⓧ~~ (iv) ~~ⓧ~~ Member States may authorise management companies not to provide up to 50 % of the additional amount of own funds referred to in ~~ⓧ~~ point (i) ~~ⓧ~~ the first indent if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking; ~~t~~The credit institution or insurance undertaking shall have its registered office in a Member State, or in a ~~ⓧ~~ third country ~~ⓧ~~ non-Member State provided that it is subject to prudential rules considered by the competent authorities as equivalent to those laid down in Community law;

~~(v) No later than 13 February 2005, the Commission shall present a report to the European Parliament and the Council on the application of this capital requirement, accompanied where appropriate by proposals for its revision;~~

- (b) the persons who effectively conduct the business of a management company are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company; ~~t~~To that end, the names of these persons and of every person succeeding them in office must be communicated forthwith to the competent authorities; ~~t~~The conduct of ~~ⓧ~~ the business of ~~ⓧ~~ a management company's business must be decided by at least two persons meeting such conditions;
- (c) the application for authorisation is accompanied by a programme of activity setting out, ~~inter alia~~ ~~ⓧ~~ at least ~~ⓧ~~ , the organisational structure of the management company;
- (d) both ~~its~~ ~~ⓧ~~ the ~~ⓧ~~ head office and ~~its~~ ~~ⓧ~~ the ~~ⓧ~~ registered office ~~ⓧ~~ of the management company ~~ⓧ~~ are located in the same Member State.

2. ~~Moreover~~ Where close links exist between the management company and other natural or legal persons, the competent authorities shall grant authorisation only if those ~~ⓧ~~ close links ~~ⓧ~~ do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorisation if the laws, regulations or administrative provisions of a ~~ⓧ~~ third ~~ⓧ~~ non-member country governing one or more natural or legal persons with which the management company has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

↓ 2001/107/EC Art. 1 pt. 3

The competent authorities shall require management companies to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

3. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted. Reasons shall be given whenever an authorisation is refused.

4. A management company may start business as soon as authorisation has been granted.
5. The competent authorities may withdraw the authorisation issued to a management company subject to this Directive only where that company:
- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by this Directive more than six months previously unless the Member State concerned has provided for authorisation to lapse in such cases;
 - (b) has obtained the authorisation by making false statements or by any other irregular means;
 - (c) no longer fulfils the conditions under which authorisation was granted;

↓ 2001/107/EC Art. 1 pt. 3 (adapted)

- (d) no longer complies with Directive ~~93/6/EEC~~ ☒ 2006/49/EC ☒ if its authorisation also covers the discretionary portfolio management service referred to in Article ~~5~~ ☒ 6 ☒ (3)(a) of this Directive;

↓ 2001/107/EC Art. 1 pt. 3

- (e) has seriously and/or systematically infringed the provisions adopted pursuant to this Directive; or
- (f) falls within any of the cases where national law provides for withdrawal.

Article ~~8~~ 5b

1. The competent authorities shall not grant authorisation to take up the business of management companies until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of a management company, they are not satisfied as to the suitability of the aforementioned shareholders or members.

↓ 2001/107/EC Art. 1 pt. 3 (adapted)

2. In the case of branches of management companies that have registered offices outside the ☒ Community ☒ ~~European Union~~ and are starting or carrying on business, the Member States shall not apply provisions that result in treatment more favourable than that accorded to branches of management companies that have registered offices in Member States.

3. The competent authorities of the other Member State involved shall be consulted beforehand on the authorisation of any management company which is ☒ one of the following ☒ :

- (a) a subsidiary of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State₃;
- (b) a subsidiary of the parent undertaking of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State₃; ~~or~~
- (c) ☒ a company ☒ controlled by the same natural or legal persons as control another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

SECTION 2~~**TITLE B**~~

RELATIONS WITH THIRD COUNTRIES

Article 9 ~~5e~~

1. Relations with third countries shall be regulated in accordance with the relevant rules laid down in Article ☒ 15 of Directive 2004/39/EC ☒ ~~7 of the ISD~~.

For the purpose of this Directive, the expressions ~~«firm/investment firm»~~ and ~~«investment firms»~~ contained in Article ☒ 15 of Directive 2004/39/EC ☒ ~~7 of the ISD~~ shall be construed respectively as «management company» and «management companies»; the expression «providing investment services» in Article ☒ 15(1) of Directive 2004/39/EC ☒ ~~7(2) of the ISD~~ shall be construed as «providing services».

2. ~~The~~ Member States shall ~~also~~ inform the Commission of any general difficulties which UCITS encounter in marketing their units in any third country.

SECTION 3~~**TITLE C**~~

OPERATING CONDITIONS

Article 10 ~~5d~~

1. The competent authorities of the management company's home Member State shall require that the management company which they have authorised complies at all times with the conditions laid down in Article ~~5~~ ☒ 6 ☒ and Article ~~5a~~ ☒ 7 ☒ (1) and (2) ~~of this Directive~~.

The own funds of a management company may not fall below the level specified in Article ~~5a~~ ☒ 7 ☒ (1)(a). If they do, however, the competent authorities may, where the circumstances

justify it, allow such firms a limited period in which to rectify their situations or cease their activities.

2. The prudential supervision of a management company shall be the responsibility of the competent authorities of ~~the~~ ☒ management company's ☒ home Member State, whether the management company establishes a branch or provides services in another Member State or not, without prejudice to those provisions of this Directive which give responsibility to the ☒ competent ☒ authorities of ~~the~~ ☒ management company's ☒ host ☒ Member State ☒ country.

Article 11 ~~5e~~

↓ 2001/107/EC Art. 1 pt. 3 (adapted)

1. Qualifying holdings in management companies shall be subject to the same rules as those laid down in Article ☒ 10 of Directive 2004/39/EC ☒ ~~9 of the ISD~~.

2. For the purpose of this Directive, the expressions ~~“firm/investment firm”~~ and ~~“investment firms”~~ contained in Article ☒ 10 of Directive 2004/39/EC ☒ ~~9 of the ISD~~ shall be construed respectively as ~~“management company”~~ and ~~“management companies”~~.

↓ 2001/107/EC Art. 1 pt. 3 (adapted)

Article 12 ~~5f~~

1. Each ☒ management company's ☒ home Member State shall draw up prudential rules which management companies, with regard to the activity of management of UCITS authorised according to this Directive, shall observe at all times.

In particular, the competent authorities of the ☒ management company's ☒ home Member State having regard also to the nature of the UCITS managed by a management company, shall require that each such company:

- (a) has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest own funds and ensuring, ~~inter alia~~ ☒ at least ☒ , that each transaction involving the fund may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the ~~unit trusts~~ common funds or of the investment companies managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force;

- (b) is structured and organised in such a way as to minimise the risk of UCITS' or clients' interests being prejudiced by conflicts of interest between the company and its clients, between one of its clients and another, between one of its clients and a UCITS or between two UCITS. Nevertheless, where a branch is set up, the organisational arrangements may not conflict with the rules of conduct laid down by the ~~the~~ UCITS ~~the~~ host Member State to cover conflicts of interest.

2. Each management company the authorisation of which also covers the discretionary portfolio management service mentioned in Article ~~5~~ ~~6~~ (3)(a):

~~(a)~~ shall not be permitted to invest all or a part of the investor's portfolio in units of ~~unit-trusts/~~common funds or of investment companies it manages, unless it receives prior general approval from the client~~;~~

~~(b)~~ shall be subject with regard to the services referred to in Article ~~5~~ ~~6~~ (3) to the provisions laid down in Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor compensation schemes²⁸.

Article 13 ~~5g~~

1. If Member States permit management companies to delegate to third parties, for the purpose of a more efficient conduct of the companies' business, to carry out on their behalf one or more of their own functions, ~~the~~ all of ~~the~~ the following preconditions shall be complied with:

- (a) the competent authority must be informed in an appropriate manner;
- (b) the mandate shall not prevent the effectiveness of supervision over the management company, and in particular it must not prevent the management company from acting, or the UCITS from being managed, in the best interests of its investors;
- (c) when the delegation concerns the investment management, the mandate may only be given to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision; the delegation must be in accordance with investment-allocation criteria periodically laid down by the management companies;
- (d) where the mandate concerns the investment management and is given to a third-country undertaking, cooperation between the supervisory authorities concerned must be ensured;
- (e) a mandate with regard to the core function of investment management shall not be given to the depositary or to any other undertaking whose interests may conflict with those of the management company or the unit-holders;
- (f) measures shall exist which enable the persons who conduct the business of the management company to monitor effectively at any time the activity of the undertaking to which the mandate is given;

²⁸ OJ L 84, 26.3.1997, p. 22.

- (g) the mandate shall not prevent the persons who conduct the business of the management company to give at any time further instructions to the undertaking to which functions are delegated and to withdraw the mandate with immediate effect when this is in the interest of investors;
- (h) having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated must be qualified and capable of undertaking the functions in question;~~and~~
- (i) the UCITS' prospectuses list the functions which the management company has been permitted to delegate.

2. In no case shall the management company's and the depositary's liability be affected by the fact that the management company delegated any functions to third parties, nor shall the management company delegate its functions to the extent that it becomes a letter box entity.

Article ~~14~~ 5h

Each Member State shall draw up rules of conduct which management companies authorised in that Member State shall observe at all times. Such rules shall implement at least the principles set out in ~~the following indents~~ ☒ points (a) to (e) ☒. ~~These~~ ☒ Those ☒ principles shall ensure that a management company:

↓ 2001/107/EC Art. 1 pt. 3

- (a) acts honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market;
- (b) acts with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market;
- (c) has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities;
- (d) tries to avoid conflicts of interests and, when they cannot be avoided, ensures that the UCITS it manages are fairly treated, and
- (e) complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

↓ 2001/107/EC Art. 1 pt. 3
(adapted)

~~SECTION 4~~ ~~TITLE D~~

~~THE RIGHT OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE SERVICES~~

↓ 2001/107/EC Art. 1 pt. 3

Article 15 ~~6~~

1. Member States shall ensure that a management company, authorised in accordance with this Directive by the competent authorities of another Member State, may carry on within their territories the activity for which it has been authorised, either by the establishment of a branch or under the freedom to provide services.
2. Member States may not make the establishment of a branch or the provision of the services subject to any authorisation requirement, to any requirement to provide endowment capital or to any other measure having equivalent effect.

Article 16 ~~6a~~

↓ 2001/107/EC Art. 1 pt. 3
(adapted)

1. In addition to meeting the conditions imposed in Articles ~~5~~ 6 and 7 ~~5 and 5a~~, any management company wishing to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.
-

↓ 2001/107/EC Art. 1 pt. 3

2. Member States shall require every management company wishing to establish a branch within the territory of another Member State to provide the following information and documents, when effecting the notification provided for in paragraph 1:
 - (a) the Member State within the territory of which the management company plans to establish a branch;

↓ 2001/107/EC Art. 1 pt. 3
(adapted)

- (b) a programme of operations setting out the activities and services according to Article 5 ~~of~~ 6 ~~of~~ (2) and (3) envisaged and the organisational structure of the branch;
- (c) the address in the ~~of~~ management company's ~~of~~ host Member State from which documents may be obtained;
- (d) the names of those responsible for the management of the branch.

3. Unless the competent authorities of the ~~of~~ management company's ~~of~~ home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of a management company, taking into account the activities envisaged, they shall, within three months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the ~~of~~ management company's ~~of~~ host Member State and shall inform the management company accordingly. They shall also communicate details of any compensation scheme intended to protect investors.

Where the competent authorities of the ~~of~~ management company's ~~of~~ home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the ~~of~~ management company's ~~of~~ host Member State, they shall give reasons for their refusal to the management company concerned within two months of receiving all the information. That refusal or failure to reply shall be subject to the right to apply to the courts in the ~~of~~ management company's ~~of~~ home Member State.

↓ 2001/107/EC Art. 1 pt. 3
(adapted)
⇒ new

4. Before the branch of a management company starts business, the competent authorities of the ~~of~~ management company's ~~of~~ host Member State shall, within two months of receiving the information referred to in paragraph 2, prepare for the supervision of the management company and, if necessary, indicate the conditions, including the rules mentioned in Articles ~~of~~ 86 and 87 ~~of~~ 44 and 45 in force in the ~~of~~ management company's ~~of~~ host Member State and the rules of conduct to be respected in the case of provision of the portfolio management service mentioned in Article 5 ~~of~~ 6 ~~of~~ (3) ~~of~~ (a) ~~of~~ and of investment advisory services and custody, under which, in the interest of the general good, that business must be carried on in the ~~of~~ management company's ~~of~~ host Member State.

5. On receipt of a communication from the competent authorities of the ~~of~~ management company's ~~of~~ host Member State or on the expiry of the period provided for in paragraph 4 without receipt of any communication from those authorities, the branch may be established and start business. From that moment the management company may also begin distributing the units of the ~~unit trusts/~~common funds and of the investment companies subject to this Directive which it manages, ~~⇒ without prejudice to Article 88 ⇐ . unless the competent authorities of the host Member State establish, in a reasoned decision taken before the expiry of that period of two months to be communicated to the competent authorities of the home~~

~~Member State that the arrangements made for the marketing of the units do not comply with the provisions referred to in Article 44 (1) and Article 45.~~

6. In the event of change of any particulars communicated in accordance with paragraphs 2(b), (c) or (d), a management company shall give written notice of that change to the competent authorities of the ☒ management company's ☒ home ☒ Member State ☒ and ☒ to the management company's ☒ host Member States at least one month before implementing the change so that the competent authorities of the ☒ management company's ☒ home Member State may take a decision on the change under paragraph 3 and the competent authorities of the ☒ management company's ☒ host Member State may do so under paragraph 4.

↓ 2001/107/EC Art. 1 pt. 3
(adapted)

7. In the event of a change in the particulars communicated in accordance with the first subparagraph of paragraph 3, the authorities of the ☒ management company's ☒ home Member State shall inform the authorities of the ☒ management company's ☒ host Member State accordingly.

Article 17 ~~6b~~

1. Any management company wishing to carry on business within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the competent authorities of ~~its~~ ☒ the management company's ☒ home Member State:

- (a) the Member State within the territory of which the management company intends to operate;
- (b) a programme of operations stating the activities and services referred to in Article ~~5~~ ☒ 6 ☒ (2) and (3) envisaged.

2. The competent authorities of the ☒ the management company's ☒ home Member State shall, within one month of receiving the information referred to in paragraph 1, forward it to the competent authorities of the ☒ management company's ☒ host Member State.

☒ The competent authorities of the management company's home Member State ☒ ~~They~~ shall also communicate details of any applicable compensation scheme intended to protect investors.

~~3.~~ The management company may then start business in the ☒ the management company's ☒ host Member State notwithstanding the provisions of Article ~~46~~ ☒ 88 ☒.

☒ 3. ☒ When appropriate, the competent authorities of the ☒ the management company's ☒ host Member State shall, on receipt of the information referred to in paragraph 1, indicate to the management company the conditions, including the rules of conduct to be respected in the case of provision of the portfolio management service mentioned in Article ~~5~~ ☒ 6 ☒ (3) ☒ (a) ☒ and of investment advisory services and custody, with which, in the

interest of the general good, the management company must comply in the ☒ the management company's ☒ host Member State.

4. Should the content of the information communicated in accordance with paragraph 1(b) be amended, the management company shall give notice of the amendment in writing to the competent authorities of the ☒ management company's ☒ home Member State and of the ☒ management company's ☒ host Member State before implementing the change, so that the competent authorities of the ☒ management company's ☒ host Member State may, if necessary, inform the company of any change or addition to be made to the information communicated under paragraph 3.

5. A management company shall also be subject to the notification procedure laid down in ☒ paragraphs 1 to 4 ☒ ~~this Article~~ in cases where it entrusts a third party with the marketing of the units in a ☒ management company's ☒ host Member State.

↓ 2001/107/EC Art. 1 pt. 3
(adapted)
→₁ 2005/1/EC Art. 9 pt. 1(a)

Article ~~18~~ 6e

1. ☒ Management company's ☒ ~~h~~Host Member States may, for statistical purposes, require all management companies with branches within their territories to report periodically on their activities in those host Member States to the competent authorities of those ☒ management company's ☒ host Member States.

2. In discharging their responsibilities under this Directive, ☒ management company's ☒ host Member States may require branches of management companies to provide the same particulars as national management companies for that purpose.

☒ Management company's ☒ ~~h~~Host Member States may require management companies, carrying on business within their territories under the freedom to provide services, to provide the information necessary for the monitoring of their compliance with the standards set by the ☒ management company's ☒ host Member State that apply to them, although those requirements may not be more stringent than those which the same Member State imposes on established management companies for the monitoring of their compliance with the same standards.

3. Where the competent authorities of a ☒ management company's ☒ host Member State ascertain that a management company that has a branch or provides services within its territory is in breach of the legal or regulatory provisions adopted in that State pursuant to those provisions of this Directive which confer powers on the ☒ management company's ☒ host Member State's competent authorities, those authorities shall require the management company concerned to put an end to its irregular situation.

4. If the management company concerned fails to take the necessary steps ☒ to put an end to the irregular situation referred to in paragraph 3 ☒, the competent authorities of the ☒ management company's ☒ host Member State shall inform the competent authorities of the ☒ management company's ☒ home Member State accordingly. The ☒ competent

authorities of the management company's home Member State ~~the latter~~ shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the ~~the~~ management company's ~~the~~ host Member State.

5. If, despite the measures taken by the ~~the~~ management company's ~~the~~ home Member State or because such measures prove inadequate or are not available in the Member State in question, the management company persists in breaching the legal or regulatory provisions referred to in paragraph 2 in force in the ~~the~~ management company's ~~the~~ host Member State, the latter may, after informing the competent authorities of the ~~the~~ management company's ~~the~~ home Member State, take appropriate measures to prevent or to penalise further irregularities and, insofar as necessary, to prevent that management company from initiating any further transaction within its territory. ~~The~~ Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on management companies.

6. The ~~foregoing~~ provisions of paragraphs (3), (4) and (5) shall not affect the powers of ~~the~~ management company's ~~the~~ host Member States to take appropriate measures to prevent or to penalise irregularities committed within their territories which are contrary to legal or regulatory provisions adopted in the interest of the general good. This shall include the possibility of preventing offending management companies from initiating any further transactions within their territories.

7. Any measure adopted pursuant to paragraphs 4, 5 or 6 involving penalties or restrictions on the activities of a management company ~~must~~ ~~the~~ shall ~~the~~ be properly justified and communicated to the management company concerned. Every such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

8. Before following the procedure laid down in paragraphs 3, 4 or 5 the competent authorities of the ~~the~~ management company's ~~the~~ host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission and the competent authorities of the other Member States concerned ~~must~~ ~~the~~ shall ~~the~~ be informed of such measures at the earliest opportunity.

After consulting the competent authorities of the Member States concerned, the Commission may decide that the Member State in question must amend or abolish those measures.

9. In the event of the withdrawal of authorisation, the competent authorities of the ~~the~~ management company's ~~the~~ host Member State shall be informed and shall take appropriate measures to prevent the management company concerned from initiating any further transactions within its territory and to safeguard investors' interests.

➔₁ Every two years the Commission shall issue a report on such cases. ←

↓ 2001/107/EC Art. 1 pt. 3
(adapted)
→₁ 2005/1/EC Art. 9 pt. 1(b)

10. ~~The~~ Member States shall inform the Commission of the number and type of cases in which there have been refusals pursuant to Article ~~6a~~ 16 or measures have been taken in accordance with paragraph 5 of this Article.

→₁ Every two years the Commission shall issue a report on such cases. ←

↓ 2001/107/EC Art. 1 pt. 4

~~SECTION IIIa~~ CHAPTER IV

Obligations regarding the depositary

↓ 85/611/EEC
⇒ new

Article ~~19~~ 7

1. A ~~unit-trust's~~ ⇒ common fund's ⇐ assets must be entrusted to a depositary for safe-keeping.

↓ 85/611/EEC (adapted)

2. A depositary's liability as referred to in Article ~~9~~ 21 shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

3. A depositary ~~must~~ shall ⇐, ~~moreover~~:

↓ 85/611/EEC
⇒ new

- (a) ensure that the sale, issue, re-purchase, redemption and cancellation of units effected on behalf of a ~~unit-trust~~ ⇒ common fund ⇐ or by a management company are carried out in accordance with the law and the fund rules;
- (b) ensure that the value of units is calculated in accordance with the law and the fund rules;
- (c) carry out the instructions of the management company, unless they conflict with the law or the fund rules;

- (d) ensure that in transactions involving a ~~unit-trust's~~ ⇨ common fund's ⇩ assets any consideration is remitted to it within the usual time limits;
- (e) ensure that a ~~unit-trust's~~ ⇨ common fund's ⇩ income is applied in accordance with the law and the fund rules.

↓ 85/611/EEC (adapted)

Article 20 ~~9~~

1. A depositary ~~must~~ ☒ shall ☒ either have its registered office in the same Member State as that of the management company or be established in that Member State if its registered office is in another Member State.
2. A depositary ~~must~~ ☒ shall ☒ be an institution which is subject to public control. It ~~must~~ ☒ shall ☒ also furnish sufficient financial and professional guarantees to be able effectively to pursue its business as depositary and meet the commitments inherent in that function.
3. ~~The~~ Member States shall determine which of the categories of institutions referred to in paragraph 2 shall be eligible to be depositaries.

Article 21 ~~9~~

A depositary shall, in accordance with the national law of the ☒ UCITS home Member ☒ State ~~in which the management company's registered office is situated~~, be liable to the management company and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.

Liability to unit-holders may be invoked either directly or indirectly through the management company, depending on the legal nature of the relationship between the depositary, the management company and the unit-holders.

Article 22 ~~10~~

1. No single company shall act as both management company and depositary.
2. In the context of their respective roles the management company and the depositary ~~must~~ ☒ shall ☒ act independently and solely in the interest of the unit-holders.

Article 23 ~~11~~

The law or the fund rules shall lay down the conditions for the replacement of the management company and the depositary and rules to ensure the protection of unit-holders in the event of such replacement.

↓ 2001/107/EC Art. 1 pt. 5 (adapted)

CHAPTER V~~SECTION IV~~

Obligations regarding investment companies

SECTION 1~~TITLE A~~

CONDITIONS FOR TAKING UP BUSINESS

Article 24 ~~12~~

Access to the business of investment ~~companies~~ ☒ company ☒ shall be subject to prior official authorisation to be granted by the ☒ competent authorities of investment company's ☒ home Member State ~~competent authorities~~.

~~The~~ Member States shall determine the legal form which an investment company must take.

↓ 85/611/EEC

Article 25 ~~13~~

No investment company may engage in activities other than those referred to in Article 1(2).

↓ 2001/107/EC Art. 1 pt. 6 (adapted)

Article 26 ~~13a~~

1. Without prejudice to other conditions of general application laid down by national law, the competent authorities ☒ of the investment company's home Member State ☒ shall not grant authorisation to an investment company that has not designated a management company unless the investment company has a sufficient initial capital of at least EUR 300 000.

In addition, when an investment company has not designated a management company authorised pursuant to this Directive ☒ , the following conditions shall apply ☒ :

- ☒ (a) ☒ the authorisation shall not be granted unless the application for authorisation is accompanied by a programme of activity setting out, ~~inter alia~~ ☒ at least ☒ , the organisational structure of the investment company;

- ☒ (b) ☒ the directors of the investment company shall be of sufficiently good repute and be sufficiently experienced also in relation to the type of business carried out by the investment company; ~~to~~ that end, the names of the directors and of every person succeeding them in office must be communicated forthwith to the competent authorities; ~~the~~ the conduct of an investment company's business must be decided by at least two persons meeting such conditions; ~~the~~ Directors shall mean those persons who, under the law or the instruments of incorporation, represent the investment company, or who effectively determine the policy of the company;
- ☒ (c) ☒ ~~moreover,~~ where close links exist between the investment company and other natural or legal persons, the competent authorities shall grant authorisation only if those ☒ close links ☒ do not prevent the effective exercise of their supervisory functions.

The competent authorities ☒ of the investment company's home Member State ☒ shall also refuse authorisation if the laws, regulations or administrative provisions of a ☒ third ☒ ~~non-member~~ country governing one or more natural or legal persons with which the investment company has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities ☒ of the investment company's home Member ☒ State shall require investment companies to provide them with the information they ☒ need ☒ ~~require~~.

2. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted. Reasons shall be given whenever an authorisation is refused.

3. An investment company may start business as soon as authorisation has been granted.

4. The competent authorities ☒ of the investment company's home Member State ☒ may withdraw the authorisation issued to an investment company subject to this Directive only where that company:

- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by this Directive more than 6 months previously unless the Member State concerned has provided for authorisation to lapse in such cases;
- (b) has obtained the authorisation by making false statements or by any other irregular means;
- (c) no longer fulfils the conditions under which authorisation was granted;
- (d) has seriously and/or systematically infringed the provisions adopted pursuant to this Directive; or
- (e) falls within any of the cases where national law provides for withdrawal.

SECTION 2~~TITLE B~~

OPERATING CONDITIONS

Article 27 ~~13b~~

Articles ☒ 13 and 14 ~~☒ 5g and 5h~~ shall apply *mutatis mutandis* to investment companies that have not designated a management company authorised pursuant to this Directive.

For the purpose of this Article «management company» shall be construed as «investment company».

Investment companies may only manage assets of their own portfolio and may not, under any circumstances, receive any mandate to manage assets on behalf of a third party.

Article 28 ~~13e~~

Each ☒ investment company's ☒ home Member State shall draw up prudential rules which shall be observed at all times by investment companies that have not designated a management company authorised pursuant to this Directive.

In particular, the competent authorities of the ☒ investment company's ☒ home Member State, having regard also to the nature of the investment company, shall require that the company has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest its initial capital and ensuring, ~~inter alia~~ ☒ at least ☒ , that each transaction involving the company may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the investment company are invested according to the instruments of incorporation and the legal provisions in force.

~~SECTION IV~~ **SECTION 3**

OBLIGATIONS REGARDING THE DEPOSITARY

Article ~~29~~ 14

1. An investment company's assets ☒ shall ~~☒ must~~ be entrusted to a depositary for safe-keeping.
2. A depositary's liability as referred to in Article ~~16~~ ☒ 31 ☒ shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.
3. A depositary ~~must~~ ☒ shall ensure the following ☒ ~~, moreover:~~
 - (a) ~~ensure~~ that the sale, issue, re-purchase, redemption and cancellation of units effected by or on behalf of a company are carried out in accordance with the law and with the company's instruments of incorporation;
 - (b) ~~ensure~~ that in transactions involving a company's assets any consideration is remitted to it within the usual time limits;
 - (c) ~~ensure~~ that a company's income is applied in accordance with the law and its instruments of incorporation.
4. ~~A~~ ☒ Investment company's home Member States ~~☒ Member State~~ may decide that investment companies ☒ established ~~☒ situated within~~ ☒ on their ~~☒ its~~ territory which market their units exclusively through one or more stock exchanges on which their units are admitted to official listing shall not be required to have depositaries within the meaning of this Directive.

Articles ☒ 71, 79 and 80 ~~☒ 34, 37 and 38~~ shall not apply to such companies. However, the rules for the valuation of such companies' assets ~~must~~ ☒ shall ☒ be stated in law or in their instruments of incorporation.
5. ~~A~~ ☒ Investment company's home Member States ~~☒ Member State~~ may decide that investment companies ☒ established ~~☒ situated within~~ ☒ on their ~~☒ its~~ territory which market at least 80 % of their units through one or more stock exchanges designated in their instruments of incorporation shall not be required to have depositaries within the meaning of this Directive provided that their units are admitted to official listing on the stock exchanges of those Member States within the territories of which the units are marketed, and that any transactions which such a company may effect outwith stock exchanges are effected at stock exchange prices only.

~~☒~~ The instruments of incorporation of ~~☒ a~~ company's instruments of incorporation ~~must~~
~~☒~~ shall ~~☒~~ specify the stock exchange in the country of marketing the prices on which shall
determine the prices at which that company will effect any transactions outwith stock
exchanges in that country.

A Member State shall avail itself of ~~this~~ ~~☒~~ the derogation provided for in the first
subparagraph ~~☒ the option provided for in the preceding subparagraph~~ only if it considers
that unit-holders have protection equivalent to that of unit-holders in UCITS which have
depositories within the meaning of this Directive.

In particular, such companies and the companies referred to in paragraph 4, ~~☒~~ shall ~~☒~~
~~must~~:

- (a) in the absence of provision in law, state in their instruments of incorporation the
methods of calculation of the net asset values of their units;
- (b) intervene on the market to prevent the stock exchange values of their units from
deviating by more than 5 % from their net asset values;
- (c) establish the net asset values of their units, communicate them to the competent
authorities at least twice a week and publish them twice a month.

At least twice a month, an independent auditor ~~must~~ ~~☒~~ shall ~~☒~~ ensure that the calculation
of the value of units is effected in accordance with the law and the company's instruments of
incorporation ~~☒~~ of the company ~~☒~~.

On such occasions, the auditor ~~must~~ ~~☒~~ shall ~~☒~~ make sure that the company's assets are
invested in accordance with the rules laid down by law and the company's instruments of
incorporation ~~☒~~ of the company ~~☒~~.

6. ~~The~~ Member States shall inform the Commission of the identities of the companies
benefiting from the derogations provided for in paragraphs 4 and 5.

Article 30 ~~15~~

1. A depository ~~☒~~ shall ~~☒~~ ~~must~~ either have its registered office in the same Member State
as that of the investment company or be established in that Member State if its registered
office is in another Member State.

2. A depository ~~☒~~ shall ~~☒~~ ~~must~~ be an institution which is subject to public control. It
~~☒~~ shall ~~☒~~ ~~must~~ also furnish sufficient financial and professional guarantees to be able
effectively to pursue its business as depository and meet the commitments inherent in that
function.

3. ~~The~~ Member States shall determine which of the categories of institutions referred to in
paragraph 2 shall be eligible to be depositories.

Article ~~31~~ 16

A depositary shall, in accordance with the national law of the ☒ investment company's home Member ☒ State ~~in which the investment company's registered office is situated~~, be liable to the investment company and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations, or its improper performance of them.

Article 32 ~~17~~

1. No single company shall act as both investment company and depositary.
2. In carrying out its role as depositary, the depositary ☒ shall ☒ ~~must~~ act solely in the interests of the unit-holders.

Article 33 ~~18~~

The law or ☒ the instruments of incorporation of ☒ the investment company's ~~instruments of incorporation~~ shall lay down the conditions for the replacement of the depositary and rules to ensure the protection of unit-holders in the event of such replacement.

↓ new

CHAPTER VI

Mergers of UCITS

SECTION 1

PRINCIPLE, AUTHORISATION AND APPROVAL

Article 34

This Chapter shall apply in relation to any of the following operations, hereinafter "mergers":

- (a) an operation whereby one or more UCITS or investment compartments thereof, the 'merging UCITS', on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing UCITS or an investment compartment thereof, the 'receiving UCITS', in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units;
- (b) an operation whereby two or more UCITS or investment compartments thereof, the 'merging UCITS', on being dissolved without going into liquidation, transfer all of their assets and liabilities to a UCITS which they form or an investment compartment

thereof, the 'receiving UCITS', in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units;

- (c) an operation whereby one or more UCITS or investment compartments thereof, the 'merging UCITS', on being dissolved without going into liquidation, transfer their net assets to another existing UCITS or an investment compartment thereof, the 'receiving UCITS', following which the outstanding liabilities of the merging UCITS will be discharged at a subsequent time.

For the purposes of this Chapter, a UCITS shall include investment compartments thereof.

Article 35

Member States shall, subject to the conditions set out in this Section and irrespective of the manner in which UCITS are constituted as set out in Article 1(3), allow for mergers between:

- (a) UCITS established within their territories;
- (b) UCITS established within their territories and UCITS established within the territories of other Member States.

Article 36

1. Mergers shall be subject to prior authorisation by the competent authorities of the merging UCITS home Member State.

2. The merging UCITS shall provide all the following information to the competent authorities of its home Member State:

- (a) the common draft terms of the proposed merger duly approved by the competent management or administrative body of the merging UCITS and the receiving UCITS;
- (b) an up-to-date version of the prospectus and the key investor information of the receiving UCITS, as referred to in Article 73, if established in another Member State;
- (c) a certificate issued by the depositaries of the merging and the receiving UCITS confirming that they have verified compliance of the common draft terms of merger with this Directive and the fund rules or instruments of incorporation of their respective UCITS and indicating their conclusions in this respect;
- (d) the information on the proposed merger it intends to provide to its unit-holders.

3. The competent authorities of the merging UCITS home Member State shall consider the potential impact of the proposed merger on unit-holders of both the merging UCITS and the receiving UCITS and when doing so, shall consult the competent authorities of the receiving UCITS home Member State unless they consider that the potential impact of the proposed merger on the unit-holders of the receiving UCITS is negligible.

If the competent authorities of the merging UCITS home Member State consider it necessary, they may require that the information to unit-holders of the merging UCITS be clarified.

If the competent authorities of the merging UCITS home Member State decide that the proposed merger might have a substantial impact on the unit-holders of the receiving UCITS, they shall inform the competent authorities of the receiving UCITS home Member State, which shall require that appropriate and accurate information on the proposed merger is provided to unit-holders of the receiving UCITS.

4. The competent authorities of the merging UCITS home Member State shall authorise the proposed merger if the following conditions are met:

- (a) the proposed merger complies with all of the requirements of Articles 36, 37, 38 and 39;
- (b) the receiving UCITS has been notified, in accordance with Article 88, to market its units in all Member States where the merging UCITS is either authorised or has been notified to market its units in accordance with Article 88;
- (c) after having considered the potential impact of the proposed merger on unit-holders in accordance with paragraph 3, the competent authorities are satisfied with the proposed information to be provided to unit-holders of the merging UCITS, and where applicable, of the receiving UCITS.

5. The competent authorities of the merging UCITS home Member State shall inform the merging UCITS, within at the latest 30 days of the submission of a complete file, whether or not the merger has been authorised.

Reasons shall be given whenever an authorisation is refused.

The competent authorities of the merging UCITS home Member State shall also inform the competent authorities of the receiving UCITS home Member State of their decision.

Article 37

1. Member States shall require that the management or administrative body of the merging UCITS and of the receiving UCITS draw up common draft terms of merger.

The common draft terms of merger shall include the following particulars:

- (a) identification of the type of merger and of the UCITS involved;
- (b) the background to and the rationale for the proposed merger;
- (c) the expected impact of the proposed merger on the unit-holders of both the merging UCITS and the receiving UCITS;
- (d) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the planned effective date of the merger;
- (e) the calculation method of the exchange ratio;

(f) the planned effective date of the merger;

(g) the fund rules or instruments of incorporation of the receiving UCITS.

2. The merging UCITS and the receiving UCITS may decide to include further items in the common draft terms of merger.

SECTION 2

THIRD PARTY CONTROL, INFORMATION OF UNIT-HOLDERS AND OTHER RIGHTS OF UNIT-HOLDERS

Article 38

Member States shall require that the depositaries of the merging UCITS and of the receiving UCITS verify the conformity of the common draft terms of merger with this Directive and the fund rules or instruments of incorporation of their respective UCITS.

Article 39

1. Member States shall require that an independent auditor, approved in accordance with Directive 2006/43/EC of the European Parliament and of the Council²⁹, validate the following:

(a) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the planned effective date of the merger;

(b) the calculation method of the exchange ratio.

2. The statutory auditors of the merging UCITS or the receiving UCITS shall be considered independent auditors for the purposes of paragraph 1.

3. A copy of the report of the independent auditor shall be made available on request and free of charge to the unit-holders of both the merging UCITS and the receiving UCITS.

Article 40

1. Member States shall require the merging UCITS to provide appropriate and accurate information on the proposed merger to its or their unit-holders so as to enable the unit-holders to make an informed decision of the impact of the proposal on their investment.

2. The competent authorities of the receiving UCITS home Member State shall require the receiving UCITS to provide appropriate and accurate information on the proposed merger to its unit-holders if so requested by the competent authorities of the merging UCITS home Member State in accordance with Article 36(3).

²⁹ OJ L 157, 9.6.2006, p. 87.

3. The information shall be provided to unit-holders only after the competent authorities of the merging UCITS home Member State have authorised the proposed merger under Article 36.

It shall be provided not less than 30 days before the date of the general meeting of unit-holders as referred to in Article 41 or, if no such general meeting of unit-holders is provided for under national law, not less than 30 days before the proposed effective date of the merger.

4. The information to be provided to unit-holders of the merging UCITS and, where applicable, the receiving UCITS, shall include appropriate and accurate information on the proposed merger such as to enable them to take an informed decision on the possible impact thereof on their investment and to exercise their rights under Articles 41 and 42.

It shall include at least the following:

- (a) the background to and the rationale of the proposed merger;
- (b) the possible impact of the proposed merger on unit-holders, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting and possible dilution in performance;
- (c) any specific rights unit-holders have in relation to the proposed merger, including but not limited to the right to obtain additional information, the right to obtain a copy of the report of the independent auditor on request, and the right to request the repurchase or redemption of their units without charge as specified in Article 42;
- (d) the relevant procedural aspects and the planned effective date of the merger;
- (e) a copy of the key investor information referred to in Article 73 of the receiving UCITS.

5. If the merging UCITS and, where applicable, the receiving UCITS, has been notified in accordance with Article 88, the information referred to in paragraph 4 shall be provided in the official language, or one of the official languages, of the merging UCITS host Member State and, where applicable the receiving UCITS host Member State, or in a language approved by their competent authorities. The translation shall be produced under the responsibility of the UCITS required to provide the information. It shall faithfully reflect the content of the original information.

6. The Commission may adopt implementing measures specifying the detailed content, format and way to provide the information referred to in paragraphs 1, 2 and 4.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 107 (2).

Article 41

Where the national laws of Member States require approval by the unit-holders of mergers between UCITS, Member States shall ensure that such approval does not require more than

75% of the votes actually cast by unit-holders present or represented at the general meeting of unit-holders.

The first paragraph shall be without prejudice to any presence quorum provided for under national laws.

Article 42

1. The laws of Member States shall provide that unit-holders of both the merging UCITS and the receiving UCITS have the right to request the re-purchase or redemption of their units or, where possible, to convert them into units in another UCITS with similar investment policies, without charge. This right shall become effective from the moment the unit-holders of the merging UCITS and, where applicable, those of the receiving UCITS, have been informed of the proposed merger. It shall cease to exist on the effective date of the merger.

2. For mergers between UCITS, by way of derogation from Article 79(1), Member States may allow the competent authorities to require or to allow the temporary suspension of the re-purchase or redemption of units provided that such suspension is justified for the protection of the unit-holders.

SECTION 3

COSTS AND ENTRY INTO EFFECT

Article 43

Member States shall ensure that any legal, advisory or administrative costs associated with the preparation and the completion of the merger shall not be charged, either directly or indirectly, to the merging UCITS, the receiving UCITS or any of their unit-holders.

Article 44

1. Member States shall provide that the merger shall take effect as soon as all assets, and where applicable, all liabilities have been transferred from the merging UCITS to the receiving UCITS and unit-holders in the merging UCITS have received units in the receiving UCITS in exchange for their units in the merging UCITS.

2. The depositaries of the merging UCITS and the receiving UCITS shall be responsible for the actual transfer of assets from the merging UCITS to the receiving UCITS.

3. The entry into effect of the merger shall be made public through all appropriate means in the manner prescribed by the laws of the receiving UCITS home Member State.

4. Member States shall also ensure that the entry into effect of the merger be made public on the website of both the competent authorities of the merging UCITS home Member State and of the competent authorities of the receiving UCITS home Member State.

5. A merger which has taken effect as provided for in paragraph 1 may not be declared null and void.

↓ 85/611/EEC (adapted)
⇒ new

CHAPTER VII~~SECTION V~~

Obligations concerning the investment policies of UCITS

Article ~~45~~ 49

1. The investments of a ~~unit-trust~~ ⇒ common fund ⇐ or of an investment company ☒ shall ~~☒ must~~ consist solely of ☒ any one or more of the following ☒:

↓ 2001/108/EC Art. 1 pt. 3
(adapted)

(a) transferable securities and money market instruments admitted to or dealt in on a regulated market within the meaning of ☒ point (14) of ☒ Article ☒ 4(1) of Directive 2004/39/EC ☒ ~~1(13) of the ISD, and/or~~

↓ 85/611/EEC (adapted)
→₁ 2001/108/EC Art. 1 pt. 4

(b) transferable securities →₁ and money market instruments ← dealt in on another regulated market in a Member State which operates regularly and is recognised and open to the public, ~~and/or~~

(c) transferable securities →₁ and money market instruments ← admitted to official listing on a stock exchange in a ☒ third country ☒ ~~non-member State~~ or dealt in on another regulated market in a ☒ third country ☒ ~~non-member State~~ which operates regularly and is recognised and open to the public provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or ☒ the instruments of incorporation of ☒ the investment company's instruments of incorporation, ~~and/or~~

(d) recently issued transferable securities, provided that:

↓ 85/611/EEC (adapted) → ₁ 2001/108/EC Art. 1 pt. 5

- ☒ (i) ☒ the terms of issue include an undertaking that application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognised and open to the public, provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or ☒ the instruments of incorporation of ☒ the investment company's ~~instruments of incorporation~~;
- ☒ (ii) ☒ ~~such~~ ☒ the ☒ admission ☒ referred to in point (i) ☒ is secured within a year of issue, →₁ and/or ←
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↓ 2001/108/EC Art. 1 pt. 5 (adapted)

- (e) units of UCITS authorised according to this Directive ~~and/or~~ other collective investment undertakings within the meaning of the first and second indent of Article 1(2)☒ (a) and (b) ☒, should they be ☒ established ☒ ~~situated~~ in a Member State or not, provided that:
- ☒ (i) ☒ such other collective investment undertakings are authorised under laws which provide that they are subject to supervision considered by the ☒ competent authorities of the ☒ UCITS ☒ home Member State ☒ ~~competent authorities~~ to be equivalent to that laid down in Community law, and that cooperation between authorities is sufficiently ensured;
- ☒ (ii) ☒ the level of protection for unit-holders in the other collective investment undertakings is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on assets segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of this Directive;
- ☒ (iii) ☒ the business of the other collective investment undertakings is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period;
- ☒ (iv) ☒ no more than 10 % of the UCITS' or the other collective investment undertakings' assets, whose acquisition is contemplated, can, according to their fund rules or instruments of incorporation, be invested in aggregate in units of other UCITS or other collective investment undertakings, ~~and/or~~
- (f) deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that the credit institution has its registered office in a Member State or, if the registered office of the credit institution has its registered office ~~is situated~~ in a ☒ third country ☒ ~~non-Member State~~, provided that it is subject to prudential rules considered by the

competent ~~of~~ authorities of the UCITS home Member State ~~of~~ UCITS' competent authorities as equivalent to those laid down in Community law, ~~and/or~~

- (g) financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in ~~subparagraphs~~ ~~of~~ points ~~of~~ (a), (b) and (c); ~~and/or~~ financial derivative instruments dealt in over-the-counter (hereinafter referred to as "OTC derivatives"), provided that:

~~of~~ (i) ~~of~~ the underlying consists of instruments covered by this paragraph, financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in ~~its~~ ~~of~~ the UCITS' fund rules or instruments of incorporation,

~~of~~ (ii) ~~of~~ the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the UCITS' competent authorities ~~of~~ of the UCITS home Member State ~~of~~, and;

~~of~~ (iii) ~~of~~ the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS' initiative, ~~and/or~~

- (h) money market instruments other than those dealt in on a regulated market, which fall under Article ~~of~~ 2(1)(p) ~~of~~ ~~1(9)~~, if the issue or issuer of such instruments is itself regulated for the purpose of protecting investors and savings, and provided that they are:

~~of~~ (i) ~~of~~ issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the ~~of~~ Community ~~of~~ European Union or the European Investment Bank, a ~~of~~ third country ~~of~~ non-Member State or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong, ~~or~~

~~of~~ (ii) ~~of~~ issued by an undertaking any securities of which are dealt in on regulated markets referred to in ~~subparagraphs~~ ~~of~~ points ~~of~~ (a), (b) or (c), ~~or~~

~~of~~ (iii) ~~of~~ issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by Community law, or by an establishment which is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down by Community law, ~~or~~

~~of~~ (iv) ~~of~~ issued by other bodies belonging to the categories approved by the competent authorities ~~of~~ of UCITS home Member State ~~of~~ UCITS' competent authorities provided that investments in such instruments are subject to investor protection equivalent to that laid down in ~~of~~ points (i), (ii) or (iii) ~~of~~ the first, the second or the third indent and provided that the issuer is a company whose capital and reserves amount to at least EUR 10 million and

which presents and publishes its annual accounts in accordance with ~~the~~ Council ~~the~~ Directive 78/660/EEC³⁰, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

↓ 85/611/EEC
→₁ 2001/108/EC Art. 1 pt. 6

2. However:

- (a) a UCITS may invest no more than 10 % of its assets in transferable securities →₁ and money market instruments ← other than those referred to in paragraph 1;

↓ 85/611/EEC (adapted)
⇒ new

- (~~the~~ b ~~the~~ e) an investment company may acquire movable and immovable property which is essential for the direct pursuit of its business;

- (~~the~~ c ~~the~~ d) a UCITS may not acquire either precious metals or certificates representing them.

~~the~~ 3 ~~the~~ 4. ~~Unit trusts~~ ⇒ Common funds ← and investment companies may hold ancillary liquid assets.

↓ 2001/108/EC Art. 1 pt. 9
(adapted)

Article ~~46~~ 24

1. The management or investment company ~~the~~ shall ~~the~~ ~~must~~ employ a risk-management 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~~the~~.

~~It~~ ~~the~~ shall ~~the~~ ~~must~~ employ a process for accurate and independent assessment of the value of OTC ~~the~~ derivatives ~~the~~ ~~derivative instruments~~.

It ~~the~~ shall ~~the~~ ~~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.

³⁰ ~~Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ L 222, 14.8.1978, p. 11). Directive as last amended by Directive 1999/60/EC (OJ L 162, 26.6.1999, p. 65).~~

2. ~~The~~ Member States may authorise UCITS to employ techniques and instruments relating to transferable securities and money market instruments 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.

When these operations concern the use of derivative instruments, these conditions and limits shall conform to the provisions laid down in this Directive.

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.

3. 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. This shall also apply to ~~the following~~ ☒ the third and fourth ☒ subparagraphs.

A UCITS may invest, as a part of its investment policy and within the limit laid down in Article ~~22~~ ☒ 47 ☒ (5), in financial derivative instruments provided that the exposure to the underlying assets does not exceed in aggregate the investment limits laid down in Article ~~22~~ ☒ 47 ☒ . ~~The~~ Member States may allow that, when a UCITS invests in index-based financial derivative instruments, these investments do not have to be combined to the limits laid down in Article ~~22~~ ☒ 47 ☒.

When a transferable security or money market instrument embeds a derivative, the ☒ derivative ☒ ~~latter must~~ ☒ shall ☒ be taken into account when complying with the requirements of this Article.

↓ 2001/108/EC Art. 1 pt. 9 (adapted) → ₁ 2005/1/EC Art. 9 pt. 3
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4. ~~The~~ Member States shall ☒ inform ☒ ~~send~~ the Commission ~~full information and any subsequent changes in~~ ☒ on ☒ their regulation concerning the methods used to calculate the risk exposures mentioned in paragraph 3, including the risk exposure to a counterparty in OTC derivative transactions, ~~no later than 13 February 2004~~. The Commission shall forward that information to the other Member States. →₁ Such information shall be the subject of exchanges of views within the European Securities Committee. ←

↓ 2001/108/EC Art. 1 pt. 10

Article ~~47~~ 22

1. 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.

↓ 2001/108/EC Art. 1 pt. 10
(adapted)

The risk exposure to a counterparty of the UCITS in an OTC derivative transaction may not exceed ☐ either of the following ☐ :

☐ (a) ☐ 10 % of its assets when the counterparty is a credit institution referred to in Article ~~19~~ ☐ 45 ☐ (1)(f) ~~;~~ ~~or~~

☐ (b) ☐ 5 % of its assets, in other cases.

2. Member States may raise the 5 % limit laid down in the first ☐ subparagraph ☐ ~~sentence~~ of paragraph 1 to a maximum of 10 %. However, the total value of the transferable securities and the money market instruments held by the UCITS in the issuing bodies in each of which it invests more than 5 % of its assets must not then exceed 40 % of the value of its assets. This limitation ☐ shall ☐ ~~does~~ not apply to deposits and OTC derivative transactions made with financial institutions subject to prudential supervision.

Notwithstanding the individual limits laid down in paragraph 1, a UCITS may not combine ☐ , where this would lead to investment of more than 20% of its assets in a single body, any of the following ☐ :

☐ (a) ☐ investments in transferable securities or money market instruments issued by ☐ that body; ☐ ~~;~~

☐ (b) ☐ deposits made with ☐ that body; ☐ ~~and/or~~

☐ (c) ☐ exposures arising from OTC derivative transactions undertaken with ☐ that body. ☐

~~a single body in excess of 20 % of its assets.~~

3. ~~The~~ Member States may raise the 5 % limit laid down in the first ☐ subparagraph ☐ ~~sentence~~ of paragraph 1 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 ☐ third country ☐ ~~non-Member State~~ or by public international bodies to which one or more Member States belong.

4. Member States may raise the 5 % limit laid down in the first ☐ subparagraph ☐ ~~sentence~~ of paragraph 1 to a maximum of 25 % in the case of certain bonds when these are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bond-holders. In particular, sums deriving from the issue of these bonds ☐ shall ☐ ~~must~~ be invested in conformity with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

When a UCITS invests more than 5 % of its assets in the bonds referred to in the first subparagraph and issued by one issuer, the total value of these investments ~~⊗~~ shall ~~⊗~~ ~~may~~ not exceed 80 % of the value of the assets of the UCITS.

↓ 2001/108/EC Art. 1 pt. 10 (adapted) → ₁ 2005/1/EC Art. 9 pt. 4

~~The~~ Member States shall send the Commission a list of the ~~aforementioned~~ categories of bonds ~~⊗~~ referred to in the first subparagraph ~~⊗~~ together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in ~~⊗~~ that ~~⊗~~ ~~the first~~ subparagraph, to issue bonds complying with the criteria set out above. A notice specifying the status of the guarantees offered shall be attached to these lists. The Commission shall immediately forward that information to the other Member States together with any comments which it considers appropriate, and shall make the information available to the public. →₁ Such communications may be the subject of exchanges of views within the European Securities Committee. ←

5. The transferable securities and money market instruments referred to in paragraphs 3 and 4 shall not be taken into account for the purpose of applying the limit of 40 % referred to in paragraph 2.

The limits provided for in paragraphs 1, ~~2, 3 and~~ ~~⊗~~ to ~~⊗~~ 4 may not be combined, and thus investments in transferable securities or money market instruments issued by the same body or in deposits or derivative instruments made with this body carried out in accordance with paragraphs 1, ~~2, 3 and~~ ~~⊗~~ to ~~⊗~~ 4 shall under no circumstances exceed in total 35 % of the assets of the UCITS.

Companies which are included in the same group for the purposes of consolidated accounts, as defined in accordance with Directive 83/349/EEC³¹ or in accordance with recognised international accounting rules, ~~⊗~~ shall be ~~⊗~~ ~~are~~ regarded as a single body for the purpose of calculating the limits contained in this Article.

↓ 2001/108/EC Art. 1 pt. 10

Member States may allow cumulative investment in transferable securities and money market instruments within the same group up to a limit of 20 %.

³¹ ~~Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts (OJ L 193, 18.7.1983, p. 1). Directive as last amended by the 1994 Act of Accession.~~

↓ 2001/108/EC Art. 1 pt. 11
(adapted)

Article ~~48~~ 22a

1. Without prejudice to the limits laid down in Article ~~25~~ ~~51~~ ~~47~~ , the Member States may raise the limits laid down in Article ~~22~~ ~~47~~ to a maximum of 20 % for investment in shares ~~and/or~~ debt securities issued by the same body when, according to the fund rules or instruments of incorporation, the aim of the UCITS' investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the competent authorities, on the following basis:

- ~~(a)~~ its composition is sufficiently diversified;
- ~~(b)~~ the index represents an adequate benchmark for the market to which it refers;
- ~~(c)~~ it is published in an appropriate manner.

2. Member States may raise the limit laid down in paragraph 1 to a maximum of 35 % where that proves to be justified by exceptional market conditions in particular in regulated markets where certain transferable securities or money market instruments are highly dominant. The investment up to this limit ~~shall~~ ~~is only~~ ~~be~~ permitted for a single issuer.

↓ 85/611/EEC (adapted)
→₁ 2001/108/EC Art. 1 pt. 12

Article ~~49~~ 23

1. By way of derogation from Article ~~22~~ ~~47~~ ~~and without prejudice to Article 68(3) of the Treaty~~, the Member States may authorise UCITS to invest in accordance with the principle of risk-spreading up to 100 % of their assets in different transferable securities →₁ and money market instruments ← issued or guaranteed by any Member State, its local authorities, a ~~third country~~ ~~non-Member State~~ or public international bodies of which one or more Member States are members.

The ~~UCITS~~ ~~competent authorities~~ shall grant such a derogation only if they consider that unit-holders in the UCITS have protection equivalent to that of unit-holders in UCITS complying with the limits laid down in Article ~~22~~ ~~47~~ .

↓ 85/611/EEC (adapted)
⇒ new

Such a UCITS ~~shall~~ ~~must~~ hold securities from at least six different issues, but securities from any one issue ~~shall~~ ~~may~~ not account for more than 30 % of its total assets.

2. The UCITS referred to in paragraph 1 ~~shall~~ ~~must~~ make express mention in the fund rules or in ~~the instruments of incorporation of~~ the investment company's instruments of incorporation of the ~~Member~~ States, local authorities or public international bodies issuing or guaranteeing securities in which they intend to invest more than 35 % of their assets.

~~Such~~ fund rules or instruments of incorporation ~~shall~~ ~~must~~ be approved by the competent authorities.

3. ~~In addition~~ ~~Each such~~ UCITS referred to in paragraph 1 ~~shall~~ ~~must~~ include a prominent statement in its prospectus and ~~any promotional literature~~ ~~⇒ marketing communications~~ ~~⇐~~ drawing attention to such authorisation and indicating the ~~Member~~ States, local authorities and/or public international bodies in the securities of which it intends to invest or has invested more than 35 % of its assets.

↓ 2001/108/EC Art. 1 pt. 13 (adapted)
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Article ~~50~~ ~~24~~

1. A UCITS may acquire the units of UCITS ~~and/or~~ other collective investment undertakings referred to in Article ~~49~~ ~~45~~ (1)(e), provided that no more than 10 % of its assets are invested in units of a single UCITS or other collective investment undertaking. ~~The~~ Member States may raise the limit to a maximum of 20 %.

↓ 2001/108/EC Art. 1 pt. 13

2. Investments made in units of collective investment undertakings other than UCITS may not exceed, in aggregate, 30 % of the assets of the UCITS.

↓ 2001/108/EC Art. 1 pt. 13 (adapted)
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~~The~~ Member States may allow that, when a UCITS has acquired units of UCITS ~~and/or~~ other collective investment undertakings, the assets of the respective UCITS or other collective investment undertakings do not have to be combined for the purposes of the limits laid down in Article ~~22~~ ~~47~~ .

3. When a UCITS invests in the units of other UCITS ~~and/or~~ other collective investment undertakings that are managed, directly or by delegation, 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, that management company or other company may not charge subscription or redemption fees on account of the UCITS's investment in the units of such other UCITS ~~and/or~~ collective investment undertakings.

A UCITS that invests a substantial proportion of its assets in other UCITS ~~and/or~~ collective investment undertakings shall disclose in its prospectus the maximum level of the management fees that may be charged both to the UCITS itself and to the other UCITS ~~and/or~~ collective investment undertakings in which it intends to invest. In its annual report it shall indicate the maximum proportion of management fees charged both to the UCITS itself and to the UCITS ~~and/or~~ other collective investment undertaking in which it invests.

↓ 85/611/EEC (adapted)
⇒ new

Article 51 ~~25~~

1. An investment company or a management company acting in connection with all of the ~~unit trusts~~ ⇒ common funds ⇐ which it manages and which fall within the scope of this Directive ☒ shall ☒ ~~may~~ not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.

Pending further coordination, ~~the~~ Member States shall take account of existing rules defining the principle stated in the first subparagraph under other Member States' legislation.

2. ~~Moreover, a~~ An investment company or ~~unit trust~~ ⇒ common fund ⇐ may acquire no more than:

☒ (a) ☒ 10 % of the non-voting shares of any single issuing body;

☒ (b) ☒ 10 % of the debt securities of any single issuing body;

↓ 2001/108/EC Art. 1 pt. 15(1)
(adapted)

☒ (c) ☒ 25 % of the units of any single UCITS ~~and/or~~ other collective investment undertaking within the meaning of ☒ points (a) and (b) ☒ ~~the first and second indent of Article 1(2)~~

↓ 2001/108/EC Art. 1 pt. 15(2)
(adapted)

☒ (d) ☒ 10 % of the money market instruments of any single issuing body.

↓ 2001/108/EC Art. 1 pt. 16
(adapted)

The limits laid down in ~~the second, third and fourth indents~~ ☒ points (b), (c) and (d) ☒ may be disregarded at the time of acquisition if at that time the gross amount of the debt securities or of the money market instruments, or the net amount of the securities in issue, cannot be calculated.

↓ 85/611/EEC (adapted) → ₁ 2001/108/EC Art. 1 pt. 17
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3. A Member State may waive application of paragraphs 1 and 2 as regards:

- (a) transferable securities →₁ and money market instruments ← issued or guaranteed by a Member State or its local authorities;
- (b) transferable securities →₁ and money market instruments ← issued or guaranteed by a ☒ third country ~~☒ non-Member State~~;

↓ 85/611/EEC → ₁ 2001/108/EC Art. 1 pt. 17
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- (c) transferable securities →₁ and money market instruments ← issued by public international bodies of which one or more Member States are members;

↓ 85/611/EEC (adapted)

- (d) shares held by a UCITS in the capital of a company incorporated in a ☒ third country ~~☒ non-Member State~~ investing its assets mainly in the securities of issuing bodies having their registered offices in that ☒ country ☒ ~~State~~, where under the legislation of that ☒ country ☒ ~~State~~ such a holding represents the only way in which the UCITS can invest in the securities of issuing bodies of that ☒ country ☒ ~~State~~. This derogation, however, shall apply only if in its investment policy the company from the ☒ third country ~~☒ non-Member State~~ complies with the limits laid down in Articles ☒ 47 and 50 and in paragraphs 1 and 2 of this Article ~~☒ 22, 24 and 25(1) and (2)~~. Where the limits set in Articles ☒ 47 and 50 ~~☒ 22 and 24~~ are exceeded, Article ~~26~~ ☒ 52 ☒ shall apply *mutatis mutandis*;

↓ 2001/108/EC Art. 1 pt. 18 (adapted)
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- (e) shares held by an investment company or investment companies in the capital of subsidiary companies carrying on only the business of management, advice or marketing in the country where the subsidiary is ☒ established ~~☒ located~~, in regard to the repurchase of units at unit-holders' request exclusively on its or their behalf.

↓ 85/611/EEC

Article 52 ~~26~~

↓ 2001/108/EC Art. 1 pt. 19
(adapted)

1. UCITS need not comply with the limits laid down in this ~~Chapter~~ ~~section~~ when exercising subscription rights attaching to transferable securities or money market instruments which form part of their assets.

While ensuring observance of the principle of risk spreading, ~~the~~ Member States may allow recently authorised UCITS to derogate from Articles ~~47 to 50~~ ~~22, 22a, 23 and 24~~ for six months following the date of their authorisation.

↓ 85/611/EEC (adapted)

2. If the limits referred to in paragraph 1 are exceeded for reasons beyond the control of a UCITS or as a result of the exercise of subscription rights, that UCITS ~~shall~~ ~~must~~ adopt as a priority objective for its sales transactions the remedying of that situation, taking due account of the interests of its unit-holders.

↓ new

CHAPTER VIII

Master-feeder structures

SECTION 1

SCOPE AND APPROVAL

Article 53

1. A feeder UCITS is a UCITS which invests, by way of derogation from Article 1(2)(a), Article 45, Article 47, Article 50 and Article 51(2)(c), at least 85 % of its assets in units of another UCITS ("the master UCITS") or an investment compartment thereof.

2. A feeder UCITS may hold up to 15 % of its assets in one or more of the following:

(a) ancillary liquid assets in accordance with Article 45(3);

- (b) financial derivative instruments in accordance with Article 45(1)(g) and Article 46(2) and (3).
- (c) movable and immovable property which is essential for the direct pursuit of the business, if the feeder UCITS is an investment company.

For the purposes of point (b) of the first subparagraph, the exposure of the feeder UCITS to the underlying assets as referred to in the third subparagraph of Article 46(3) shall be calculated by also taking into account the investments of the master UCITS, including the investments of the master UCITS into financial derivative instruments and their underlyings, in proportion to the feeder UCITS investment into the master UCITS.

3. A master UCITS is a UCITS which:

- (a) must have at least one feeder UCITS as unit-holder;
- (b) must not itself be a feeder UCITS;
- (c) must not hold units of a feeder UCITS.

4. By way of derogation from Article 1(2) point (a) and Article 3 point (b), if a master UCITS has at least two feeder UCITS as unit-holders, it shall not be obliged to raise capital from other investors.

If a master UCITS raises capital only from one or more feeder UCITS in a Member State other than that in which it is established, Chapter XI and Article 103(1) shall not apply.

Article 54

1. Member States shall ensure that the investment of a feeder UCITS into a given master UCITS be subject to prior approval by the competent authorities of the feeder UCITS' home Member State.

2. If the feeder UCITS already carried on activities as a UCITS, including as a feeder UCITS of a different master UCITS, the feeder UCITS shall be informed within at the latest 15 working days following the submission of a complete file, whether or not the competent authorities approved the feeder UCITS' investment into the master UCITS.

3. In the event that the feeder UCITS and the master UCITS are established in the same Member State, the competent authorities of that Member State shall grant approval if the feeder UCITS, its depositary and its auditor, as well as the master UCITS, comply with all the requirements set out in this Chapter. For such purpose, the feeder UCITS shall provide to the competent authorities of its home Member State the following documents:

- (a) the fund rules or instruments of incorporation of the feeder UCITS and the master UCITS;
- (b) the prospectus and the key investor information referred to in Article 73 of the feeder UCITS and the master UCITS;

- (c) the agreement between the feeder UCITS and the master UCITS referred to in Article 55(1);
- (d) where applicable, the information to be provided to unit-holders referred to in Article 59(1);
- (e) a declaration of the master UCITS to the effect that it does not hold any units of a feeder UCITS;
- (f) in the event that the master UCITS and the feeder UCITS have different depositaries, the information-sharing agreement referred to in Article 56(1) between their respective depositaries;
- (g) in the event that the master UCITS and the feeder UCITS have different auditors, the information-sharing agreement referred to in Article 57(1) between their respective auditors.

4. When the feeder UCITS is established in another Member State than the master UCITS, the competent authorities of the feeder UCITS' home Member State shall grant approval provided the following conditions are met:

- (a) the feeder UCITS, its depositary and its auditor comply with all the requirements set out in this Chapter and the feeder UCITS for such purpose submits the documents referred to in paragraph 3 of this Article;
- (b) the feeder UCITS demonstrates that the master UCITS is duly authorised as a UCITS, that it is not itself a feeder UCITS and does not hold any units of a feeder UCITS.

The competent authorities of the feeder UCITS' home Member State shall immediately inform those of the master UCITS, if the approval is granted or withdrawn.

SECTION 2

COMMON PROVISIONS FOR FEEDER UCITS AND MASTER UCITS

Article 55

1. Member States shall require the feeder UCITS to enter into an agreement with the master UCITS concerned in order to enable the feeder UCITS to meet the requirements laid down in this Directive.

Such agreement shall include the following particulars:

- (a) the main characteristics of the investment objective and policy of the master UCITS;
- (b) the rules which govern a possible modification of the investment objective and policy of the master UCITS;

- (c) the rights and duties of the feeder UCITS and of the master UCITS and of their respective management companies.

The feeder UCITS shall not invest in units of that master UCITS until the agreement referred to in subparagraph 1 has become effective.

2. The master UCITS and the feeder UCITS shall take appropriate measures to ensure that no units of either the master UCITS or the feeder UCITS can be issued, sold, re-purchased or redeemed for the same business day after either the master UCITS or the feeder UCITS published the issue, sale, re-purchase or redemption price of its units for that day.

3. If a master UCITS temporarily suspends the re-purchase or redemption of its units, whether at its own initiative or at the request of its competent authorities, each of its feeder UCITS is entitled to suspend the re-purchase or redemption of its units notwithstanding the conditions laid down in Article 79(2) within the same period of time as the master UCITS .

4. If a master UCITS is liquidated, the feeder UCITS shall also be liquidated, unless the competent authorities of its home Member State approve:

(a) the investment of at least 85% of the assets of the feeder UCITS in units of another master UCITS; or

(b) the amendment of its fund rules or instruments of incorporation in order to enable the feeder UCITS to convert into a UCITS which is not a feeder UCITS.

A master UCITS may only be liquidated three months after the master UCITS informed all of its feeder UCITS and the competent authorities of these feeder UCITS' home Member States of the binding decision to liquidate.

5. If a master UCITS merges with another UCITS or is divided into two or more UCITS, the feeder UCITS shall be liquidated, unless the competent authorities of the feeder UCITS' home Member State approve that the feeder UCITS:

(a) continues to be a feeder UCITS resulting from the merger or division; or

(b) invests at least 85% of its assets in units of another master UCITS not resulting from the merger or the division; or

(c) amends its fund rules or its instruments of incorporation in order to convert into a UCITS which is not a feeder UCITS.

No merger or division of a master UCITS shall become effective, unless the master UCITS provided all of its feeder UCITS and the competent authorities of these feeder UCITS' home Member States with the information referred to in or comparable with Article 40 no later than 60 days before the proposed effective date.

Unless the competent authorities of the feeder UCITS' home Member State had granted approval pursuant to point (a) of the first subparagraph, the feeder UCITS shall re-purchase or redeem all units in the master UCITS before the merger or division of the master UCITS becomes effective.

6. The Commission may adopt implementing measures specifying:

- (a) the particulars that need to be included in the agreement referred to in the first subparagraph of paragraph 1;
- (b) which measures referred to in paragraph 2 are deemed appropriate and;
- (c) the procedures for the required approvals pursuant to paragraphs 4 and 5 in case of a liquidation, merger or division of a master UCITS.

Those measures, designed to amend this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 107(2).

SECTION 3

DEPOSITARIES AND AUDITORS

Article 56

1. Member States shall require that, if the master UCITS and the feeder UCITS have different depositaries, these depositaries enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both depositaries.

The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

2. The depositary of the master UCITS shall immediately inform the feeder UCITS or, where applicable, the management company and the depositary of the feeder UCITS about any irregularities it detects with regard to the master UCITS.

3. The Commission may adopt implementing measures further specifying the following:

- (a) the particulars that need to be included in the agreement referred to in paragraph 1 subparagraph 1;
- (b) the types of irregularities referred to in paragraph 2 which are deemed to have a negative impact on the feeder UCITS.

Those measures, designed to amend this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 107(2).

Article 57

1. Member States shall require that, if the master UCITS and the feeder UCITS have different auditors, these auditors enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both auditors.

The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

2. In its audit report, the auditor of the feeder UCITS shall take into account the audit report of the master UCITS.

The auditor shall in particular report on any irregularities revealed in the audit report of the master UCITS and on their impact on the feeder UCITS.

3. The Commission may adopt implementing measures specifying the particulars that need to be included in the agreement referred to in paragraph 1 subparagraph 1.

These measures, designed to amend this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 107(2).

SECTION 4

COMPULSORY INFORMATION AND MARKETING COMMUNICATIONS BY THE FEEDER UCITS

Article 58

1. Member States shall require that, in addition to the information provided for in Schedule A of Annex I, the prospectus of the feeder UCITS contains the following information:

- (a) a declaration that the feeder UCITS is a feeder of a given master UCITS and as such permanently invests 85 % or more its assets in units of such given master UCITS;
- (b) on the investment made in accordance with Article 53(2);
- (c) a brief description of the master UCITS, its organisation, its investment objective and policy, including the risk profile;
- (d) if the feeder UCITS invests into a given investment compartment or a given unit or share class of the master UCITS, a brief description thereof;
- (e) a summary of the agreement entered into between the feeder UCITS and the master UCITS pursuant to Article 55(1);
- (f) how the unit-holders may obtain further information on the master UCITS and the agreement entered into between the feeder UCITS and the master UCITS pursuant to Article 55(1);

- (g) whether the investment objective and policy, including the risk profile and the performance of the feeder UCITS and the master UCITS are identical, or to what extent and for which reasons they differ;
- (h) a description of all remuneration or reimbursement of costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as of the aggregate charges of the feeder UCITS and the master UCITS;
- (i) a description of the tax implications of the investment into the master UCITS for the feeder UCITS.

The up-dated prospectus of the master UCITS shall be annexed to the prospectus of the feeder UCITS.

2. In addition to the information provided for in Schedule B of Annex I, the annual report of the feeder UCITS shall include a statement on the aggregate charges of the feeder UCITS and the master UCITS.

The annual and the half-yearly reports of the master UCITS shall be annexed to the annual and the half-yearly report of the feeder UCITS respectively.

3. In addition to the requirements laid down in Articles 69 and 77, the feeder UCITS shall send the prospectus, the key investor information referred in Article 73 and any amendment thereto, as well as the annual and half-yearly reports of the master UCITS, to the competent authorities of its home Member State.

4. A feeder UCITS shall disclose in any relevant marketing communications that it is a feeder UCITS of a given master UCITS and as such permanently invests 85 % or more of its assets in units of such master UCITS.

SECTION 5

CONVERSION OF EXISTING UCITS INTO FEEDER UCITS

Article 59

1. Member States shall require that, if a feeder UCITS already carries on activities as a UCITS, including a feeder UCITS of a different master UCITS, the feeder UCITS shall provide the following information to all its unit-holders:

- (a) a statement that the competent authorities of the feeder UCITS' home Member State approved the investment of the feeder UCITS in units of such master UCITS;
- (b) the key investor information referred to in Article 73 concerning the feeder UCITS and the master UCITS;
- (c) the date when the feeder UCITS is to start to invest into the master UCITS;

- (d) a statement that the unit-holders have the right to request the re-purchase or redemption of their units free of charge within 30 days; this right shall become effective from the moment the feeder UCITS has provided the information referred to in this paragraph.

This information shall be provided not less than 30 days before the date of the feeder UCITS' investment into the master UCITS pursuant to point (c) of the first subparagraph.

2. If the feeder UCITS has been notified in accordance with Article 88, the information referred to in paragraph 1 shall be provided in the official language, or one of the official languages, of the feeder UCITS host Member State or in a language approved by its competent authorities. The translation shall be produced under the responsibility of the feeder UCITS and shall faithfully reflect the content of the original information.

3. Member States shall ensure that the feeder UCITS does not invest into the units of the given master UCITS before the period of 30 days referred to in the second subparagraph of paragraph 1 has elapsed.

4. The Commission may adopt implementing measures specifying:

- (a) the format and the way to provide the information referred to in paragraph 1;
- (b) if the feeder UCITS transfers all or parts of its assets to the master UCITS in exchange for units, the procedure for valuating and auditing such a contribution in kind and the role of the depositary of the feeder UCITS in this process.

Those measures, designed to amend this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 107(2).

SECTION 6

OBLIGATIONS AND COMPETENT AUTHORITIES

Article 60

1. The feeder UCITS shall ensure that its investment into a master UCITS does not affect its ability to re-purchase or redeem its units at the request of the unit-holders or in other cases when this is in the interest of its unit-holders.

2. The feeder UCITS and, where applicable, its management company, remain obliged to act in the best interest of the unit-holders of the feeder UCITS and in doing so, shall monitor effectively the activity of the master UCITS. In performing this obligation, the feeder UCITS and, where applicable, its management company, may rely on information and documents received from the master UCITS or, where applicable, its management company, depositary and auditor, unless there is reason to doubt their accuracy.

3. Where, by virtue of an investment in the units of the master UCITS, a commission is received by the feeder UCITS, the management company of the feeder UCITS or any person

acting on behalf of either the feeder UCITS or the management company of the feeder UCITS, the commission shall be paid into the assets of the feeder UCITS.

Article 61

1. The master UCITS shall immediately inform the competent authorities of its home Member State of the identity of each feeder UCITS which invests in its units. If the master UCITS and the feeder UCITS are established in different Member States, the competent authorities of the master UCITS' home Member State shall immediately inform those of the feeder UCITS' home Member State of such investment.

2. The master UCITS shall not charge subscription or redemption fees for the investment of the feeder UCITS into its units or the divestment thereof.

3. The master UCITS shall ensure the timely availability of all information that is required according to this Directive, other Community law, the applicable national law, the fund rules or the instruments of incorporation to the feeder UCITS or, where applicable, its management company, and to the competent authorities, the depositary and the auditor of the feeder UCITS.

Article 62

1. If the master UCITS and the feeder UCITS are established in the same Member State, the competent authorities shall immediately inform the feeder UCITS of any decision, measure, observation of non-compliance with the conditions of this Chapter or of any information reported pursuant to Article 101(1) with regard to the master UCITS or, where applicable, its management company, depositary or auditor.

2. If the master UCITS and the feeder UCITS are established in different Member States, the competent authorities of the master UCITS' home Member State shall immediately communicate any decision, measure, observation of non-compliance with the conditions of this Chapter or information reported pursuant to Article 101(1) with regard to the master UCITS or, where applicable, its management company, depositary or auditor, to the competent authorities of the feeder UCITS' home Member State. The latter shall then immediately inform the feeder UCITS.

↓ 85/611/EEC

CHAPTER IX~~SECTION VI~~

↓ 85/611/EEC

⇒ new

**Obligations concerning information to be ~~supplied to unit holders~~
⇒ provided to investors ⇐**

↓ 85/611/EEC (adapted)

SECTION 1

~~A.~~ PUBLICATION OF A PROSPECTUS AND PERIODICAL REPORTS

Article 63 ~~27~~

↓ 2001/107/EC Art. 1 pt. 8
(adapted)

⇒ new

1. An investment company and, for each of the ~~unit trusts~~ ⇒ common funds ⇐ it manages, a management company, ~~must~~ ☒ shall ☒ publish ☒ the following ☒ :

↓ 2001/107/EC Art. 1 pt. 8 (new)

~~a simplified prospectus;~~

- ☒ (a) ☒ a ~~full~~ prospectus;
 - ☒ (b) ☒ an annual report for each financial year, ~~and~~
 - ☒ (c) ☒ a half-yearly report covering the first six months of the financial year.
-

↓ 85/611/EEC (adapted)

2. The annual and half-yearly reports ~~must~~ ☒ shall ☒ be published within the following time limits, with effect from the ☒ following ☒ ends of the periods to which they relate:

- ⊗ (a) ⊗ four months in the case of the annual report;
- ⊗ (b) ⊗ two months in the case of the half-yearly report.

↓ 2001/107/EC Art. 1 pt. 9
(adapted)
⇒ new

Article ~~64~~ 28

1. ~~Both the simplified and the full prospectuses~~ ⇒ The prospectus ⇐ ~~must~~ ⊗ shall ⊗ include the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto.

The ~~latter~~ ⊗ prospectus ⊗ shall include, independent of the instruments invested in, a clear and easily understandable explanation of the fund's risk profile.

↓ 2001/107/EC Art. 1 pt. 9 (new)

2. The ~~full~~ prospectus shall contain at least the information provided for in Schedule A₂ ⊗ of Annex I, ~~⊗ Annex I to this Directive~~, in so far as that information does not already appear in the fund rules or instruments of incorporation annexed to the ~~full~~ prospectus in accordance with Article ~~29~~ ⊗ 66 ⊗ (1).

~~3. The simplified prospectus shall contain in summary form the key information provided for in Schedule C, Annex I to this Directive. It shall be structured and written in such a way that it can be easily understood by the average investor. Member States may permit that the simplified prospectus be attached to the full prospectus as a removable part of it. The simplified prospectus can be used as a marketing tool designed to be used in all Member States without alterations except translation. Member States may therefore not require any further documents or additional information to be added.~~

~~4. Both the full and the simplified prospectus may be incorporated in a written document or in any durable medium having an equivalent legal status approved by the competent authorities.~~

↓ 2001/107/EC Art. 1 pt. 9
(adapted)

5 ⊗ 3 ⊗ . The annual report ~~must~~ ⊗ shall ⊗ include a balance-sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the financial year and the other information provided for in Schedule B₂ ⊗ of Annex I, ~~⊗ Annex I to this Directive~~, as well as any significant information which will enable investors to make an informed judgement on the development of the activities of the UCITS and its results.

6 ⊗ 4 ⊗ . The half-yearly report ~~must~~ ⊗ shall ⊗ include at least the information provided for in ⊗ Sections ⊗ ~~Chapters~~ I to IV of Schedule B₂ ⊗ of Annex I. ~~⊗ Annex I to this~~

~~Directive;~~ ☒ Where ☒ ~~where~~ a UCITS has paid or proposes to pay an interim dividend, the figures must indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.

↓ 2001/108/EC Art. 1 pt. 14
(adapted)
⇒ new

Article ~~65~~ 24a

1. The prospectus shall indicate in which categories of assets a UCITS is authorised to invest. It shall mention if transactions in financial derivative instruments are authorised; in this event, it ~~must~~ ☒ shall ☒ include a prominent statement indicating if these operations may be carried out for the purpose of hedging or with the aim of meeting investment goals, and the possible outcome of the use of financial derivative instruments on the risk profile.

2. ~~When~~ ☒ Where ☒ a UCITS invests principally in any category of assets defined in Article ~~49~~ ☒ 45 ☒ other than transferable securities and money market instruments or replicates a stock or debt securities index in accordance with Article ~~22a~~ ☒ 48 ☒, its prospectus and, where necessary, ~~any other promotional literature~~ ⇒ marketing communications ⇐ ~~must~~ ☒ shall ☒ include a prominent statement drawing attention to the investment policy.

3. When the net asset value of a UCITS is likely to have a high volatility due to its portfolio composition or the portfolio management techniques that may be used, its prospectus and, where necessary, ~~any other promotional literature~~ ⇒ marketing communications ⇐ ~~must~~ ☒ shall ☒ include a prominent statement drawing attention to this characteristic.

4. Upon request of an investor, the management company ~~must~~ ☒ shall ☒ also provide supplementary information relating to the quantitative limits that apply in the risk management of the UCITS, to the methods chosen to this end and to the recent evolution of the main instrument categories' risks and yields.

↓ 2001/107/EC Art. 1 pt. 10
(adapted)
⇒ new

Article ~~66~~ 29

1. The fund rules or ~~an investment company's~~ instruments of incorporation ☒ of an investment company ☒ shall form an integral part of the ~~full~~ prospectus and ~~must~~ ☒ shall ☒ be annexed thereto.

2. The documents referred to in paragraph 1 need not, however, be annexed to the ~~full~~ prospectus provided that the ~~unit-holder~~ ⇒ investor ⇐ is informed that on request he or she will be sent those documents or be apprised of the place where, in each Member State in which the units are ~~placed on the market~~ ☒ marketed ☒, he or she may consult them.

↓ 2001/107/EC Art. 1 pt. 11
(adapted)
⇒ new

Article 67 ~~30~~

The essential elements of ~~the simplified and the full prospectuses~~ ⇒ the prospectus ⇐ ~~must~~ ☒ shall ☒ be kept up to date.

↓ 85/611/EEC (adapted)

Article 68 ~~31~~

The accounting information given in the annual report ~~must~~ ☒ shall ☒ be audited by one or more persons empowered by law to audit accounts in accordance with ~~Council Directive~~ ☒ 2006/43/EC of the European Parliament and of the Council ☒ ~~84/253/EEC of 10 April 1984 based on Article 54(3) (g) of the EEC Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents~~³². The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

↓ 2001/107/EC Art. 1 pt. 12
(adapted)
⇒ new

Article 69 ~~32~~

UCITS ~~must~~ ☒ shall ☒ send their ~~simplified and full prospectuses~~ ⇒ prospectus ⇐ and any amendments thereto, as well as their annual and half-yearly reports, to the competent authorities.

↓ 2001/107/EC Art. 1 pt. 13
(new)

Article 70 ~~33~~

~~1. The simplified prospectus must be offered to subscribers free of charge before the conclusion of the contract.~~

~~In addition, the full prospectus and the latest published annual and half yearly reports shall be supplied to subscribers free of charge on request.~~

³² OJ No L 157, 9.6.2006, p. 87.

~~2. The annual and half yearly reports shall be supplied to unit holders free of charge on request.~~

~~3. The annual and half yearly reports must be available to the public at the places, or through other means approved by the competent authorities, specified in the full and simplified prospectus.~~

↓ new

1. The prospectus and the latest published annual and half-yearly reports shall be provided to investors free of charge on request.

2. The prospectus may be provided in a durable medium or in electronic form.

3. The annual and half-yearly reports shall be available to investors in the manner specified in the prospectus and in the key investor information referred to in Article 73.

4. The Commission may adopt implementing measures which define the specific conditions which need to be met when providing the prospectus in a durable medium other than paper and by means of a website which does not constitute a durable medium.

Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 107(2).

↓ 85/611/EEC (adapted)

SECTION 2

B. PUBLICATION OF OTHER INFORMATION

Article 71 ~~34~~

A UCITS ~~must~~ ☒ shall ☒ make public in an appropriate manner the issue, sale, re-purchase or redemption price of its units each time it issues, sells, re-purchases or redeems them, and at least twice a month.

The competent authorities may, however, permit a UCITS to reduce the frequency to once a month on condition that such a derogation does not prejudice the interests of the unit-holders.

Article ~~72~~³⁵

~~All publicity comprising an invitation to purchase the units of UCITS must indicate that prospectuses exist and the places where they may be obtained by the public or how the public may have access to them.~~

↓ new

All marketing communications to investors shall be clearly identifiable as such. They shall be fair, clear and not misleading and the information contained therein shall be consistent with the information contained in the prospectus and the key investor information referred to in Article 73. They shall indicate that a prospectus exists and that the key investor information referred to in Article 73 is available and specify where and in which language such information or documents may be obtained by investors or potential investors or how they may have access to them.

SECTION 3

KEY INVESTOR INFORMATION

Article 73

1. Member States shall require that an investment company and, for each of the common funds it manages, a management company draw up a short document containing key investor information.
2. Key investor information shall include appropriate product information about the essential characteristics of the UCITS concerned, which is to be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.
3. Key investor information shall include information on at least the following essential elements in respect of the UCITS concerned:
 - (a) a short description of its investment objectives and investment policy;
 - (b) past performance presentation;
 - (c) costs and associated charges ;
 - (d) risk/reward profile of the investment, including appropriate guidance on and warnings of the risks associated with investments in the relevant UCITS.

4. Key investor information shall clearly specify where and how to obtain additional information on the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly report can be obtained free of charge at any time, and the language in which such information is available to investors.

5. Key investor information shall be written in a brief manner and in non-technical language. It shall be drawn up in a common format, allowing for comparison, and shall be presented in a way that is likely to be understood by retail investors.

6. Key investor information shall be used without alterations, except translation, in all Member States where the UCITS is notified to market its units in accordance with Article 88.

7. The Commission may adopt implementing measures which define the following:

(a) the detailed content of the key investor information to be provided to investors as referred to under paragraphs 2,3 and 4;

(b) the detailed content of the key investor information to be provided to investors in the following specific cases:

(i) for UCITS having different investment compartments, the key investor information to be provided to investors subscribing to a specific investment compartment, including how to pass from one investment compartment into another and the costs related thereto;

(ii) for UCITS offering different share classes, the key investor information to be provided to investors subscribing to a specific share class;

(iii) for fund of funds structures, the key investor information to be provided to investors subscribing to a UCITS, which invests itself in other UCITS or other collective investment undertakings referred to in Article 45(1)(e);

(iv) for master-feeder structures, the key investor information to be provided to investors subscribing to a feeder UCITS;

(v) for exchange-traded UCITS, the key investor information to be provided to investors subscribing to an exchange-traded UCITS;

(vi) for structured, capital protected and other comparable UCITS, the key investor information to be provided to investors subscribing to structured, capital protected and other comparable UCITS offering a predetermined pay-off at a certain time horizon, entirely depending on certain parameters such as the evolution of a given index;

(c) the specific details of the form and presentation of the key investor information to be provided to investors as referred to under paragraph 5.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 107(2).

Article 74

1. Key investor information shall constitute pre-contractual information. It shall be fair, clear and not misleading. It shall be consistent with the relevant parts of the prospectus.
2. Member States shall ensure that a person does not incur civil liability solely on the basis of the key investor information, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. Key investor information shall contain a clear warning in this respect.

Article 75

1. Member States shall require that an investment company and, for each of the common funds it manages, a management company, which sells UCITS directly or through a tied agent to investors, delivers to investors, either directly or through their tied agent, key investor information on such UCITS in good time before their proposed subscription of units in such UCITS.
2. Member States shall require that an investment company and, for each of the common funds it manages, a management company, which does not sell UCITS directly or through a tied agent to investors, delivers key investor information to product manufacturers and intermediaries selling or advising investors on potential investments in such UCITS or in products offering exposure to such UCITS, so as to enable them to provide all relevant information on the proposed investment to their clients or potential clients, in compliance with any information obligations applicable to them under the relevant Community and national law.

Article 76

1. Member States shall allow investment companies and, for each of the common funds they manage, management companies, to deliver key investor information in a durable medium or by means of a website.
2. The Commission may adopt implementing measures which define the specific conditions which need to be met when delivering key investor information in a durable medium other than on paper and by means of a website which does not constitute a durable medium.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 107(2).

Article 77

1. UCITS shall send their key investor information and any amendments thereto, to the competent authorities of their home Member State.
2. The essential elements of key investor information shall be kept up to date.

↓ 85/611/EEC (adapted)

CHAPTER X SECTION VII

The gGeneral obligations of UCITS

↓ 85/611/EEC

Article 78 ~~36~~

1. Neither:

↓ 85/611/EEC (adapted)

⇒ new

⊗ (a) ⊗ an investment company, nor

⊗ (b) ⊗ a management company or depositary acting on behalf of a ~~unit-trust~~
⇒ common fund ⇐,

↓ 85/611/EEC

⇒ new

may borrow.

However, a UCITS may acquire foreign currency by means of a ~~≠~~"back-to-back"~~≠~~ loan.

2. By way of derogation from paragraph 1, a Member State may authorise a UCITS to borrow:

(a) up to 10%

- of its assets, in the case of an investment company, or
- of the value of the fund, in the case of a ~~unit-trust~~ ⇒ common fund ⇐,

provided that the borrowing is on a temporary basis;

↓ 85/611/EEC (adapted)

(b) up to 10 % of its assets, in the case of an investment company, provided that the borrowing is to make possible the acquisition of immovable property essential for the direct pursuit of its business; in this case the borrowing and that referred to in

subparagraph ☒ point ☒ (a) may not in any case in total exceed 15 % of the borrower's assets.

Article 79 ~~37~~

1. A UCITS ~~must~~ ☒ shall ☒ re-purchase or redeem its units at the request of any unit-holder.

2. By way of derogation from paragraph 1:

(a) a UCITS may, in the cases and according to the procedures provided for by law, the fund rules or ☒ the instruments of incorporation of ☒ the investment company's ~~instruments of incorporation~~, temporarily suspend the re-purchase or redemption of its units. Suspension may be provided for only in exceptional cases where circumstances so require, and suspension is justified having regard to the interests of the unit-holders;

(b) ~~the~~ ☒ UCITS home ☒ Member States may allow their competent authorities to require the suspension of the re-purchase or redemption of units in the interest of the unit-holders or of the public.

3. In the cases mentioned in paragraph 2(a), a UCITS ~~must~~ ☒ shall ☒ without delay communicate its decision to the competent authorities and to the authorities of all Member States in which it markets its units.

↓ 85/611/EEC (adapted) ⇒ new

Article 80 ~~38~~

The rules for the valuation of assets and the rules for calculating the sale or issue price and the re-purchase or redemption price of the units of a UCITS ~~must~~ ☒ shall ☒ be laid down in the law, in the fund rules or in ☒ the instruments of incorporation of ☒ the investment company's ~~instruments of incorporation~~.

Article 81 ~~39~~

The distribution or reinvestment of the income of a ~~unit-trust~~ ☒ common fund ☒ or of an investment company shall be effected in accordance with the law and with the fund rules or the ~~investment company's~~ instruments of incorporation ☒ of the investment company ☒.

Article 82 ~~40~~

A UCITS unit ~~may~~ ☒ shall ☒ not be issued unless the equivalent of the net issue price is paid into the assets of the UCITS within the usual time limits. This provision shall not preclude the distribution of bonus units.

Article 83 ~~41~~

1. Without prejudice to the application of Articles ~~45~~ and 46 ~~49 and 21~~, neither:

~~(a)~~ an investment company, nor

~~(b)~~ a management company or depositary acting on behalf of a ~~unit-trust~~
⇒ common fund ⇐

↓ 85/611/EEC

may grant loans or act as a guarantor on behalf of third parties.

↓ 2001/108/EC Art. 1 pt. 20
(adapted)

2. Paragraph 1 shall not prevent such undertakings from acquiring transferable securities, money market instruments or other financial instruments referred to in Article ~~49~~ ~~45~~ (1)(e), (g) and (h) which are not fully paid.

↓ 2001/108/EC Art. 1 pt. 21

Article 84 ~~42~~

Neither:

↓ 2001/108/EC Art. 1 pt. 21
(adapted)
⇒ new

~~(a)~~ an investment company, nor

~~(b)~~ a management company or depositary acting on behalf of a ~~unit-trust~~
⇒ common fund ⇐

may carry out uncovered sales of transferable securities, money market instruments or other financial instruments referred to in Article ~~49~~ ~~45~~ (1)(e), (g) and (h).

Article ~~85~~ 43

The law or the fund rules ~~must~~ ☒ shall ☒ prescribe the remuneration and the expenditure which a management company is empowered to charge to a ~~unit trust~~ ⇒ common fund ⇐ and the method of calculation of such remuneration.

The law or ~~an investment company's~~ ☒ the ☒ instruments of incorporation ☒ of an investment company ☒ ~~must~~ ☒ shall ☒ prescribe the nature of the cost to be borne by the company.

CHAPTER XI~~SECTION VII~~

Special provisions applicable to UCITS which market their units in Member States other than those in which they are ☒ established ☒ ~~situated~~

Article ~~86~~ 44

~~1. A UCITS which markets its units in another Member State must comply with the laws, regulations and administrative provisions in force in that State which do not fall within the field governed by this Directive.~~

~~2. Any UCITS may advertise its units in the Member State in which they are marketed. It must comply the provisions governing advertising in that State.~~

~~3. The provisions referred to in paragraphs 1 and 2 must be applied without discrimination.~~

1. UCITS host Member States shall ensure that UCITS can market their units within their territories upon notification under Article 88.

2. UCITS host Member States shall not impose any additional requirements or administrative procedures on UCITS as referred to in paragraph 1 in respect of the field governed by this Directive.

3. Member States shall ensure that complete information on the laws, regulations and administrative provisions which do not fall within the field governed by this Directive and which are relevant to the marketing of units of UCITS, established in another Member State within their territories, is easily accessible at distance and by electronic means. Member States shall ensure that this information is available in a language customary in the sphere of international finance, is provided in a clear and unambiguous manner and is kept up to date.

↓ 85/611/EEC (new)

Article 87 ~~45~~

~~In the case referred to in Article 44, the~~ UCITS ~~must~~ ☒ shall ☒, ~~inter alia,~~ in accordance with the laws, regulations and administrative provisions in force in the ☒ host ☒ Member State ~~of marketing~~, take the measures necessary to ensure that facilities are available in that ☒ Member ☒ State for making payments to unit-holders, re-purchasing or redeeming units and making available the information which UCITS are obliged to provide.

↓ 2001/107/EC Art. 1 pt. 15
(adapted)
⇒ new

Article 88 ~~46~~

☒ 1. ☒ If a UCITS proposes to market its units in a Member State other than that in which it is ~~situated~~ established, it ~~must~~ ☒ shall ☒ first ~~inform~~ ⇒ submit a notification letter to ⇐ the competent authorities of ~~that other~~ ⇒ its home ⇐ Member State ~~accordingly. It must simultaneously send the latter authorities:~~

The notification letter shall include information on arrangements made for marketing of units of the UCITS in that Member State.

2. A UCITS shall enclose with the notification letter, as referred to in paragraph 1, the latest version of the following:

~~an attestation by the competent authorities to the effect that it fulfils the conditions imposed by this Directive;~~

(a) its fund rules or its instruments of incorporation, its ~~full and simplified prospectuses,~~ ☒ and, ☒ where appropriate, its latest annual report and any subsequent half-yearly report, ~~and~~ ⇐ translated in accordance with the provisions of Article 89(1) (c) and (d). ⇐

~~details of the arrangements made of the marketing of its units in that other Member State~~

~~An investment company or a management company may begin to market its units in that other Member State two months after such communication, unless the authorities of the Member States concerned establish, in a reasoned decision taken before the expiry of that period of two months, that the arrangements made for the marketing of units do not comply with the provisions referred to in Article 44 (1) and Article 45.~~

↓ new

(b) its key investor information referred to in Article 73, translated in accordance with Article 89(1) (b) and (d).

3. The competent authorities of the UCITS home Member State shall verify whether the documentation submitted by the UCITS according to paragraphs 1 and 2 is complete.

The competent authorities of the UCITS home Member State shall transmit the complete documentation referred to in paragraphs 1 and 2 to the competent authorities of the Member State in which the UCITS proposes to market its units, no later than one month after the date of receipt of the notification letter. They shall enclose to the documentation an attestation that the UCITS fulfils the conditions imposed by this Directive.

Upon the transmission of the documentation, the competent authorities of the UCITS home Member State shall immediately notify the UCITS about the transmission. The UCITS may start marketing its units in the UCITS host Member State as of the date of this notification.

4. Member States shall ensure that the notification letter as referred to in paragraph 1 and the attestation as referred to in paragraph 3 are provided in a language customary in the sphere of international finance.

5. Member States shall ensure that the electronic transmission and filing of the documents referred to in paragraph 3 is accepted by their competent authorities.

6. For the purpose of the notification procedure set out in this Article, the competent authorities of the Member State in which a UCITS proposes to market its units shall not request any additional documents, certificates or information other than those provided for in this Article.

7. The UCITS home Member State shall ensure that the competent authorities of the UCITS host Member State have access, by electronic means, to the documents referred to in paragraph 2 and, if applicable, to any translations thereof and that those documents and translations are kept up to date.

8. In the event of a change in the information regarding the marketing arrangements communicated in the notification letter in accordance with paragraph 1, the UCITS shall give a written notice of this change to the competent authorities of the host Member State before implementing the change.

↓ 2001/107/EC Art. 1 pt. 16

Article ~~89~~ 47

~~If a UCITS markets its units in a Member State other than that in which it is situated, it must distribute in that other Member State, in accordance with the same procedures as those provided for in the home Member State, the full and simplified prospectuses, the annual and half-yearly reports and the other information provided for in Articles 29 and 30.~~

~~These documents shall be provided in the or one of the official languages of the host Member State or in a language approved by the competent authorities of the host Member State.~~

1. If a UCITS markets its units in a UCITS host Member State, it shall provide to investors within the territory of such Member State all information and documents which it is required pursuant to Chapter IX to provide to investors in its home Member State.

Such information and documents shall be provided to investors in compliance with the following provisions:

- (a) without prejudice to the provisions of Chapter IX, such information and/or documents shall be provided to investors in the way prescribed by the laws, regulations and/or administrative provisions of the UCITS host Member State;
- (b) key investor information referred to in Article 73 shall be translated into the official language, or one of the official languages, of the UCITS host Member State or into a language approved by the competent authorities of the UCITS host Member State;
- (c) information or documents other than key investor information referred to in Article 73 shall be translated into the official language, or one of the official languages, of the UCITS host Member State or into a language approved by the competent authorities of the UCITS host Member State or into a language customary in the sphere of international finance, at the choice of the UCITS;
- (d) translations of information and/or documents under points (b) and (c) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

2. The requirements set out in paragraph 1 shall also be applicable to any changes to the information and documents referred therein.

3. The frequency of the publication of the issue, sale, purchase or redemption price of units of UCITS according to Article 71 shall be subject to the laws, regulations and administrative provisions of the UCITS home Member State.

Article 90

1. The Commission may adopt implementing measures specifying:

- (a) the format and the scope of the information as referred to in Article 86 (3);
- (b) the application of the procedure set out in Article 88 to the marketing of units of investment compartments of UCITS when the marketing of units of such UCITS has already been notified in the UCITS host Member State in accordance with Article 88;
- (c) the application of the procedure set out in Article 88 to the marketing of new share classes of UCITS when the marketing of other share classes of such UCITS has already been notified in the UCITS host Member State in accordance with Article 88;

- (d) the facilitation of access for the competent authorities of the UCITS host Member States to the information and/or documents referred to in Article 88(1), (2) and (3) as required by Article 88 (7).

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 107(2).

2. The Commission may also adopt implementing measures specifying:

- (a) the form and contents of a standard model of the notification letter to be used by a UCITS for the purpose of notification, as referred to in Article 88(1);
- (b) the form and contents of a standard model of attestation to be used by competent authorities of Member States, as referred to in Article 88(3);
- (c) the procedure for the exchange of information and the use of electronic communication between competent authorities for the purpose of notification under the provisions of Article 88.

These measures shall be adopted in accordance with the regulatory procedure referred to in Article 107(3).

↓ 85/611/EEC (adapted)
⇒ new

Article 91 ~~48~~

For the purpose of carrying on its activities, a UCITS may use the same ~~generic name~~ ☒ reference to its legal form ☒ (such as investment company or ☒ common fund ☒ ~~unit trust~~) ☒ in its designation ☒ in the Community ☒ a UCITS host Member State ☒ as it uses in the ☒ its home ☒ Member State ~~in which it is situated. In the event of any danger of confusion, the host Member State may, for the purpose of clarification, require that the name be accompanied by certain explanatory particulars.~~

CHAPTER XI~~SECTION IX~~

Provisions concerning the authorities responsible for authorization and supervision

Article 92 ~~49~~

1. ~~The~~ Member States shall designate the authorities which are to carry out the duties provided for in this Directive. They shall inform the Commission thereof, indicating any division of duties.

2. The ~~competent~~ authorities ~~referred to in paragraph 1 must~~ shall be public authorities or bodies appointed by public authorities.

3. The authorities of the UCITS home Member State ~~in which a UCITS is situated~~ shall be competent to supervise that UCITS. However, the authorities of the UCITS host Member State ~~in which a UCITS markets its units in accordance with Article 44~~ shall be competent to supervise compliance with ~~Section VIII~~ ⇒ the provisions falling outside the field governed by the Directive and requirements set out in Articles 87 and 89. ⇐

~~4. The authorities concerned must be granted all the powers necessary to carry out their task.~~

↓ new

Article 93

1. Competent authorities shall be given all supervisory and investigatory powers that are necessary for the exercise of their functions. Such powers shall be exercised in any of the following ways:

- (a) directly; or
- (b) in collaboration with other authorities; or
- (c) under their responsibility by delegation to entities to which tasks have been delegated; or
- (d) by application to the competent judicial authorities.

2. The powers referred to in paragraph 1 shall include, at least, the rights to:

- (a) have access to any document in any form and to receive a copy of it;
- (b) demand information from any person and if necessary to summon and question a person with a view to obtaining information;
- (c) carry out on-site inspections;
- (d) require existing telephone and existing data traffic records;
- (e) require the cessation of any practice that is contrary to the provisions adopted in the implementation of this Directive;
- (f) request the freezing and/or the sequestration of assets;
- (g) request temporary prohibition of professional activity;
- (h) require authorised investment companies, management companies and depositaries to provide information;

- (i) adopt any type of measure to ensure that investment companies, management companies or depositaries continue to comply with the requirements of this Directive;
- (j) require the suspension of the repurchase or redemption of units in the interest of the unit holders or of the public;
- (k) withdraw the authorisation granted to a UCITS, a management company or a depositary;
- (l) refer matters for criminal prosecution;
- (m) allow auditors or experts to carry out verifications or investigations.

Article 94

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Without precluding rules on penalties applicable to infringements of the other national provisions adopted pursuant to this Directive, Member States shall in particular lay down effective, proportionate and dissuasive penalties concerning the duty to present key investor information in a way that is likely to be understood by retail investors according to Article 73(5).

2. Member States shall provide that the competent authorities may disclose to the public any measure or sanction that will be imposed for infringement of the provisions adopted in the implementation of this Directive, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

Article 95

1. Member States shall ensure that efficient and effective complaints and redress procedures are in place for the out-of court settlement of consumer disputes concerning the activity of UCITS using existing bodies where appropriate.

2. Member States shall ensure that the bodies referred to in paragraph 1 are not prevented by legal or regulatory provisions from cooperating effectively in the resolution of cross-border disputes

↓ 85/611/EEC (new)

Article 96 ~~50~~

~~1. The authorities of the Member States referred to in Article 49 shall collaborate closely in order to carry out their task and must for that purpose alone communicate to each other all information required.~~

1. The competent authorities of the Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties under this Directive or of exercising their powers under this Directive or under national law.

Member States shall take the necessary administrative and organisational measures to facilitate the cooperation provided for in this paragraph.

Competent authorities shall use their powers for the purpose of cooperation, even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in that Member State.

2. The competent authorities of the Member States shall immediately supply one another with the information required for the purposes of carrying out their duties under this Directive.

3. The competent authorities of one Member State may request the cooperation of the competent authorities of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation on the territory of the latter within the framework of their powers pursuant to this Directive. Where a competent authority receives a request with respect to an on-the-spot verification or an investigation, it shall:

- (a) carry out the verification or investigation itself,
- (b) allow the requesting authority to carry out the verification or investigation, or
- (c) allow auditors or experts to carry out the verification or investigation.

4. If the verification or investigation is carried out on the territory of one Member State by the competent authority of the same Member State, the competent authority of the Member State which has requested cooperation, may ask that members of its own personnel accompany the personnel carrying out the verification or investigation. The verification or investigation shall, however, be subject to the overall control of the Member State on whose territory it is conducted.

If the verification or investigation is carried out on the territory of one Member State by the competent authority of another Member State, the competent authority of the Member State on whose territory the verification or investigation is carried out may request that members of its own personnel accompany the personnel carrying out the verification or investigation.

5. Competent authorities may refuse to exchange information as provided for in paragraph (2) or to act on a request for cooperation in carrying out an investigation or on-the-spot verification as provided for in paragraph (3) only where:

- (a) such an investigation, on-the-spot verification or exchange of information might adversely affect the sovereignty, security or public policy of the Member State addressed;
- (b) judicial proceedings have already been initiated in respect of the same actions and the same persons before the authorities of the Member State addressed;

(c) final judgment has already been delivered in the Member State addressed in respect of the same persons and the same actions.

6 Competent authorities shall notify the requesting competent authorities of any decision taken under paragraph 5. This notification shall contain information about the motives of their decision.

7. Competent authorities may bring the following situations to the attention of the Committee of European Securities Regulators³³:

(a) situations where a request to exchange information as provided for in Article 104 has not been acted upon within a reasonable time or has been rejected;

(b) situations where an application to carry out an investigation or a verification as provided for in Article 105 has not been acted upon within a reasonable time or has been rejected;

(c) situations where a request for authorisation for its officials to accompany those of the competent authority of the other Member State has not been acted upon within a reasonable time or has been rejected.

8. The Commission may adopt implementing measures concerning procedures for on-the-spot verifications and investigations.

Those measures shall be adopted in accordance with the regulatory procedure referred to in Article 107(3).

↓ 95/26/EC Art. 4(7) (adapted)

Article 97

~~2~~ ~~1~~ ~~1~~. Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, ~~shall~~ be bound by the obligation of professional secrecy. Such ~~secrecy~~ ~~obligation~~ implies that no confidential information which they ~~may~~ receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that ~~UCITS~~ ~~Units~~ and management companies and depositaries (hereinafter referred to as undertakings contributing towards their business activity) cannot be individually identified, without prejudice to cases covered by criminal law.

~~Nevertheless~~ ~~However~~, when an ~~UCITS~~ ~~Units~~ or an undertaking contributing towards its business activity has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in rescue attempts may be divulged in civil or commercial proceedings.

~~2~~ ~~2~~. ~~Paragraph 1~~ shall not prevent the competent authorities of the ~~various~~ Member States from exchanging information in accordance with this Directive or other

³³ As established by Commission Decision 2001/527/EC of 6 June 2001, OJ L 191, 13 July 2001, p 43.

Directives applicable to ~~UCITS~~ ~~Units~~ or to undertakings contributing towards their business activity. That information shall be subject to the conditions of professional secrecy imposed in paragraph ~~2~~ ~~1~~.

↓ 2000/64/EC Art. 1 (adapted)

~~4~~ ~~3~~. ~~Member States may conclude cooperation agreements providing for exchange of information with the competent authorities of third countries, or with authorities or bodies of third countries, as defined~~ ~~determined~~ ~~in paragraphs 6~~ ~~5~~ of this Article ~~and 7~~ ~~Article 98(1)~~ ~~only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must~~ ~~shall~~ ~~be intended for the performance of the supervisory task of the~~ ~~those~~ ~~authorities or bodies mentioned.~~

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

↓ 95/26/EC Art. 4(6) (adapted)

~~5~~ ~~4~~. ~~Competent authorities receiving confidential information under paragraphs 2~~ ~~1~~ ~~or 3~~ ~~2~~ may use it only in the course of their duties ~~for the following purposes~~:

- ~~(a)~~ ~~to check that the conditions governing the taking-up of the business of~~ ~~UCITS~~ ~~Units~~ or of undertakings contributing towards their business activity are met and to facilitate the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms;
- ~~(b)~~ ~~to impose sanctions;~~
- ~~(c)~~ ~~in administrative appeals against decisions by the competent authorities;~~
- ~~(d)~~ ~~in court proceedings initiated under Article 54~~ ~~102~~ (2).

~~6~~ ~~5~~. ~~Paragraphs 2~~ ~~1~~ ~~and 5~~ ~~4~~ shall not preclude the exchange of information ~~between the competent authorities, within one Member State or between several Member States, which are~~:

- ~~(a) within a Member State, where there are two or more competent authorities; or~~
- ~~(b) within a Member State or between Member States, between competent authorities; and~~
 - ~~(i)~~ ~~authorities with public responsibility for the supervision of credit institutions, investment undertakings, insurance undertakings and other financial organisations and the authorities responsible for the supervision of financial markets;~~

☒ (ii) ☒ bodies involved in the liquidation or bankruptcy of ☒ UCITS ☒ ~~Units~~ and other similar procedures and of undertakings contributing towards their business activity~~;~~

☒ (iii) ☒ persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment undertakings and other financial institutions~~;~~

☒ In particular, paragraph 1 and 4 shall not preclude the performance by the competent authorities listed above of their ☒ ~~in the performance of their~~ supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions.

~~Such information~~ ☒ Information exchanged pursuant to the first subparagraph ☒ shall be subject to the conditions of professional secrecy imposed in paragraph 2 ☒ 1 ☒.

Article 98

~~7~~ ☒ 1 ☒ . Notwithstanding ~~paragraphs 2 to 5~~ ☒ Article 97(1) to (4) ☒, Member States may authorise~~ise~~ exchanges of information between the competent authorities and

↓ 95/26/EC Art. 4(7) (adapted)
→₁ 95/26/EC Art. 1 fourth indent

☒ (a) ☒ the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of →₁ ☒ UCITS ☒ ~~undertakings for collective investment in transferable securities (Units)~~ or undertakings contributing towards their business activity ← and other similar procedures~~;~~ ~~or~~

☒ (b) ☒ the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

☒ 2. ☒ Member States which have recourse to the ☒ derogation ☒ ~~option~~ provided for in the ☒ paragraph 1 ☒ ~~first subparagraph~~ shall require ~~at least~~ that ☒ at least ☒ the following conditions are met:

☒ (a) ☒ the information ~~shall be~~ ☒ is used ☒ for the purpose of performing the task of overseeing referred to in ~~the first subparagraph~~ ☒ paragraph 1 ☒ ;

☒ (b) ☒ ☒ the ☒ information received ~~in this context shall be~~ ☒ is ☒ subject to the conditions of professional secrecy imposed in ~~paragraph 2~~ ☒ Article 97(1) ☒ ;

☒ (c) ☒ where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

3. Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to ~~this paragraph~~ paragraph 1 .

4 . Notwithstanding ~~paragraphs 2~~ Article 97(1) to (4) ~~to 5~~ , Member States may, with the aim of strengthening the stability, including integrity, of the financial system, ~~authorise~~ the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

5. Member States which have recourse to the ~~derogation~~ ~~option~~ provided for in ~~the first subparagraph~~ paragraph 4 shall require ~~at least~~ that at least the following conditions are met:

(a) the information ~~shall be~~ is used for the purpose of performing the task referred to in ~~the first subparagraph~~ paragraph 4 ;

(b) the information received ~~in this context shall be~~ is subject to the conditions of professional secrecy imposed in ~~paragraph 2~~ Article 97(1) ;

(c) where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

For the purposes of point (c), the authorities or bodies referred to in paragraph 4 shall communicate to the competent authorities which have disclosed the information the names and precise responsibilities of the persons to whom it is to be sent.

6. Where, in a Member State, the authorities or bodies referred to in ~~the first subparagraph~~ paragraph 4 perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector the possibility of exchanging information provided for in ~~the first subparagraph~~ that paragraph may be extended to such persons under the conditions stipulated in ~~the second subparagraph~~ paragraph 5 .

~~In order to implement the final indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information the names and precise responsibilities of the persons to whom it is to be sent.~~

7. Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to ~~this~~ paragraph 4 .

~~Before 31 December 2000, the Commission shall draw up a report on the application of this paragraph~~

Article 99

9 1 . ~~This Article~~ Articles 97 and 98 shall not prevent a competent authority from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their tasks, nor shall those articles prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of ~~paragraph 5~~ Article 97(4) . Information received in this context shall be subject to the conditions of professional secrecy imposed in ~~this Article~~ 97(1) .

10 2 . ~~This Article~~ Articles 97 and 98 shall not prevent the competent authorities from communicating the information referred to in ~~paragraphs 2~~ Article 97(1) to (4) ~~to 5~~ to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their Member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants.

The information received in this context shall be subject to the conditions of professional secrecy imposed in ~~paragraph 2~~ Article 97(1) .

Member States shall, however, ensure that information received under ~~paragraph 3~~ Article 97(2) may not be disclosed in the circumstances referred to in ~~this paragraph~~ the first subparagraph of this paragraph without the express consent of the competent authorities which disclosed it.

11 3 . ~~In addition,~~ Notwithstanding the provisions referred to in ~~paragraphs 2~~ Article 97(1) and (4), ~~and 5,~~ Member States may, by virtue of provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of UCITS ~~Units~~ and of undertakings contributing towards their business activity, credit institutions, financial institutions, investment undertakings and insurance undertakings and to inspectors instructed by those departments.

Such disclosures may, however, be made only where necessary for reasons of prudential control.

Member States shall, however, provide that information received under ~~paragraphs 3~~ Article 97(2) and (5) ~~and 6~~ may never be disclosed in the circumstances referred to in this paragraph except with the express agreement of the competent authorities which disclosed the information.

↓ new

Article 100

The Commission may adopt implementing measures relating to the procedures for exchange of information between competent authorities.

Those measures shall be adopted in accordance with the regulatory procedure referred to in Article 107(3).

↓ 95/26/EC Art. 5 (adapted)
→₁ 95/26/EC Art. 1 fourth indent

Article ~~101~~ ~~50a~~

1. Member States shall provide at least that:

- (a) any person authorised within the meaning of Directive ~~2006/43/EC~~ ~~84/253/EEC~~³⁴, performing in an →₁ ~~UCITS~~ ~~undertaking for collective investment in transferable securities (Ucits)~~ or an undertaking contributing towards its business activity ← the task described ~~in~~ statutory audit referred to ~~in~~ Article 51 of Directive 78/660/EEC³⁵, Article 37 of Directive 83/349/EEC or Article ~~34~~ ~~68~~ of ~~this~~ Directive ~~85/611/EEC~~ or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which he has become aware while carrying out that task ~~and~~ which is liable to ~~bring about~~ any of the following :
- ~~(i)~~ ~~constitute~~ a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of →₁ ~~UCITS~~ ~~undertakings for collective investment in transferable securities (Ucits)~~ or undertakings contributing towards their business activity ← ~~;~~ ~~or~~
- ~~(ii)~~ ~~affect~~ ~~the~~ impairment of ~~the~~ continuous functioning of the →₁ ~~UCITS~~ ~~undertaking for collective investment in transferable securities (Ucits)~~ or an undertaking contributing towards its business activity ← ~~;~~ ~~or~~
- ~~(iii)~~ ~~lead to~~ ~~a~~ refusal to certify the accounts or to the expression of reservations;
- (b) ~~the~~ ~~that~~ person ~~referred to in point (a)~~ shall likewise have a duty to report any facts and decisions of which he becomes aware in the course of carrying out a task as described in point (a) in an undertaking having close links resulting from a control relationship with the →₁ ~~UCITS~~ ~~undertaking for collective investment in transferable securities (Ucits)~~ or an undertaking contributing towards its business activity, ← within which he is carrying out the abovementioned ~~that~~ task.

2. The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive ~~2006/43/EC~~ ~~84/253/EEC~~ of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information

³⁴ ~~OJ No L 126, 12. 5. 1984, p. 20.~~

³⁵ ~~OJ No L 222, 14. 8. 1978, p. 11. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).~~

imposed by contract ☒ or ☒ ~~or~~ by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

↓ 85/611/EEC (adapted)

Article 102 ~~51~~

1. The ☒ competent ☒ authorities ~~referred to in Article 49 must~~ ☒ shall ☒ give reasons for any decision to refuse authorisation, and any negative decision taken in implementation of the general measures adopted in application of this Directive, and communicate them to applicants.

2. ~~The~~ Member States shall provide that decisions taken in respect of a UCITS pursuant to laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right to apply to the courts; the same shall apply if no decision is taken within six months of ~~its~~ ☒ the ☒ submission ~~on~~ ☒ of ☒ an authorisation application made by a UCITS₂ which includes all the information required under the provisions in force.

↓ new

3. Member States shall provide that one or more of the following bodies, as determined by national law, may, in the interests of consumers and in accordance with national law, take action before the courts or competent administrative bodies to ensure that the national provisions for the implementation of this Directive are applied:

(a) public bodies or their representatives;

(b) consumer organisations having a legitimate interest in protecting consumers;

(c) professional organisations having a legitimate interest in acting to protect their members.

↓ 85/611/EEC (adapted)

⇒ new

Article 103 ~~52~~

1. Only the authorities of the ☒ UCITS home ☒ Member State ~~in which a UCITS is situated~~ shall have the power to take action against it if it infringes any law, regulation or administrative provision or any regulation laid down in the fund rules or in the ~~investment company's~~ instruments of incorporation ☒ of the investment company ☒.

~~2. Nevertheless~~ ☒ However ☒, the authorities of the ☒ UCITS host ☒ Member State ~~in which the units of a UCITS are marketed~~ may take action against it if it infringes ⇒ the laws, regulations and administrative ⇐ provisions ~~referred to in Section VIII~~ ⇒ in force on their

territory and falling outside the field governed by the Directive or the requirements set out in Articles 87 and 89 ↩.

2. ~~2.~~ Any decision to withdraw authorisation, or any other serious measure taken against a UCITS, or any suspension of re-purchase or redemption imposed upon it, ~~must~~ shall be communicated without delay by the authorities of the UCITS home Member State ~~in which the UCITS in question is situated~~ to the authorities of the other UCITS host Member States ~~in which its units are marketed~~.

↓ new

3. If the competent authorities of the UCITS host Member State have clear and demonstrable grounds for believing that a UCITS whose units are marketed within their territory is in breach of the obligations arising from the provisions adopted pursuant to this Directive which do not confer powers on the competent authorities of the UCITS host Member State, they shall refer those findings to the competent authorities of the UCITS home Member State, which shall take the appropriate measures.

4. If, despite the measures taken by the competent authorities of the UCITS home Member State or because such measures prove inadequate, or because the UCITS home Member State fails to act within a reasonable timeframe, the UCITS persists in acting in a manner that is clearly prejudicial to the interests of the UCITS host Member State's investors, the competent authorities of the UCITS host Member State, may take either of the following actions:

(a) after informing the competent authorities of the UCITS home Member State, take all the appropriate measures needed in order to protect investors, including the possibility of preventing the UCITS concerned from carrying on any further marketing of its units within their territory;

(b) bring the matter to the attention of the Committee of European Securities Regulators.

The Commission shall be informed without delay of any measure taken pursuant to point (a) of the first subparagraph.

5. Member States shall ensure that within their territories it is possible to serve the legal documents necessary for the measures which may be taken by the UCITS host Member State on UCITS pursuant to paragraphs 2 to 4.

↓ 2001/107/EC Art. 1 pt. 17
(adapted)
⇒ new

Article ~~104~~ ~~52a~~

1. Where, through the provision of services or by the establishment of branches, a management company operates in one or more management company's host Member States, the competent authorities of all the Member States concerned shall collaborate closely.

They shall supply one another on request with all the information concerning the management and ownership of such management companies that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such companies. In particular, the authorities of the ☒ management company's ☒ home Member State shall cooperate to ensure that the authorities of the ☒ management company's ☒ host Member State collect the particulars referred to in Article 66 ☒ 18 ☒ (2).

2. Insofar as it is necessary for the purpose of exercising their powers of supervision, the competent authorities of the ☒ management company's ☒ home Member State shall be informed by the competent authorities of the ☒ management company's ☒ host Member State of any measures taken by the ☒ management company's ☒ host Member State pursuant to Article 66 ☒ 18 ☒ (6) which involve penalties imposed on a management company or restrictions on a management company's activities.

Article 105 ~~52b~~

1. Each ☒ management company's ☒ host Member State shall ensure that, where a management company authorised in another Member State carries on business within its territory through a branch, the competent authorities of the management company's home Member State may, after informing the competent authorities of the ☒ management company's ☒ host Member State, themselves or through the intermediary of persons they instruct for the purpose, carry out on-the-spot verification of the information referred to in Article ~~52a~~ ☒ 104 ☒.

~~2. The competent authorities of the management company's home Member State may also ask the competent authorities of the management company's host Member State to have such verification carried out. Authorities which receive such requests must, within the framework of their powers, act upon them by carrying out the verifications themselves, by allowing the authorities who have requested them to carry them out or by allowing auditors or experts to do so.~~

~~3 ☒ 2 ☒ . This Article ☒ Paragraph 1 ☒ shall not affect the right of the competent authorities of the ☒ management company's ☒ host Member State, in discharging their responsibilities under this Directive, to carry out on-the-spot verifications of branches established within their territory.~~

↓ 85/611/EEC

CHAPTER XIII~~SECTION X~~

↓ 2005/1/EC Art. 9 pt. 5

European Securities Committee

↓ 2008/18/EC Art.1 (adapted)

Article 106 ~~53a~~

The Commission ☒ may ~~☒ shall~~ adopt technical amendments to this Directive in the following areas:

- (a) clarification of the definitions in order to ensure uniform application of this Directive throughout the Community;
- (b) alignment of terminology and the framing of definitions in accordance with subsequent acts on UCITS and related matters.

Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 107 ~~53b~~(2).

Article 107 ~~53b~~

1. The Commission shall be assisted by the European Securities Committee instituted by Commission Decision 2001/528/EC³⁶.

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

↓ new

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

³⁶ OJ L 191, 13.7.2001, p. 45. ~~Decision as amended by Decision 2004/8/EC (OJ L 3, 7.1.2004, p. 32).~~

CHAPTER XIV~~SECTION XI~~

~~Transitional provisions, d~~Derogations ☒ , transitional ☒ and final provisions

SECTION 1

DEROGATIONS

Article 108 ~~54~~

☒ 1. ☒ Solely for the purpose of Danish UCITS, *pantebreve* issued in Denmark shall be treated as equivalent to the transferable securities referred to in Article ~~19~~ ☒ 45 ☒ (1)(b).

~~Article 55~~

☒ 2. ☒ By way of derogation from Articles ☒ 19(1) and 29(1) ☒ ~~7(1) and 14(1)~~, the competent authorities may authorise those UCITS which, on ☒ 20 December 1985 ☒ ~~the date of adoption of this Directive~~, had two or more depositaries in accordance with their national law to maintain that number of depositaries if those authorities have guarantees that the functions to be performed under Articles ☒ 19(3) and 29(3) ☒ ~~7(3) and 14(3)~~ will be performed in practice.

~~Article 56~~

☒ 3. ☒ ~~1.~~ By way of derogation from Article ~~6~~ ☒ 15 ☒ , the Member States may authorise management companies to issue bearer certificates representing the registered securities of other companies.

~~2. The Member States may authorize those management companies which, on the date of adoption of this Directive, also carry on activities other than those provided for in Article 6 to continue those other activities for five years after that date.~~

~~Article 57~~

~~1. The Member States shall bring into force no later than 1 October 1989 the measures necessary for them to comply with this Directive. They shall forthwith inform the Commission thereof.~~

~~2. The Member States may grant UCITS existing on the date of implementation of this Directive a period of not more than 12 months from that date in order to comply with the new national legislation.~~

~~3. The Hellenic Republic and the Portuguese Republic shall be authorized to postpone the implementation of this Directive until 1 April 1992 at the latest.~~

~~One year before that date the Commission shall report to the Council on progress in implementing the Directive and on any difficulties which the Hellenic Republic or the Portuguese Republic may encounter in implementing the Directive by the date referred to in the first subparagraph.~~

~~The Commission shall, if necessary, propose that the Council extend the postponement by up to four years.~~

↓ 2001/107/EC Art. 2 (adapted)

Article 109

1. Investment firms, as defined in Article ~~⊗~~ 4(1) of Directive 2004/39/EC ~~⊗~~ ~~1(2) of Directive 93/22/EEC~~, authorised to carry out only the services provided for in Section ~~⊗~~ A(4) ~~⊗~~ ~~A(3)~~ and ~~⊗~~ (5) ~~⊗~~ ~~in Section C(1) and (6)~~ of the Annex to that Directive, may obtain authorisation under this Directive to manage common funds and investment companies and to qualify themselves as "management companies". In that case, such investment firms must give up the authorisation obtained under Directive ~~⊗~~ 2004/39/EC ~~⊗~~ ~~93/22/EEC~~.

2. Management companies already authorised before 13 February 2004 in their home Member State under ~~⊗~~ this ~~⊗~~ Directive ~~85/611/EEC~~ to manage UCITS in the form of common funds and investment companies shall be deemed to be authorised for the purposes of this ~~⊗~~ Article ~~⊗~~ ~~Directive~~ if the laws of those Member States provide that to take up such activity they must comply with conditions equivalent to those imposed in Articles ~~⊗~~ 7 and 8 ~~⊗~~ ~~5a and 5b~~.

~~3. Management companies, already authorised before 13 February 2004, which are not included among those referred to in paragraph 2 may continue such activity provided that, no later than 13 February 2007 and pursuant to the provisions of their home Member State, they obtain authorisation to continue such activity in accordance with the provisions adopted in implementation of this Directive.~~

~~Only the grant of such authorisation shall enable such management companies to qualify under the provisions of this Directive on the right of establishment and the freedom to provide services.~~

SECTION 2

TRANSITIONAL AND FINAL PROVISIONS

↓ 2001/108/EC Art. 2 (adapted)

Article 105

~~1. 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. The report shall in particular:~~

- ~~(a) analyse how to deepen and broaden the single market for UCITS, in particular with regard to cross-border marketing of UCITS (including third party funds), the functioning of the passport for management companies, the functioning of the simplified prospectus as an information and marketing tool, the review of the scope of ancillary activities and the possibilities for improved collaboration of supervisory authorities with respect to common interpretation and application of the Directive;~~
- ~~(b) review the scope of the Directive in terms of how it applies to different types of products (e.g. institutional funds, real estate funds, master feeder funds and hedge funds); the study should in particular focus on the size of the market for such funds, the regulation, where applicable, of these funds in the Member States and an evaluation of the need for further harmonisation of these funds;~~
- ~~(c) evaluate the organisation of funds, including the delegation rules and practices and the relationship between fund manager and depositary;~~
- ~~(d) review the investment rules for UCITS, for example the use of derivatives and other instruments and techniques relating to securities, the regulation of index funds, the regulation of money market instruments, deposits, the regulation of «fund of fund» investments, as well as the various investment limits;~~
- ~~(e) analyse the competitive situation between funds managed by management companies and «self-managed» investment companies.~~

~~In preparing its report, the Commission shall consult as widely as possible with the various industries concerned and with consumer groups and supervisory bodies.~~

~~2. Member States may grant UCITS existing on the date of entry into force of this Directive a period of not more than 60 months from that date in order to comply with the new national legislation.~~

Article ~~58~~

~~The Member States shall ensure that the Commission is informed of the texts of the main laws, regulations and administrative provisions which they adopt in the field covered by this Directive.~~



Article 110

1. Member States shall adopt and publish by [...] at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 1(3)(b), 2(1)(e), 2(1)(f), 2(1)(n), 4, 5(2), 16(5), 19(1), 19(3)(a), 19(3)(d), 19(3)(e), 34 to 44, 45(1) introductory phrase, 45(3), 49(3), 51(1), 51(2) subparagraph 1 introductory phrase, 53 to 62, 63(1), 64, 65(2), 65(3), 66, 67, 69, 70, 72, 73 to 77, 78(1)(b), 78(2)(a) second indent, 81, 83(1)(b), 84(b), 85, 86-96, 102(3), 103(1), 103(3) to (5), 105, 110 to 112 and Annex I. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from the date referred to in the first subparagraph.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive[s] repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 111

Directive 85/611/EEC, as amended by the Directives listed in Annex III, Part A, is repealed with effect from the date set out in Article 110(1), without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex III, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex IV.

Article 112

1. This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Articles 1(1), 1(2), 1(3)(a), 1(4) to 1(7), 2(1)(a) to (d), 2(1)(g) to (m), 2(1)(o), 2(1)(p), 2(2) to (7), 3, 5(1), 5(3) to (5), 6 to 15, 16(1) to (4), 16(6), 16(7), 17, 18, 19(2), 19(3)(b), 19(3)(c), 20 to 33, 45(1)(a) to (h), 45(2), 46 to 48, 49(1), 49(2), 50, 51(2) first subparagraph points (a) to (c), 51(2) second subparagraph, 52, 63(2), 65(1), 65(4), 68, 71, 78(1) except 78(1)(b), 78(2)(a) except second indent, 79, 80, 82, 83(1) except 83(1)(b), 83(2), 84 except 84(b), 97 to 99, 100, 101, 102(1), 102(2), 103(2), 104, 106, 107, 108, 109 and Annexes II, III and IV shall apply from the date set out in the second subparagraph of Article 110(1).

↓ new

2. Member States shall make sure that UCITS replace their simplified prospectus drawn up in accordance with the provisions of Directive 2001/107/EC with key investor information drawn up in accordance with Article 73 as soon as possible and in any event no later than 12 months after the date referred to in the first subparagraph of Article 110(1). During that period, the competent authorities shall continue to accept the simplified prospectus for UCITS marketed on their territory.

↓

Article 113

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

↓ 85/611/EC (adapted)
 →₁ 2001/107/EC Art. 1 pt. 18
 →₂ 2001/107/EC Art. 1 pt. 19(1)
 →₃ 2001/107/EC Art. 1 pt. 19(2)
 ⇨ new

ANNEX →₁ I ←

SCHEDULE A

1. Information concerning the unit-trust fund ⇨ common	1. Information concerning the management company	1. Information concerning the investment company
1.1. Name	1.1. Name or style, form in law, registered office and head office if different from the registered office.	1.1. Name or style, form in law, registered office and head office if different from the registered office.
1.2. Date of establishment of the unit-trust fund ⇨ common . Indication of duration, if limited.	1.2. Date of incorporation of the company. Indication of duration, if limited.	1.2. Date of the incorporation of the company. Indication of duration, if limited.
	1.3. If the company manages other unit-trusts ⇨ common funds ⇨ , indication of those other trusts ⇨ funds ⇨ .	→ ₂ 1.3. In the case of investment companies having different investment compartments, the indication of the compartments. ←
1.4. Statement of the place		1.4. Statement of the place

where the fund rules, if they are not annexed, and periodic reports may be obtained.		where the instruments of incorporation, if they are not annexed, and periodical reports may be obtained.
1.5. Brief indications relevant to unit-holders of the tax system applicable to the unit-trust ⇒ common fund ⇐ . Details of whether deductions are made at source from the income and capital gains paid by the trust ⇒ common fund ⇐ to unit-holders.		1.5. Brief indications relevant to unit-holders of the tax system applicable to the company. Details of whether deductions are made at source from the income and capital gains paid by the company to unit-holders.
1.6. Accounting and distribution dates		1.6. Accounting and distribution dates.
1.7. Names of the persons responsible for auditing the accounting information referred to in Article 34 ☒ 68 ☒ .		1.7. Names of the persons responsible for auditing the accounting information referred to in Article 34 ☒ 68 ☒ .
	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company.

	company.	
	1.9. Amount of the subscribed capital with an indication of the capital paid-up	1.9. Capital
1.10. Details of the types and main characteristics of the units and in particular: – the nature of the right (real, personal or other) represented by the unit, – original securities or certificates providing evidence of title; entry in a register or in an account, – characteristics of the units: registered or bearer. Indication of any denominations which may be provided for, – indication of unit-holders' voting rights if these exist, – circumstances in which winding-up of the unit-trust ⇒ common fund ⇐ can be decided on and winding-up procedure, in particular as regards the rights of unit-holders.	–	1.10. Details of the types and main characteristics of the units and in particular: – original securities or certificates providing evidence of title; entry in a register or in an account, – characteristics of the units: registered or bearer. Indication of any denominations which may be provided for, – indication of unit-holders' voting rights, – circumstances in which winding-up of the investment company can be decided on and winding-up procedure, in particular as regards the rights of unit-holders.

1.11.	Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.		1.11.	Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.
1.12.	Procedures and conditions of issue and sale of units.		1.12.	Procedures and conditions of issue and sale of units.
1.13.	Procedures and conditions for re-purchase or redemption of units, and circumstances in which re-purchase or redemption may be suspended.		1.13.	Procedures and conditions for re-purchase or redemption of units, and circumstances in which re-purchase or redemption may be suspended. ➔ ₃ In the case of investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases. ⬅
1.14.	Description of rules for determining and applying income.		1.14.	Description of rules for determining and applying income.
1.15.	Description of the unit trust's ⇒ common fund's ⇐ investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the unit trust		1.15.	Description of the company's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in

	⇒ common fund ⇐ .		the management of the company.
1.16.	Rules for the valuation of assets.		1.16. Rules for the valuation of assets.
1.17.	Determination of the sale or issue price and the re-purchase or redemption price of units, in particular: – the method and frequency of the calculation of those prices, – information concerning the charges relating to the sale or issue and the re-purchase or redemption of units, – the means, places and frequency of the publication of those prices.	–	1.17. Determination of the sale or issue price and the re-purchase or redemption price of units, in particular: – the method and frequency of the calculation of those prices, – information concerning the charges relating to the sale or issue and the re-purchase or redemption of units, – the means, places and frequency of the publication of those prices¹.
1.18.	Information concerning the manner, amount and calculation of remuneration payable by the unit-trust ⇒ common fund ⇐ to the management company, the depositary or third parties, and reimbursement of costs by the unit-trust ⇒ common fund ⇐ to the management company, to the depositary or to third parties.		1.18. Information concerning the manner, amount and calculation of remuneration paid by the company to its directors, and members of the administrative, management and supervisory bodies, to the depositary, or to third parties, and reimbursement of costs by the company to its directors, to the depositary or to third parties.

¹ Investment companies within the meaning of Article ~~44~~ ☒ 29 ☒ (5) of the Directive shall also indicate:

- the method and frequency of calculation of the net asset value of units,
- the means, place and frequency of the publication of that value,
- the stock exchange in the country of marketing the price on which determines the price of transactions effected outwith stock exchanges in that country.

2. Information concerning the depositary:

- 2.1. Name or style, form in law, registered office and head office if different from the registered office;
- 2.2. Main activity.

3. Information concerning the advisory firms or external investment advisers who give advice under contract which is paid for out of the assets of the UCITS:

- 3.1. Name or style of the firm or name of the adviser;
- 3.2. Material provisions of the contract with the management company or the investment company which may be relevant to the unit-holders, excluding those relating to remuneration;
- 3.3. Other significant activities.

4. Information concerning the arrangements for making payments to unit-holders, repurchasing or redeeming units and making available information concerning the UCITS. Such information must in any case be given in the Member State in which the UCITS is ☒ established ☒ ~~situated~~. In addition, where units are marketed in another Member State, such information shall be given in respect of that Member State in the prospectus published there.

↓ 2001/107/EC Art. 1 pt. 19(3)
(adapted)

5. Other investment information:

- 5.1. Historical performance of the ~~unit-trust/~~common fund or of the investment company (where applicable) — such information may be either included in or attached to the prospectus;
- 5.2. Profile of the typical investor for whom the ~~unit-trust/~~common fund or the investment company is designed.

6. Economic information:

↓ 2001/107/EC Art. 1 pt. 19(3)
(adapted)

- 6.1. Possible expenses or fees, other than the charges mentioned in ~~☒~~ point ~~☒~~ paragraph 1.17., distinguishing between those to be paid by the unit-holder and those to be paid out of the ~~unit-trust's~~ common fund's or of the investment company's assets.
-

↓ 85/611/EEC

SCHEDULE B

Information to be included in the periodic reports

I. Statement of assets and liabilities

- transferable securities,
-

↓ 85/611/EEC (adapted)

- ~~debt instruments of the type referred to in Article 19(2)(b);~~
-

↓ 85/611/EEC

- bank balances,
- other assets,
- total assets,
- liabilities,
- net asset value.

II. Number of units in circulation

III. Net asset value per unit

IV. Portfolio, distinguishing between:

- (a) transferable securities admitted to official stock exchange listing;
- (b) transferable securities dealt in on another regulated market;

↓ 85/611/EEC (adapted)

- (c) recently issued transferable securities of the type referred to in Article 49 ~~45~~ (1)(d);
- (d) other transferable securities of the type referred to in Article 49 ~~45~~ (2)(a);
- ~~(e) debt instruments treated as equivalent in accordance with Article 19(2)(b);~~

↓ 85/611/EEC
⇒ new

and analysed in accordance with the most appropriate criteria in the light of the investment policy of the UCITS (e.g. in accordance with economic, geographical or currency criteria) as a percentage of net assets; for each of the above investments the proportion it represents of the total assets of the UCITS should be stated.

Statement of changes in the composition of the portfolio during the reference period.

V. Statement of the developments concerning the assets of the UCITS during the reference period including the following:

- income from investments,
- other income,
- management charges,
- depositary's charges,
- other charges and taxes,
- net income,
- distributions and income reinvested,
- changes in capital account,
- appreciation or depreciation of investments,
- any other changes affecting the assets and liabilities of the UCITS.
- ⇒ transaction costs ⇐

VI. A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:

- the total net asset value,
- the net asset value per unit.

↓ 85/611/EEC (adapted)

VII. Details, by category of transaction within the meaning of Article 24 ~~☒~~ 46 ~~☒~~ carried out by the UCITS during the reference period, of the resulting amount of commitments.

↓ 2001/107/EC Art. 1 pt. 20 and Annex I (new)

~~SCHEDULE C~~

~~Contents of the simplified prospectus~~

~~Brief presentation of the UCITS~~

~~when the unit trust/common fund or the investment company was created and indication of the Member State where the unit trust/common fund or the investment company has been registered/incorporated,~~

~~in the case of UCITS having different investment compartments, the indication of this circumstance,~~

~~management company (when applicable),~~

~~expected period of existence (when applicable),~~

~~depository,~~

~~auditors,~~

~~financial group (e.g. a bank) promoting the UCITS,~~

~~Investment information~~

~~short definition of the UCITS' objectives,~~

↓ 2001/107/EC Art. 1 pt. 20 and Annex I (new)

~~the unit trust's/common fund's or the investment company's investment policy and a brief assessment of the fund's risk profile (including, if applicable, information according to Article 24a and by investment compartment),~~

↓ 2001/107/EC Art. 1 pt. 20 and Annex I (new)

~~historical performance of the unit trust/common fund/investment company (where applicable) and a warning that this is not an indicator of future~~

~~performance — such information may be either included in or attached to the prospectus,~~

~~profile of the typical investor the unit trust/common fund or the investment company is designed for.~~

~~Economic information~~

~~tax regime,~~

~~entry and exit commissions,~~

~~other possible expenses or fees, distinguishing between those to be paid by the unit holder and those to be paid out of the unit trust's/common fund's or the investment company's assets.~~

~~Commercial information~~

~~how to buy the units,~~

~~how to sell the units,~~

~~in the case of UCITS having different investment compartments how to pass from one investment compartment into another and the charges applicable in such cases,~~

~~when and how dividends on units or shares of the UCITS (if applicable) are distributed,~~

~~frequency and where/how prices are published or made available.~~

~~Additional information~~

~~statement that, on request, the full prospectus, the annual and half yearly reports may be obtained free of charge before the conclusion of the contract and afterwards,~~

~~competent authority,~~

~~indication of a contact point (person/department, timing, etc.) where additional explanations may be obtained if needed,~~

~~publishing date of the prospectus.~~

ANNEX II

FUNCTIONS INCLUDED IN THE ACTIVITY OF COLLECTIVE PORTFOLIO MANAGEMENT:

- Investment management.
 - Administration:
 - (a) legal and fund management accounting services;
 - (b) customer inquiries;
 - (c) valuation and pricing (including tax returns);
 - (d) regulatory compliance monitoring;
 - (e) maintenance of unit-holder register;
 - (f) distribution of income;
 - (g) unit issues and redemptions;
 - (h) contract settlements (including certificate dispatch);
 - (i) record keeping.
 - Marketing.
-

ANNEX III

Part A

Repealed Directive with list of its successive amendments (referred to in Article 106)

Council Directive 85/611/EEC

(OJ L 375, 31.12.1985, p.3)

Council Directive 88/220/EEC

(OJ L 100, 19.4.1988, p. 31)

Directive 95/26/EC of the European Parliament and of the Council
(OJ L 168, 18.7.1995, p. 7)

Article 1 fourth indent, Article 4(7) and Article 5 fifth indent only

Directive 2000/64/EC of the European Parliament and of the Council
(OJ L 290, 17.11.2000, p. 27)

Article 1 only

Directive 2001/107/EC of the European Parliament and of the Council
(OJ L 41, 13.2.2002, p. 20)

Directive 2001/108/EC of the European Parliament and of the Council
(OJ L 41, 13.2.2002, p. 35)

Directive 2004/39/EC of the European Parliament and of the Council
(OJ L 145, 30.4.2004, p. 1)

Article 66 only

Directive 2005/1/EC of the European Parliament and of the Council
(OJ L 79, 24.3.2005, p. 9)

Article 9 only

Directive 2008/ 18 /EC of the European Parliament and of the Council
(OJ L 76, 19.3.2008, p.42)

Part B

List of time-limits for transposition into national law and application (referred to in Article 78)

Directive	Time-limit for transposition	Date of application
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85/611/EEC	1 October 1989	-
88/220/EEC	1 October 1989	-
95/26/EC	18 July 1996	-
2000/64/EC	17 November 2002	-
2001/107/EC	13 August 2003	13 February 2004
2001/108/EC	13 August 2003	13 February 2004
2004/39/EC	-	30 April 2006
2005/1/EC	13 May 2005	-

ANNEX IV

CORRELATION TABLE

Directive 85/611/EEC	This Directive
Article 1(1)	Article 1(1)
Article 1(2), introductory phrase	Article 1(2), introductory phrase
Article 1(2), first and second indent	Article 1(2)(a) and (b)
Article 1(3) – (7)	Article 1(3) – (7)
Article 1(8), introductory phrase	Article 2(1)(o), introductory phrase
Article 1(8), first, second and third indent	Article 2(1)(o), points (i), (ii) and (iii)
Article 1(8), final phrase	Article 2(7)
Article 1(9)	Article 2(1)(p)
Article 1a, introductory phrase	Article 2(1), introductory phrase
Article 1a, point (1)	Article 2(1)(a)
Article 1a, point (2), first part of the phrase	Article 2(1)(b)
Article 1a, point (2), second part of the phrase	Article 2(2)
Article 1a, points (3) to (5)	Article 2(1)(c) to (e)
-	Article 2(1)(f)
Article 1a, point (6)	Article 2(1)(g)
Article 1a, point (7), first part of the phrase	Article 2(1)(h)
Article 1a, point (7), second part of the phrase	Article 2(3)
Article 1a, points (8) to (9)	Article 2(1)(i) to (j)
Article 1a, point (10), first subparagraph	Article 2(1)(k)
Article 1a, point (10), second subparagraph	Article 2(4)
Article 1a, points (11), (12) and (13)	-
Article 1a, points (14) and (15)	Article 2(1)(l) and (m)

-	Article 2(1)(n)
-	Article 2(5) to 2(6)
Article 2(1), introductory phrase	Article 3, introductory phrase
Article 2(1), first, second, third and fourth indent	Article 3(a), (b), (c) and (d)
Article 2(2)	-
Article 3	Article 4
Article 4(1) - (3)	Article 5(1) - (3)
Article 4(3a)	Article 5(4)
Article 4(4)	Article 5(5)
Article 5(1) and (2)	Article 6(1) and (2)
Article 5(3), first subparagraph, introductory phrase	Article 6(3), first subparagraph, introductory phrase
Article 5(3), first subparagraph, point (a)	Article 6(3), first subparagraph, point (a)
Article 5(3), first subparagraph, point (b), introductory words	Article 6(3), first subparagraph, point (b), introductory words
Article 5(3) , first subparagraph, point (b), first and second indent	Article 6(3) , first subparagraph, point (b)(i) and (ii)
Article 5(3), second subparagraph	Article 6(3), second subparagraph
Article 5(4)	Article 6(4)
Article 5a(1), introductory phrase	Article 7(1), introductory phrase
Article 5a(1)(a), introductory phrase	Article 7(1)(a), introductory phrase
Article 5a(1)(a), first indent	Article 7(1)(a)(i)
Article 5a(1)(a), second indent, introductory phrase	Article 7(1)(a)(ii), introductory phrase
Article 5a(1)(a), second indent, points (i), (ii) and (iii)	Article 7(1)(a)(ii), first, second and third indent
Article 5a(1)(a), third and fourth indent	Article 7(1)(a)(iii) and (iv)
Article 5a(1)(a), fifth indent	-

Article 5a(1)(b) to (d)	Article 7(1)(b) to (d)
Article 5a(2) to (5)	Article 7(2) to (5)
Article 5b	Article 8
Article 5c	Article 9
Article 5d	Article 10
Article 5e	Article 11
Article 5f(1)	Article 12(1)
Article 5f(2), introductory phrase	Article 12(2), introductory phrase
Article 5f(2), first and second indent	Article 12(2)(a) and (b)
Article 5g	Article 13
Article 5h	Article 14
Article 6	Article 15
Article 6a	Article 16
Article 6b(1)	Article 17(1)
Article 6b(2)	Article 17(2), first and second subparagraph
Article 6b(3), first subparagraph	Article 17(2), third subparagraph
Article 6b(3), second subparagraph	Article 17(3)
Article 6b(4) and (5)	Article 17(4) and (5)
Article 6c	Article 18
Article 7	Article 19
Article 8	Article 20
Article 9	Article 21
Article 10	Article 22
Article 11	Article 23
Article 12	Article 24
Article 13	Article 25
Article 13a(1), first subparagraph	Article 26(1), first subparagraph

Article 13a(1), second subparagraph, introductory phrase	Article 26(1), second subparagraph, introductory phrase
Article 13a(1), second subparagraph, first, second and third indent	Article 26(1), second subparagraph, points (a), (b) and (c)
Article 13a(1), third and fourth subparagraph	Article 26(1), third and fourth subparagraph
Article 13a(2), (3) and (4)	Article 26(2), (3) and (4)
Article 13b	Article 27
Article 13c	Article 28
Article 14	Article 29
Article 15	Article 30
Article 16	Article 31
Article 17	Article 32
Article 18	Article 33
-	Article 34
-	Article 35
-	Article 36
-	Article 37
-	Article 38
-	Article 39
-	Article 40
-	Article 41
-	Article 42
-	Article 43
-	Article 44
Article 19(1), introductory phrase	Article 45(1), introductory phrase
Article 19(1)(a), (b) and (c)	Article 45(1)(a), (b) and (c)
Article 19(1)(d), introductory words	Article 45(1)(d), introductory words
Article 19(1)(d), first and second indent	Article 45(1)(d)(i) and (ii)

Article 19(1)(e), introductory phrase	Article 45(1)(e), introductory phrase
Article 19(1)(e), first, second, third and fourth indent	Article 45(1)(e)(i), (ii), (iii) and (iv)
Article 19(1)(f)	Article 45(1)(f)
Article 19(1)(g), introductory phrase	Article 45(1)(g), introductory phrase
Article 19(1)(g), first, second and third indent	Article 45(1)(g)(i), (ii) and (iii)
Article 19(1)(h), introductory phrase	Article 45(1)(h), introductory phrase
Article 19(1)(h), first, second, third and fourth indent	Article 45(1)(h)(i), (ii), (iii) and (iv)
Article 19(2), introductory word	Article 45(2), introductory word
Article 19(2)(a)	Article 45(2)(a)
Article 19(2)(c)	Article 45(2)(b)
Article 19(2)(d)	Article 45(2)(c)
Article 19(4)	Article 45(3)
Article 21	Article 46
Article 22(1), first subparagraph	Article 47(1), first subparagraph
Article 22(1), second subparagraph, introductory phrase	Article 47(1), second subparagraph, introductory phrase
Article 22(1), second subparagraph, first and second indent	Article 47(1), second subparagraph, points (a) and (b)
Article 22(2), first subparagraph,	Article 47(2), first subparagraph
Article 22(2), second subparagraph, introductory phrase	Article 47(2), second subparagraph, introductory phrase
Article 22(2), second subparagraph, first second and third indent	Article 47(2), second subparagraph, points (a), (b) and (c)
Article 22(3) to (5)	Article 47 (3) to (5)
Article 22a(1), introductory phrase	Article 48(1), introductory phrase
Article 22a(1), first, second and third indent	Article 48(1)(a), (b) and (c)
Article 22a(2)	Article 48(2)

Article 23	Article 49
Article 24	Article 50
Article 24a	Article 65
Article 25(1)	Article 51(1)
Article 25(2), first subparagraph, introductory phrase	Article 51(2), first subparagraph, introductory phrase
Article 25(2), first subparagraph, first, second, third and fourth indent	Article 51(2) first subparagraph, points (a), (b), (c) and (d)
Article 25(2), second subparagraph	Article 51(2), second subparagraph
Article 25(3)	Article 51(3)
Article 26	Article 52
-	Article 53
-	Article 54
-	Article 55
-	Article 56
-	Article 57
-	Article 58
-	Article 59
-	Article 60
-	Article 61
-	Article 62
Article 27(1), introductory phrase	Article 63(1), introductory phrase
Article 27(1), first indent	-
Article 27(1), second, third and fourth indent	Article 63(1)(a), (b), (c)
Article 27(2), introductory phrase	Article 63(2), introductory phrase
Article 27(2), first and second indent	Article 63(2)(a) and (b)
Article 28(1) and (2)	Article 64(1) and 2
Article 28(3) and (4)	-

Article 28(5) and (6)	Article 64(3) and (4)
Article 29	Article 66
Article 30	Article 67
Article 31	Article 68
Article 32	Article 69
Article 33	Article 70
Article 34	Article 71
Article 35	Article 72
-	Article 73
-	Article 74
-	Article 75
-	Article 76
-	Article 77
Article 36(1), first subparagraph, introductory word	Article 78(1), first subparagraph, introductory word
Article 36(1), first subparagraph, first and second indent	Article 78(1) first subparagraph, points (a) and (b)
Article 36(1), first subparagraph, final words	Article 78(1), first subparagraph final words
Article 36(1), second subparagraph	Article 78(1), second subparagraph
Article 36(2)	Article 78(2)
Article 37	Article 79
Article 38	Article 80
Article 39	Article 81
Article 40	Article 82
Article 41(1), introductory phrase	Article 83(1), introductory phrase
Article 41(1), first and second indent	Article 83(1)(a) and (b)
Article 41(1), final phrase	Article 83(1), final phrase
Article 41(2)	Article 83(2)

Article 42, introductory word	Article 84, introductory word
Article 42, first and second indent	Article 84, points (a) and (b)
Article 42, final phrase	Article 84, final phrase
Article 43	Article 85
Article 44(1)	-
Article 44(2)	-
-	Article 86(1)
-	Article 86(2)
Article 44(3)	-
-	Article 86(3)
Article 45	Article 87
Article 46, first paragraph, introductory phrase	Article 88(1), first subparagraph
-	Article 88(1), second subparagraph
Article 46, first paragraph, first indent	-
Article 46, first paragraph second indent	Article 88(2)(a)
Article 46, first paragraph, third and fourth indent	Article 88(2)(a)
Article 46, first paragraph, fifth indent	-
Article 46, second paragraph	-
-	Article 88, paragraphs (3) to (8)
Article 47	Article 89
-	Article 90
Article 48	Article 91
Article 49	Article 92
-	Article 93
-	Article 94
-	Article 95

Article 50(1)	Article 96(1)
-	Article 96(2) to (8)
Article 50(2) to (4)	Article 97(1) to (3)
Article 50(5), introductory phrase	Article 97(4), introductory phrase
Article 50(5), first, second, third and fourth indent	Article 97(4)(a), (b), (c) and (d)
Article 50(6), introductory phrase	Article 97(5), first subparagraph, introductory phrase
Article 50(6)(a)	Article 97(5), first subparagraph
Article 50(6)(b), introductory phrase	Article 97(5), first subparagraph
Article 50(6)(b), first, second and third indent	Article 97(5), first subparagraph points (i), (ii) and (iii)
Article 50(6)(b), final phrase	Article 97(5), second and third subparagraph
Article 50(7), first subparagraph, introductory phrase	Article 98(1)(a) and (b)
Article 50(7), first subparagraph, first and second indent	Article 98(1), introductory phrase
Article 50(7), second subparagraph, introductory phrase	Article 98(2), introductory phrase
Article 50(7), second subparagraph, first, second and third indent	Article 98(2)(a), (b) and (c)
Article 50(7), third subparagraph	Article 98(3)
Article 50(8), first subparagraph	Article 98(4)
Article 50(8), second subparagraph, introductory phrase	Article 98(5), introductory phrase
Article 50(8), second subparagraph, first, second and third indent	Article 98(5)(a), (b) and (c)
Article 50(8), third subparagraph	Article 98(6)
Article 50(8), fourth subparagraph	Article 98(5), subparagraph 2
Article 50(8), fifth subparagraph	Article 98(7)
Article 50(8) sixth subparagraph	-

Article 50(9) to (11)	Article 99(1) to (3)
	Article 100
Article 50a(1), introductory phrase	Article 101(1), introductory phrase
Article 50a(1)(a), introductory phrase	Article 101(1)(a), introductory phrase
Article 50a(1)(a), first, second and third indent	Article 101(1)(a), points (i), (ii) and (iii)
Article 50a(1)(b)	Article 101(1)(b)
Article 50a(2)	Article 101(2)
Article 51(1) to (2)	Article 102(1) to (2)
-	Article 102(3)
Article 52(1)	Article 103(1)
Article 52(2)	Article 103(1)
Article 52(3)	Article 103(2)
-	Article 103(3) to (5)
Article 52a	Article 104
Article 52b(1)	Article 105(1)
Article 52b(2)	-
Article 52b(3)	Article 105(2)
Article 53a	Article 106
Article 53b	Article 107(1) to (2)
	Article 107 (3)
Article 54	Article 108(1)
Article 55	Article 108(2)
Article 56(1)	Article 108(3)
Article 56(2)	-
Article 57	-
-	Article 109

Article 58

-

-

Article 59

Annex I, schedule A and B

Annex I, schedule C

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—

Article 110

Article 111

Article 112

Article 113

Annex I schedule A and B

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Annex III

Annex IV

FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

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)

2. BUDGET LINES:

3. FINANCIAL IMPACT

Proposal has no financial implications. The needs for human and financial resources shall be covered within the allocation granted to the managing DG in the framework of the annual allocation procedure.

4. ANTI-FRAUD MEASURES

5. OTHER REMARKS