



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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| from:           | General Secretariat of the Council  |
| to:             | Delegations   |
| No. Cion prop.: | 12149/08 EF 47 ECOFIN 308 CODEC 1012  |
| Subject:        | 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)<br>- General approach |

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Delegations will find below the General approach resulting from agreement in COREPER on 19 November (based on doc. 15718/08 +ADD 1)<sup>1</sup>.

All changes and additions with respect to the Commission proposal (doc. 12149/08) are underlined; deletions are denoted by (...).

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<sup>1</sup> In addition, the technical references laid down in Article 110(1) and Article 110(2) have been updated (and a reference to Annex II added towards the end of the correlation table set out in Annex IV). They are evidenced in bold.

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 47(2)  
thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>1</sup>,

Whereas:

- (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)<sup>2</sup> has been substantially amended several times<sup>3</sup>. Since further amendments are to be made, it should be recast in the interests of clarity.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> 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)

<sup>3</sup> See Annex III, Part A.

- (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 21<sup>st</sup> century financial markets. The 2005 Commission Green Paper on Investments Funds<sup>1</sup> launched a public debate on the way the Directive should be adapted in order to meet these new challenges. This intense consultation process led to the largely shared conclusion that substantial amendments are needed.
- (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 facilitates the removal of the restrictions on the free movement of the units of UCITS in the Community.
- (4) Having regard to these objectives, it is desirable to provide for common basic rules for the authorisation, supervision, structure and activities of UCITS established in the Member States and the information they must publish.
- (5) The coordination of the laws of the Member States should be confined to UCITS other than of the closed-ended type which promote the sale of their units to the public in the Community. It is desirable that UCITS should be permitted as part of their investment objective 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 listed in this Directive. The selection of investments for a portfolio by means of an index is a management technique.
- (5a) Whereby a provision of the directive requires the UCITS to take action, the provision should be understood to refer to the management company in cases where the UCITS is constituted as a common fund managed by a management company and where a common fund is not in a position to act by itself because it has no legal personality of its own.

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<sup>1</sup> COM (2005) 314 final.

- (6) Authorisation granted to the management company 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 and the application of the home Member State supervision.
- (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.
- (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 and other international fora, these requirements, including the use of guarantees, should be reviewed.
- (9) By virtue of the principle of home Member State supervision, 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 by establishing branches or under the freedom to provide services. (...)

- (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 without prejudice to Chapter XI of this Directive: to distribute through a branch the units of the harmonised unit trusts/common funds managed by this company in its home Member State; to distribute the shares of the harmonised investment companies, managed by such a company, through the establishment of a branch; to distribute the units of the harmonised unit trusts/common funds or shares of the harmonised investment companies managed by other management companies; 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. When a management company distributes the units of its own harmonised unit trusts/common funds or shares of its own harmonised investment companies in host Member States, without the establishment of a branch, it should only be subject to rules regarding cross-border marketing.
- (11) The principle of home Member State supervision requires that the 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 home country supervision, only the competent authorities of the management company's home Member State can be considered competent to supervise the organisation of the management company, including all procedures and resources to perform the administrative functions mentioned in Annex II of this Directive, which should be subject to the law of the management company's home Member State. (...)

- (11a) The competent authorities which approve the UCITS should take into account fund rules or instruments of incorporation, the choice of the depositary and the ability of the management company to manage the UCITS. When the management company is located in another Member State, they should be able to rely on an attestation, by the competent authorities of the management company's home Member State, regarding the type of UCITS that the management company can manage. The authorisation of a fund should neither be conditioned to additional capital requirement at the level of the management company, nor to the location of the management company's registered office in the UCITS home Member State, nor to the location of any activity of the management company in the UCITS home Member State.
- (11b) The competent authorities of the UCITS home Member State should be competent to supervise compliance with the rules regarding the constitution and functioning of the UCITS, which should be subject to the law of the UCITS home Member State. To this effect, the competent authorities of the UCITS home Member State should be able to get information directly from the management company. To remedy any breach of the rules under their responsibility, they should be able to rely on the cooperation of the competent authorities of the management company's home Member State and, if necessary, they should be able to take action directly against the management company.
- (11c) The UCITS home Member State may provide for rules regarding the content of the unit-holder register of the UCITS. The organisation of the maintenance and the location of this register should however remain part of the organisational arrangements of the management company.

- (11d) In case the UCITS is managed by a management company authorised in a Member state different from the UCITS home Member State, such management company should set up appropriate procedures and arrangements adopted by the management company to deal with investor complaints, e.g. through appropriate provisions in distribution arrangements or through an address in the Member State of the UCITS, which need not be an address of the management company itself. It should also set up appropriate procedures and arrangements to make information available at the request of the public or the competent authorities of the UCITS home Member State, e.g. through the designation of a contact person, among the employees of the management company, for dealing with requests for information. However, such management company should not be obliged by the law of the UCITS home Member State to have a local representative in that Member State in order to fulfil these duties.
- (11e) It is necessary to provide the UCITS home Member State with all means to remedy any breach in the rules of the UCITS ; to that end, the UCITS home Member State should be able to take preventive measures as well as sanctions against the management company. As a last resort, the UCITS home Member State should have the possibility to require the management company to cease managing the UCITS. Member States should provide for the necessary provisions so as to arrange for an orderly management or liquidation of the UCITS in such a case.
- (11f) 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.

- (12) With regard to the scope of activity of management companies and in order to take into account national legislation of Member States and to permit such companies to achieve important economies of scale, it is 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 scope of the activity of the management company would not prejudice the stability of such companies. However, specific rules should be laid down preventing conflicts of interest when management companies are authorised to carry on both the business of collective and individual portfolio management.
- (13) The activity of management of individual portfolios of investments is an investment service covered by 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/EEC<sup>1</sup>. 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.
- (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 prospectus.

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



- (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 the home Member State supervision, 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.
- (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.
- (17) Articles 13 and 14 should always be complied with by authorised investment companies, either by the company directly according to Article 27 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 this Directive and thus obliged to comply with Articles 13 and 14.

- (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 may authorise only contractual funds, cross border mergers between all types of UCITS (contractual, corporate and unit trusts) should be allowed and recognised by (..) each Member State. This does not require Member States to introduce new legal forms of UCITS into their national regulation.
- (18a) This Directive covers those merger techniques which are most commonly used in (...) Member States. It does not imply that all Member States introduce all three techniques into their national laws but each Member State should recognize a transfer of assets resulting from these merger techniques. It does not prevent UCITS from using other techniques on a purely domestic (...) basis, in situations where none of the UCITS concerned by the merger has been notified for cross border marketing of its units. These mergers will remain subject to the relevant provisions of national law. Quorum rules should not discriminate between national and cross border mergers, nor should they be more stringent than those laid down for mergers of corporate entities.
- (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 (...) merging UCITS should approve the merger so as to ensure that the interests of the unit-holders who effectively change UCITS 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, including through appropriate information sharing. Since the interests of the unit-holders of the (...) receiving UCITS also need to be adequately safeguarded, they should be taken into account by the competent authorities of the receiving UCITS' home Member State (...).

- (19a) Furthermore, unit-holders of both the merging UCITS and the receiving UCITS should 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 and managed by the same management company or by another company linked to it. This right should not be subject to any additional charge, i.e. it should be subject only to the fees to be retained exclusively by the respective UCITS to cover disinvestment costs in all situations, as laid down in the respective prospectuses;
- (20) (...) Third-party control of mergers should also be ensured. 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. Either a depositary or 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 (...) in the common draft terms of merger as well as the actual exchange ratio and, where applicable, the cash payment per unit. 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 (...).
- (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)<sup>1</sup>.

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<sup>1</sup> OJ L 24, 29.1.2004, p.1.

- (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.
- (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.
- (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.
- (26) It is useful to ensure that the concept of regulated market in this Directive corresponds to that in Directive 2004/39/EC.
- (27) It is desirable to permit a UCITS to invest its assets in units of UCITS and 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 spreading. It is necessary that UCITS or other collective investment undertakings in which a UCITS invests be subject to effective supervision.
- (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 collective investment undertakings, it is necessary to lay down certain rules on quantitative limits, the disclosure of information and prevention of the cascade phenomenon.

- (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, the credit institution should be subject to prudential rules equivalent to those laid down in Community legislation.
- (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.
- (31) For prudential reasons it is necessary to avoid excessive concentration by a UCITS in investments which expose it to counterparty risk to the same entity or to entities belonging to the same group.
- (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.

- (33) With regard to over-the-counter (OTC) derivatives, requirements should be set in terms of the eligibility of counterparties and instruments, liquidity and ongoing assessment of the position. The purpose of such 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.
- (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.
- (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.
- (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 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.

- (37) 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 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.
- (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. In order to avoid undue administrative burden, provisions on notification of cross border marketing should not apply if a master UCITS does not raise capital from the public in a Member State other than that in which it is established, but only has one or more feeder UCITS in that other Member State.

- (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. Only the initial investment into the master UCITS by which the feeder UCITS exceeds the limit applicable for investing into another UCITS requires approval. In order to facilitate the effective operation of the Internal Market and to ensure the same level of investor protection throughout the Community, the conditions which have to be met and the documents and information which have to be provided for approving the feeder UCITS' investment into the master UCITS are exhaustive.
- (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. However, if both are managed by the same management company, it should be sufficient that the latter set up internal conduct of business rules. (...) An 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. The Directive should ensure that, when complying with these requirements, the depositaries or the auditors would not be in breach of any restriction on disclosure of information or of data protection.
- (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. The investment of the feeder UCITS into the master UCITS should not affect the ability of the feeder UCITS to itself re-purchase or redeem units at the request of its unit-holders and to act in the best interests of its unit-holders.



- (43) Under this Directive, unit-holders should be protected from being charged unjustified additional costs. The prohibition that master UCITS may not charge feeder UCITS subscription and redemption fees if both are managed by the same management company, reflects that general principle. The master UCITS should however be able to charge subscription and redemption fees to other investors in the master UCITS.
- (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 in order to enable them to decide whether to maintain their investment or not. Competent authorities may not require the feeder UCITS to provide more or other information than those specified.
- (44a) Whenever the competent authorities of the master UCITS are informed of an irregularity with regard to the master or detect that the master UCITS does not comply with the provisions of this Directive, they may decide, where appropriate, to take relevant actions to ensure that unit-holders of the master UCITS are informed.
- (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 as a specific document to investors free of charge, in good time before the subscription of the UCITS, 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 fully harmonised (...) 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 provide the key investor information to the relevant entities, depending on the distribution method used (direct sales or intermediated sales). (...) Intermediaries should provide key investor information to clients and potential clients.
- (47a) The right for UCITS to sell their units should be subject to their taking the necessary measures to ensure that facilities are available for making payments to unit-holders, repurchasing or redeeming units and making available the information which UCITS are obliged to provide.
- (48) The right for UCITS to sell their units in other Member States should also 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 (...)after the UCITS has (...) accessed the market of that Member State. This control can cover (...) the adequacy of arrangements made for marketing, in particular the adequacy of distribution arrangements and the obligation for marketing communications to be presented in a fair, clear and not-misleading way. This Directive should not prevent competent authorities of the host Member State from checking marketing communications (which does not include key investor information, prospectus and annual and half-yearly reports) according to national law before the UCITS can use them, but this control should not be discriminatory and should not prevent this UCITS from accessing the market.

- (50) For the purpose of enhancing 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 that specifically relate to the arrangements made for marketing of UCITS. Subject to national laws, such publication should not trigger legal liability of the Member State or its authorities publishing;
- (51) To facilitate access of UCITS to the markets of Member States, 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.
- (51a) Member States should take the necessary administrative and organisational measures to enable the cooperation between national authorities and competent authorities of other Member States, including through bilateral or multilateral agreements between those authorities.
- (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. In addition, Member States should lay down rules on penalties, which may include criminal, civil and administrative penalties, and administrative measures, applicable to infringements of this Directive and should take the measures necessary to ensure that they are implemented.
- (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.

- (53a) For the purpose of cross-border provision of services, clear competences are to be assigned to the respective supervisory authorities so as to eliminate any gaps or overlaps; this should be consistent with the definition of applicable law.
- (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 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 UCITS or an undertaking contributing towards its business activity.
- (55) The principle of home Member State supervision requires that the 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 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. (...)
- (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.
- (57) Certain behaviour, such as fraud and insider offences, 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.
- (58) It is necessary to specify the conditions under which such exchanges of information are authorised.

- (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.
- (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.
- (61) The same obligation of professional secrecy on the authorities responsible for authorising and supervising UCITS 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.
- (62) For the purpose of strengthening the prudential supervision of UCITS or of undertakings contributing towards their business activity and protection of clients of UCITS 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 UCITS or an undertaking contributing towards its business activity.
- (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 UCITS or an undertaking contributing towards its business activity.

- (64) The duty of auditors to communicate, where appropriate, to the competent authorities certain facts and decisions concerning a 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 UCITS nor an undertaking contributing towards 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.
- (64a) This Directive should not affect national rules on taxation, including arrangements that may be imposed by Member States to ensure compliance with these rules in their territory.
- (65) The Commission should be empowered to adopt the measures necessary for the implementation of this Directive. Concerning management companies, those measures are designed to specify the details regarding organisational requirements, risk management, conflicts of interest and conduct of business. Concerning depositaries, those measures are designed to specify the duties of depositaries as foreseen by the Directive in the context of the management company passport. These measures should facilitate a uniform application of the obligations of management companies and depositaries under this Directive. However, the adoption of these measures should not be a precondition to implement the right of management companies to carry on the services for which they have been authorised in their home Member State throughout the Community by establishing branches or under the freedom to provide services including the management of UCITS in another Member State.

(65a) 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 (...) scope of the information on the applicable local rules to be published by host authorities (...) and the technical details on access by host authorities to stored and updated UCITS documents (...). 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.

- (65b) 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/EC<sup>1</sup>. Powers not falling under the above category should be subject to the regulatory procedure provided in Article 5 of the same 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, and exchange of information between competent authorities.
- (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.
- (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,

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<sup>1</sup> OJ L184, 17.7.1999, p. 23. Decisions as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).



(68a) In accordance with point 34 of the Inter-institutional Agreement on better law-making<sup>1</sup>, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

HAVE ADOPTED THIS DIRECTIVE:

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<sup>1</sup> OJ C 321, 31.12.2003, p. 1

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## CHAPTER I

### General provisions and scope

#### *Article 1*

1. Member States shall apply this Directive to undertakings for collective investment in transferable securities (hereinafter referred to as UCITS) established within their territories.
2. For the purposes of this Directive, and subject to Article 3, UCITS shall be undertakings:
  - (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) of capital raised from the public and which operates on the principle of risk-spreading, and
  - (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.

Member States may allow UCITS to be constituted of several investment compartments.

3. The 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;
  - (b) "units" of UCITS shall also include shares of UCITS.
4. Investment companies the assets of which are invested through the intermediary of subsidiary companies mainly otherwise than in transferable securities shall not be subject to this Directive.

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.

6. Subject to the provisions governing capital movements and to Articles 86, 87 and 103(1), subparagraph 2, no Member State may apply any other provisions whatsoever in the field covered by this Directive to UCITS established 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 without prejudice to paragraph 6, a Member State may apply to UCITS established within its territory requirements which are stricter than or additional to those laid down in this Directive, provided that they are of general application and do not conflict with the provisions of this Directive.

## *Article 2*

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

(a) "depository" means any institution entrusted with the duties mentioned in Articles 19 and 29 and subject to the other provisions laid down in Chapter IV and Section 3 of Chapter V;

(b) "management company" means any company, the regular business of which is the management of UCITS in the form of common funds and/or of investment companies (collective portfolio management of UCITS);

(c) a "management company's home Member State" means the Member State, in which the management company's has its registered office;

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

e) a "UCITS home Member State" means the Member state in which the UCITS is authorised pursuant to Article 5;

(...)

(g) a "UCITS host Member State" means the Member State, other than the UCITS home Member State, in which the units of the common fund or of the investment company are marketed;

(h) "branch" 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;

(i) "competent authorities" means the authorities which each Member State designates under Article 92;

(j) "close links" means a situation 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/EEC<sup>1</sup> and in all the cases referred to in Article 1 (1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

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<sup>1</sup> OJ L 193, 18.7.1983, p. 1.



(k) "qualifying holdings" means any direct or indirect holding in a management company which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the management company in which that holding subsists~~;~~;

(l) "initial capital" means capital as defined in Article 57(a) and (b) of Directive 2006/48/EC of the European Parliament and of the Council<sup>1</sup>;

(m) "own funds" means own funds as defined in Title V, Chapter 2, Section 1 of Directive 2006/48/EC;

(n) "durable medium" means any instrument which enables an investor to store information addressed personally to it in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

(o) "transferable securities" 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.

(p) For the purposes of this Directive "money market instruments" shall mean instruments normally dealt in on the money market which are liquid, and have a value which can be accurately determined at any time.

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

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<sup>1</sup> OJ L 177, 30.6.2006, p. 1.

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 Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council<sup>1</sup> 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 Council<sup>2</sup> shall apply *mutatis mutandis*.
7. For the purpose of paragraph 1(o), transferable securities shall exclude the techniques and instruments referred to in Article 46.

### *Article 3*

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;

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<sup>1</sup> OJ L 390, 31.12.2004, p. 38.

<sup>2</sup> OJ L 177, 30.6.2006, p. 201.

- (c) UCITS the units of which, under the fund rules or the instruments of incorporation of the investment company, may be sold only to the public in third countries;
- (d) categories of UCITS prescribed by the regulations of the Member States in which such UCITS are established, for which the rules laid down in Chapter VII and Article 78 are inappropriate in view of their investment and borrowing policies.

*Article 4*

For the purposes of this Directive, a UCITS shall be deemed to be established in its home Member State (...).

## CHAPTER II

### Authorisation of UCITS

#### *Article 5*

1. No UCITS shall carry on activities as such unless it has been authorised by the competent authorities of its home Member State (...).

Such authorisation shall be valid for all Member States.

2. A common fund shall be authorised only if the competent authorities of its home Member State have approved the application of the management company to manage the UCITS, the fund rules and the choice of depositary. An investment company shall be authorised only if the competent authorities of its home member State have approved both its instruments of incorporation and the choice of depositary, and, where relevant, the application of the designated management company to manage the UCITS.

2a. Without prejudice to paragraph 2, if the UCITS is not established in the management company's home Member State, the competent authorities of the UCITS home Member State shall approve the application of the management company to manage the UCITS pursuant to article 17b. It must not be made a condition of authorisation that the UCITS be managed by a management company having its registered office in that Member state or that the management company performs or delegates any activities in the UCITS home Member State.

3. The competent authorities of the UCITS home Member State may not authorise a UCITS if

a) such authorities establish that the investment company does not comply with the preconditions laid down in Chapter (...) V of the Directive (...); or,

b) the management company is not authorised as a UCITS management company in its home Member State.

Without prejudice to Article 26 of this Directive, the management company or, where applicable, the investment company shall be informed, within two months of the submission of a complete application, whether or not authorisation has been granted.

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

5. Neither the management company nor the depositary may be replaced, nor may the fund rules or the instruments of incorporation of the investment company be amended, without the approval of the competent authorities of the UCITS home Member State.

6. Member States shall ensure that complete information on the laws, regulations and administrative provisions implementing this Directive which relate to the constitution and functioning of the UCITS is easily accessible at a distance or by electronic means. Member States shall ensure that this information is available, at least, in a language customary in the sphere of international finance, provided in a clear and unambiguous manner, and kept up-to-date.

## CHAPTER III

### Obligations regarding management companies

#### Section 1

#### Conditions for taking up business

##### *Article 6*

1. Access to the business of management companies shall be subject to prior official authorisation to be granted by the competent authorities of the management company's home Member State (...). 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 common funds and of investment companies shall include, for the purpose of this Directive, the functions mentioned in Annex II.

3. By way of derogation from paragraph 2, Member States may authorise management companies to provide, in addition to the management of 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;

- (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,
  - (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.

4. Articles 2(2), 12, 13 and 19 of Directive 2004/39/ shall apply to the provision of the services referred to in paragraph 3 of this Article by management companies.

#### *Article 7*

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 exceeds EUR 250 000 000, the management company shall be required to provide an additional amount of own funds; 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; the required total of the initial capital and the additional amount shall not, however, exceed EUR 10 000 000;
- (ii) for the purpose of this paragraph, the following portfolios shall be deemed to be the portfolios of the management company:
- 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,
  - investment companies for which the management company is the designated management company,
  - 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;
- (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;
- (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) if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking; the credit institution or insurance undertaking shall have its registered office in a Member State, or in a third country provided that it is subject to prudential rules considered by the competent authorities as equivalent to those laid down in Community law;



- (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; to that end, the names of these persons and of every person succeeding them in office must be communicated forthwith to the competent authorities; the conduct of the business of a management company 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, at least, the organisational structure of the management company;
- (d) both the head office and the registered office of the management company are located in the same Member State.

2. 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 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.

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

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.

2. In the case of branches of management companies that have registered offices outside the Community 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 State;
- (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 State;
- (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

### Relations with third countries

#### *Article 9*

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

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

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

### Section 3

#### Operating conditions

##### *Article 10*

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 6 and Article 7 (1) and (2).

The own funds of a management company may not fall below the level specified in Article 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 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 management company's host Member State.

##### *Article 11*

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.

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

## *Article 12*

1. Each management company's home Member State shall draw up prudential rules which management companies authorised in that Member state, 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, at least, that each transaction involving the UCITS 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 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 and between two UCITS. (...)

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

- (a) shall not be permitted to invest all or a part of the investor's portfolio in units of 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 6 (3) to the provisions laid down in Directive 97/9/EC of the European Parliament and of the Council<sup>1</sup>.

3. Without prejudice to Article 110, the Commission shall adopt, by 1<sup>st</sup> July 2010, implementing measures specifying procedures and arrangements as referred to under paragraph 1 lit. a and the structures and organizational requirements to minimize conflicts of interests as referred to under paragraph 1 lit.b.

These 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 13*

1. If the law of the management company's home Member State permits 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, all of the following preconditions shall be complied with:

- (a) the competent authorities of the management company's home Member State must be informed by the management company in an appropriate manner; the competent authorities of the management company's home Member State shall transmit the information to the competent authorities of the UCITS home Member State.
- (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;

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<sup>1</sup> OJ L 84, 26.3.1997, p. 22.

- (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;
- (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;
- (i) the UCITS' prospectuses list the functions which the management company has been permitted to delegate by the management company's home Member State .

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*

1. 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 points (a) to (e). Those principles shall ensure that a management company:

- (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.

2. Without prejudice to Article 110, the Commission shall adopt, by 1<sup>st</sup> July 2010, implementing measures, with a view to ensuring that the management company complies with the duties set out in paragraph 1, in particular to:

- (a) define the steps that management companies might reasonably be expected to take to identify, prevent, manage and/or disclose conflicts of interest as well as to establish appropriate criteria for determining the types of conflicts of interest whose existence may damage the interests of the UCITS;
- (b) establish appropriate criteria for acting honestly and fairly and with due skill, care and diligence in the best interests of the UCITS;

(c) specify the principles required to ensure that management companies employ effectively the resources and procedures that are necessary for the proper performance of their business activities.

These 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 14a*

Management companies or, where relevant, investment companies shall take the measures in accordance with Article 87 and set up appropriate procedures and arrangements to ensure that they properly deal with investor complaints and that there are no restriction for investors to exercise their rights in case the management company is authorised in a Member State different from the UCITS home Member State. Investors should be able to file complaints in their local language.

They shall also set up appropriate procedures and arrangements to make information available at the request of the public or the competent authorities of the UCITS home Member State.

## Section 4

### Right of establishment and freedom to provide services

#### *Article 15*

1. Member States shall ensure that a management company, authorised by its home 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.

If such a management company only proposes to market, without establishment of a branch, the units of the UCITS it manages as provided for in Annex II in a Member State different from the one where the UCITS has been authorised, without proposing to carry out any other activities or services, such a marketing shall only be subject to the requirements of Chapter XI.

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.

3. Subject to the conditions set out in this article, a UCITS shall be free to designate, or to be managed by, a management company authorized in another Member State in accordance with the relevant provisions of this Directive, provided such a management company fulfils the following criteria:

a) it complies with the provisions of Article 16 or Article 17;

b) it complies with the provisions of Article 17a and Article 17b.

## *Article 16*

1. In addition to meeting the conditions imposed in Articles 6 and 7, any management company wishing to establish a branch within the territory of another Member State to perform the activities for which it has been authorised shall notify the competent authorities of its home Member State.
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;
  - (b) a programme of operations setting out the activities and services according to Article 6 (2) and (3) envisaged and the organisational structure of the branch;
  - (c) the address in the management company's 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 management company's 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 two months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the management company's 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 management company's home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the management company's 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 management company's home Member State.

Where a management company wishes to carry out the service of collective portfolio management as referred to in Annex II, the competent authorities of the management company's home Member State shall attach to the documentation an attestation that the management company has been authorised pursuant to the provisions of this Directive and a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

3a. The services provided by the branch of a management company within the territory of the host Member State shall comply with the rules drawn up by the management company's host Member State pursuant to Article 14 of this Directive.

3b. The competent authorities of the management company's host Member State are responsible for supervising compliance with respect to the matters listed under paragraph 3a above.

4. Before the branch of a management company starts business, the competent authorities of the management company's host Member State shall, within two months of receiving the information referred to in paragraph 2, prepare for the supervision of the compliance of the management company with the rules under their responsibility (...).

5. On receipt of a communication from the competent authorities of the management company's 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. (...)

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 State 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.

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.

The competent authorities of the management company's home Member State shall update the information contained in the attestation mentioned in paragraph 3 whenever there is a change in the scope of the management company's authorization or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

#### *Article 17*

1. Any management company wishing to carry on the activities for which it has been authorised 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 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 6 (2) and (3) envisaged.

2. The competent authorities of 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 shall also communicate details of any applicable compensation scheme intended to protect investors. (...)

Where a management company wishes to carry out the service of collective portfolio management as referred to in Annex II, the competent authorities of the management company's home Member State shall enclose to the documentation an attestation that the management company has been authorised pursuant to the provisions of this Directive and a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

The management company may then start business in the management company's host Member State, notwithstanding the provisions of Article 17b and Article 88.

3. The services provided by the management company under the freedom to provide services shall comply with the rules drawn up by the management company's home Member State pursuant to Article 14 of this Directive.

4. Should the content of the information communicated in accordance with article 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 implementing the change. The competent authority of the management company shall update the information contained in the attestation mentioned in paragraph 2 whenever there is a change in the scope of the management company's authorization or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

(...)

## Article 17a

1. A management company which provides the service of cross border collective portfolio management under the free provision of services or by the establishment of a branch shall comply with the rules of the management company's home Member State which relate to the organization of the management company, including delegation arrangements, risk management procedures, prudential rules and supervision, procedures mentioned in Article 12 and the management company's reporting requirements. These rules may not be stricter than rules applicable to management companies conducting their activities only in their home Member State
2. The competent authorities of the management company's home Member State are responsible for supervising compliance with respect to the matters listed under paragraph 1 above.
3. A management company which provides the service of cross border collective portfolio management through the free provision of services or by the establishment of a branch shall comply with the rules of the UCITS home Member State which relate to the constitution and functioning of the UCITS, which are namely the rules applicable to:
  - a) set up and authorisation of the UCITS;
  - b) issuance and redemption of units and shares ;
  - c) investment policies and limits, including calculation of total exposure and leverage ;
  - d) restrictions on borrowing, lending and uncovered sales;
  - e) valuation of assets and accounting of the UCITS;
  - f) calculation of the issue price and/or redemption price, and rules regarding errors in the calculation of the net asset value and the related investor compensation;
  - g) distribution or reinvestment of the income;
  - h) disclosure and reporting requirements of the UCITS, including the prospectus, the key investor information and periodic reports;



- i) arrangements made for marketing;
- j) relationship with unit holders;
- k) merging and restructuring of UCITS;
- l) winding-up and liquidation of the UCITS;
- m) where applicable, content of the unit-holder register;
- n) licensing and supervision fees regarding the UCITS;
- o) exercise of unit holders' voting rights and other unit holders' rights related to items a) to m).

4. The management company shall comply with the obligations set out in the fund rules or in the instruments of incorporation, and the obligations set out in the prospectus, which shall be consistent with applicable law as referred to in par. 1 and 3.

5. The competent authorities of the UCITS home Member State are responsible for supervising compliance with respect to the matters listed under paragraph 3 and 4 above.

6. The management company shall decide and be responsible for adopting and implementing all the arrangements and organisational decisions which are necessary to ensure compliance with the rules which relate to the constitution and functioning of the UCITS and with the obligations set out in the fund rules or in the instruments of incorporation, and in the obligations set out in the prospectus.

7. The competent authorities of the management company's home Member State are responsible for supervising the adequacy of the arrangements and organisation of the management company so that the management company is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the UCITS it manages.

8. Member States shall ensure that any management company authorised in a Member State is not subject to any additional requirement established in the UCITS home Member State in respect of the matters covered by the Directive, except in the cases expressly referred to in the Directive.

*Article 17b*

1. Without prejudice to Article 5, a management company which applies to manage a UCITS established in another Member State shall provide the competent authorities of the UCITS home Member State with the following documentation:

- a) the written agreement with the depository referred to in articles 20 and 30 of this Directive ;
- b) information on delegation arrangements regarding functions of investment management and administration as referred to in Annex II.

If a management company already manages the same type of UCITS in the UCITS home Member State, reference to the documentation already provided shall be sufficient.

2. Insofar as it is necessary to ensure compliance with the rules for which they are responsible, the competent authorities of the UCITS home Member State may ask the competent authorities of the management company's home Member State for clarification and information regarding the documentation mentioned in paragraph 1 and, based on the attestation referred to in Articles 16 and 17, on whether the type of UCITS for which authorisation is requested fits with the scope of the management company's authorization. Where applicable, the competent authorities of the management company's home Member State shall provide its opinion within 10 working days of the initial request.

3. The competent authorities of the UCITS home Member State may refuse the application of the management company only if :

- a) the management company does not comply with the rules falling within their remit pursuant to article 17a of this Directive, or

- b) the management company is not authorised by the competent authorities of its home Member State to manage the type of UCITS for which authorisation is requested, or
- c) the management company has not provided the documentation referred to in paragraph 1.

Before refusing the application, the competent authorities of the UCITS home Member State should consult the competent authorities of the management company's home Member State.

4. Any subsequent material modifications of the documentation mentioned in paragraph 1 should be notified by the management company to the competent authorities of the UCITS home Member State.

#### *Article 18*

1. Management company's 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. (...)

Management company's host Member States may require management companies, carrying on business within their territories through the establishment of a branch or under the freedom to provide services, to provide them with the information necessary for the monitoring of their compliance with the rules under responsibility of the management company's host Member State that apply to them, including information regarding transactions concerning the investments of the UCITS. Those requirements may not be more stringent than those which the same Member State imposes on management companies authorized in that Member State 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 one of the rules under their responsibility, those authorities shall require the management company concerned to put an end to its irregular situation and inform the competent authorities of the management company's home Member State.

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 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 management company's host Member State.

5. If, despite the measures taken by the management company's 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 management company's host Member State, the latter may, after informing the competent authorities of the management company's home Member State, take appropriate measures, including those referred to in Articles 93 and 94, to prevent or to penalise further irregularities and, insofar as necessary, to prevent that management company from initiating any further transaction within its territory. Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on management companies. Where the service provided within the management company's host Member State is the management of a UCITS, the management company's host Member State may require the management company to cease managing this UCITS.

(...)

7. Any measure adopted pursuant to paragraphs 4 and 5 (...) involving measures or penalties (...) shall 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 management company's 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 shall 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. The competent authorities of the management company's home Member State shall consult the competent authorities of the UCITS home Member State before withdrawing the authorisation of the management company. In such cases, the competent authorities of the UCITS home Member State shall take appropriate measures to safeguard investors' interests. These measures can include decisions preventing the management company concerned from initiating any further transactions within its territory and to safeguard investors' interests.

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

10. Member States shall inform the Commission of the number and type of cases in which there have been refusals pursuant to Article 16 and 17b or measures have been taken in accordance with paragraph 5 of this Article.

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

## CHAPTER IV

### Obligations regarding the depositary

#### *Article 19*

1. A common fund's assets must be entrusted to a depositary for safe-keeping.
2. A depositary's liability as referred to in Article 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 shall:
  - (a) ensure that the sale, issue, re-purchase, redemption and cancellation of units effected on behalf of a 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 common fund's assets any consideration is remitted to it within the usual time limits;
  - (e) ensure that a common fund's income is applied in accordance with the law and the fund rules.

#### *Article 20*

1. A depositary shall either have its registered office in the UCITS home Member State or be established in that Member State if its registered office is in another Member State.
2. A depositary shall be an institution which is subject to prudential regulation and on-going supervision. It 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. Member States shall determine which of the categories of institutions referred to in paragraph 2 shall be eligible to be depositaries.

4. If the management company's home Member State is not the UCITS home Member State, the depositary shall sign a written agreement with the management company regulating the flow of information deemed necessary to allow it to perform the functions referred to in Article 19 of this Directive and in other laws, regulations and administrative provisions which are relevant for depositaries in the UCITS home Member State.

The depositary shall enable the competent authorities of the UCITS home Member State to obtain on request all information, which the depositary has obtained while discharging its duties, and which are necessary for the competent authorities to supervise compliance of the UCITS with the requirements under this Directive.

5. The Commission may adopt implementing measures on the measures to be taken by a depositary in order to fulfill its duties regarding a UCITS managed by a management company situated in another Member state, including the particulars that need to be included in the standard agreements to be used by the depositary and the management company as referred to in paragraph 4.

These 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 21*

A depositary shall, in accordance with the national law of the UCITS home Member State, 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*

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 shall act independently and solely in the interest of the unit-holders.

*Article 23*

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.



## CHAPTER V

### Obligations regarding investment companies

#### Section 1

#### Conditions for taking up business

##### *Article 24*

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

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

The registered office of the investment company must be situated in the investment company's home Member State.

##### *Article 25*

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

##### *Article 26*

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, 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 conduct of an investment company's business must be decided by at least two persons meeting such conditions; 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) 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 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.

2. In case the investment company has not designated a management company, the investment company 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

### Operating conditions

#### *Article 27*

Articles 13 and 14 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*

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, 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 3

### Obligations regarding the depositary

#### *Article 29*

1. An investment company's assets shall be entrusted to a depositary for safe-keeping.
2. A depositary's liability as referred to in Article 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 shall ensure the following:
  - (a) 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) that in transactions involving a company's assets any consideration is remitted to it within the usual time limits;
  - (c) that a company's income is applied in accordance with the law and its instruments of incorporation.
4. Investment company's home Member States may decide that investment companies established on their 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 shall not apply to such companies. However, the rules for the valuation of such companies' assets shall be stated in law or in their instruments of incorporation.

5. Investment company's home Member States may decide that investment companies established on their 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 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 the derogation provided for in the first subparagraph only if it considers that unit-holders have protection equivalent to that of unit-holders in UCITS which have depositaries within the meaning of this Directive.

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

- (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 shall ensure that the calculation of the value of units is effected in accordance with the law and the instruments of incorporation of the company.

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

6. 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*

1. A depositary shall 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 depositary shall be an institution which is subject to prudential regulation and on-going supervision.

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

4. If the management company's home Member State is not the UCITS home Member State, the depositary shall sign a written agreement with the management company regulating the flow of information deemed necessary to allow it to perform the functions referred to in Article 29 of this Directive and in other laws, regulations and administrative provisions which are relevant for depositaries in the UCITS home Member State.

The depositary shall enable the competent authorities of the UCITS home Member State to obtain on request all information, which the depositary has obtained while discharging its duties, and which are necessary for the competent authorities to supervise compliance of the UCITS with the requirements under this Directive.

5. The Commission may adopt implementing measures on the measures to be taken by a depositary in order to fulfill its duties regarding a UCITS managed by a management company situated in another Member state, including the particulars that need to be included in the standard agreements to be used by the depositary and the management company as referred to in paragraph 4.

These 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 31*

A depositary shall, in accordance with the national law of the investment company's home Member State, 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*

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

*Article 33*

The law or the instruments of incorporation of the investment company 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.



## CHAPTER VI

### Mergers of UCITS

#### Section 1

#### *Principle, authorisation and approval*

#### *Article 34*

For the purposes of this Chapter, (...) "mergers" shall mean:

- (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', which continue to exist until the liabilities have been discharged (...), transfer their net assets to another investment compartment of the same UCITS, to a UCITS which they form or to another existing UCITS or an investment compartment thereof, the 'receiving UCITS' (...).

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

#### *Article 35*

1. Member States shall, subject to the conditions set out in this Chapter and irrespective of the manner in which UCITS are constituted as set out in Article 1(3), allow for cross border mergers and domestic mergers as defined in this Article in accordance with one or more of the merger techniques provided for under Article 34. (...)

2. For the purpose of this Directive a cross border merger shall mean:

- (a) a merger of UCITS of which at least two are established in different Member States;  
and
- (b) a merger of UCITS established in the same Member State into a newly constituted UCITS established in another Member State.

The merger techniques used for cross border mergers must be allowed for under the laws of the merging UCITS home Member state.

3. For the purpose of this directive, a domestic merger shall mean a merger of UCITS established in the same Member State when at least one of the involved UCITS has been notified pursuant to article 88 of this Directive. The merger techniques used for domestic mergers must be allowed for under the laws of that Member State.

#### *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 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 statement by each of the depositaries of the merging and the receiving UCITS confirming that, in accordance with the provision of Article 38, they have verified compliance of the elements set out in Article 37 paragraph 1 a), (...) f) and g) with the requirements of this Directive and the fund rules or instruments of incorporation of their respective UCITS (...);
- (d) the information on the proposed merger that the merging UCITS and the receiving UCITS intend to provide to their respective unit-holders.

This information shall be provided so that both the competent authorities of the merging UCITS home Member State and the competent authorities of the receiving UCITS home Member State can read them in the official language or one of the official languages of the relevant Member State, or in a language approved by the relevant competent authorities.

3. The competent authorities of the merging UCITS shall immediately transmit copies of the information mentioned in par. 2 to the competent authorities of the receiving UCITS. The competent authorities of the merging UCITS home Member State and the competent authorities of the receiving UCITS shall, respectively, consider the potential impact of the proposed merger on unit-holders of (...) the merging UCITS and the receiving UCITS to assess whether appropriate information is provided to unit-holders.

(...)

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

If the competent authorities of the receiving UCITS home Member State consider it necessary, they may require, in writing, no later than 20 working days after reception of the copies of the information mentioned in par. 2, that the information to unit-holders of the receiving UCITS be clarified by the receiving UCITS. In such a case, they shall send an indication of their dissatisfaction to the competent authorities of the merging UCITS home Member State. If, within the delay mentioned in paragraph 5, they consider that the information has been clarified in an appropriate manner, they shall indicate that they are satisfied to the competent authorities of the merging UCITS home Member State.

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) (...) the competent authorities of the merging and the receiving UCITS are, respectively, satisfied with the proposed information to be provided to unit-holders, or no indication of dissatisfaction from the competent authority of the receiving UCITS has been received under the third sub-paragraph of paragraph (3) above. (...).

5. The competent authorities of the merging UCITS home Member State shall inform the merging UCITS, within at the latest 45 days of the submission of a complete file as provided for in par. 2, whether or not the merger has been authorised. (...)

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 merging UCITS and (...) the receiving UCITS draw up common draft terms of merger.

The common draft terms of merger shall set out 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 (...) date (...) referred to in Article 44(1);
- (e) the calculation method of the exchange ratio;
- (f) the planned effective date of the merger;
- (g) the rules applicable for respectively the transfer of assets and the exchange of units;
- (h) in the case of a merger pursuant to Article 34 (b) and, where applicable, Article 34 (c), the fund rules or instruments of incorporation of the newly constituted receiving UCITS.

Competent authorities may not require that any additional information is included in the common draft terms of mergers.

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 elements set out in article 37 paragraph 1 a), (...) f) and g) with requirements of this Directive and the fund rules or instruments of incorporation of their respective UCITS.

#### Article 39

1. The law of the merging UCITS home Member States shall entrust either a depositary or an independent auditor, approved in accordance with Directive 2006/43/EC of the European Parliament and of the Council<sup>1</sup>, with validating the following:
  - (a) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the (...) date (...) referred to in Article 44(1);
  - (aa) where applicable, the cash payment per unit;
  - (b) the calculation method of the exchange ratio as well as the actual exchange ratio determined at the date referred to in Article 44(1).
2. The statutory auditors of the merging UCITS or the statutory auditor of the receiving UCITS shall be considered independent auditors for the purposes of paragraph 1.
3. A copy of the reports of the independent auditor, or, where applicable, the depositary shall be made available on request and free of charge to the unit-holders of both the merging UCITS and the receiving UCITS and to their respective competent authorities.

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<sup>1</sup> OJ L 157, 9.6.2006, p. 87.

*Article 40*

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

(...)

3. The information shall be provided to unit-holders of the merging UCITS and of the receiving UCITS 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 last date for requesting repurchase or redemption or, where applicable, conversion without additional charge as referred to in Article 42(1).

4. The information to be provided to unit-holders of the merging UCITS and (...) 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 (...) the following:

- (a) the background to and the rationale for 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, (...) possible dilution in performance, and, where relevant, a prominent warning to investors that their tax treatment may be changed following the merger;

- (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 or the depository on request, and the right to request the re-purchase or redemption or, where applicable, the conversion of their units without charge as specified in Article 42 and the last date for exerting that right;
- (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 or (...) the receiving UCITS, have 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 relevant UCITS host Member State (...), or in a language approved by its 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. Where applicable, Member States shall not impose more stringent presence quora for cross border mergers than for domestic mergers. Nor shall they impose more stringent presence quora for UCITS mergers than in horizontal provisions on mergers of corporate entities.

#### *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, without any other charges than those retained by the UCITS to cover disinvestment costs, the re-purchase or redemption of their units or, where possible, to convert them into units in another UCITS with similar investment policies and managed (...) by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding (...). This right shall become effective from the moment the unit-holders of the merging UCITS and (...) those of the receiving UCITS, have been informed of the proposed merger in accordance with article 40. It shall cease to exist five working days before the date for calculating the exchange ratio as referred to in Article 44.
2. Without prejudice to the provisions of par.1, 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 subscription, 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*

Except in case where UCITS have not designated a management company, 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 (...) to the merging UCITS, the receiving UCITS or any of their unit-holders.

#### *Article 44*

1. For domestic mergers, the laws of the Member States shall determine the date on which a merger takes effect as well as the date for calculating the ratio for exchange of units of the merging UCITS into units of the receiving UCITS and, where applicable, for determining the relevant net asset value for cash payments.

For cross border mergers, the laws of the receiving UCITS home Member State shall determine the aforementioned dates. Member States shall ensure that, where applicable, these dates are after the approval of the merger by unitholders of the receiving UCITS or the merging 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, and notified to the competent authorities.

(...)

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

Article 44a

1. A merger carried out as laid down in point (a) of Article 34 shall have the following consequences:

- (a) all the assets and liabilities of the merging UCITS shall be transferred to the receiving UCITS or, where applicable, the depositary of the receiving UCITS;
- (b) the unit-holders of the merging UCITS shall become unit-holders of the receiving UCITS; in addition, if applicable, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS;
- (c) the merging UCITS shall cease to exist with the entry into effect of the merger.

2. A merger carried out as laid down in point (b) of Article 34 shall have the following consequences:

- (a) all the assets and liabilities of the merging UCITS shall be transferred to the newly constituted receiving UCITS or, where applicable, the depositary of the receiving UCITS;
- (b) the unit-holders of the merging UCITS shall become unit-holders of the newly constituted receiving UCITS; in addition, if applicable, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS;
- (c) the merging UCITS shall cease to exist with the entry into effect of the merger.

3. A merger carried out as laid down in point (c) of Article 34 shall have the following consequences:

- (a) the net assets of the merging UCITS shall be transferred to the receiving UCITS or, where applicable, the depositary of the receiving UCITS;
- (b) the unit-holders of the merging UCITS shall become unit-holders of the receiving UCITS;

(c) the merging UCITS continues to exist until the liabilities have been discharged.

4. Member States shall provide that a procedure is established, whereby the management company of the receiving UCITS confirms to the depositary of the receiving UCITS that transfer of assets and, where applicable, liabilities is complete. Where the receiving UCITS has not designated a management company, it will give that confirmation to the depositary of the receiving UCITS.

## CHAPTER VII

### Obligations concerning the investment policies of UCITS

#### *Article 44b*

For UCITS constituted of several compartments, each investment compartment will be regarded as a separate UCITS for the purposes of the rules laid down in this Chapter.

#### *Article 45*

1. The investments of a common fund or of an investment company shall consist solely of any one or more of the following:
  - (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,
  - (b) transferable securities 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,
  - (c) transferable securities and money market instruments admitted to official listing on a stock exchange in a third country or dealt in on another regulated market in a third country 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,

- (d) recently issued transferable securities, provided that:
- (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,
  - (ii) the admission referred to in point (i) is secured within a year of issue,
- (e) units of UCITS authorised according to this Directive or other collective investment undertakings within the meaning of Article 1(2)(a) and (b), should they be established 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 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,

- (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 in a third country, provided that it is subject to prudential rules considered by the competent authorities of the UCITS home Member State as equivalent to those laid down in Community law,
- (g) financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in points (a), (b) and (c); or financial derivative instruments dealt in over-the-counter (hereinafter referred to as "OTC derivatives"), provided that:
  - (i) 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 fund rules or instruments of incorporation,
  - (ii) the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the competent authorities of the UCITS home Member State, and
  - (iii) 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,
- (h) money market instruments other than those dealt in on a regulated market, which fall under Article 2(1)(p), if the issue or issuer of such instruments is itself regulated for the purpose of protecting investors and savings, and provided that they are:
  - (i) issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the Community or the European Investment Bank, a third country 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,

- (ii) issued by an undertaking any securities of which are dealt in on regulated markets referred to in points (a), (b) or (c),
- (iii) 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
- (iv) issued by other bodies belonging to the categories approved by the competent authorities of UCITS home Member State provided that investments in such instruments are subject to investor protection equivalent to that laid down in points (i), (ii) or (iii) 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 Council Directive 78/660/EEC<sup>1</sup>, 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.

2. However:

- (a) a UCITS may invest no more than 10 % of its assets in transferable securities and money market instruments other than those referred to in paragraph 1;
- (b) an investment company may acquire movable and immovable property which is essential for the direct pursuit of its business;
- (c) a UCITS may not acquire either precious metals or certificates representing them.

3. Common funds and investment companies may hold ancillary liquid assets.

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<sup>1</sup> OJ L 222, 14.8.1978, p. 11.



## *Article 46*

1. The management or investment company shall 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.

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

It shall communicate to the competent authorities of its home Member State regularly and (...) 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.

2. 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 third and fourth subparagraphs.

A UCITS may invest, as a part of its investment policy and within the limit laid down in Article 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 47. 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 47.

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

4. Without prejudice to Article 110, the Commission shall adopt, by 1<sup>st</sup> July 2010, implementing measures specifying the following:

- criteria for assessing the adequacy of risk management process employed by the management company in accordance with paragraph 1, first sentence above;

- detailed rules regarding the accurate and independent assessment of the value of OTC derivatives;

- detailed rules regarding the content and the procedure to be followed for communicating the information to the management company home Member States' competent authorities referred to in paragraph 1 third sentence above ;

These 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 47*

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.

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 45 (1)(f);
- (b) 5 % of its assets, in other cases.

2. Member States may raise the 5 % limit laid down in the first subparagraph 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 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;
- (c) exposures arising from OTC derivative transactions undertaken with that body.

3. Member States may raise the 5 % limit laid down in the first subparagraph 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 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 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 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 not exceed 80 % of the value of the assets of the UCITS.

Member States shall send the Commission a list of the categories of bonds referred to in the first subparagraph together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in that 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. 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 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 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/EEC or in accordance with recognised international accounting rules, shall be regarded as a single body for the purpose of calculating the limits contained in this Article.

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

#### *Article 48*

1. Without prejudice to the limits laid down in Article 51, Member States may raise the limits laid down in Article 47 to a maximum of 20 % for investment in shares 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 only be permitted for a single issuer.

### *Article 49*

1. By way of derogation from Article 47, 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 and money market instruments issued or guaranteed by any Member State, its local authorities, a third country 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 47.

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

2. The UCITS referred to in paragraph 1 shall make express mention in the fund rules or in the instruments of incorporation of the investment company 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 be approved by the competent authorities.

3. Each UCITS referred to in paragraph 1 shall include a prominent statement in its prospectus and 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.

### *Article 50*

1. A UCITS may acquire the units of UCITS or other collective investment undertakings referred to in Article 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. Member States may raise the limit to a maximum of 20 %.

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

Member States may allow that, when a UCITS has acquired units of UCITS 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 47.

3. When a UCITS invests in the units of other UCITS 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 or collective investment undertakings.

A UCITS that invests a substantial proportion of its assets in other UCITS 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 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 or other collective investment undertaking in which it invests.

#### *Article 51*

1. An investment company or a management company acting in connection with all of the common funds which it manages and which fall within the scope of this Directive shall 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, Member States shall take account of existing rules defining the principle stated in the first subparagraph under other Member States' legislation.

2. An investment company or 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;
- (c) 25 % of the units of any single UCITS or other collective investment undertaking within the meaning of points (a) and (b) of Article 1(2);
- (d) 10 % of the money market instruments of any single issuing body.

The limits laid down in 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.

3. A Member State may waive application of paragraphs 1 and 2 as regards:

- (a) transferable securities and money market instruments issued or guaranteed by a Member State or its local authorities;
- (b) transferable securities and money market instruments issued or guaranteed by a third country;
- (c) transferable securities and money market instruments issued by public international bodies of which one or more Member States are members;
- (d) shares held by a UCITS in the capital of a company incorporated in a third country investing its assets mainly in the securities of issuing bodies having their registered offices in that country, where under the legislation of that country such a holding represents the only way in which the UCITS can invest in the securities of issuing bodies of that country. This derogation, however, shall apply only if in its investment policy the company from the third country complies with the limits laid down in Articles 47 and 50 and in paragraphs 1 and 2 of this Article. Where the limits set in Articles 47 and 50 are exceeded Article 52 shall apply *mutatis mutandis*;



- (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, in regard to the repurchase of units at unit-holders' request exclusively on its or their behalf.

*Article 52*

1. UCITS need not comply with the limits laid down in this Chapter 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, Member States may allow recently authorised UCITS to derogate from Articles 47 to 50 for six months following the date of their authorisation.

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 adopt as a priority objective for its sales transactions the remedying of that situation, taking due account of the interests of its unit-holders.

## CHAPTER VIII

### Master-feeder structures

#### Section 1

#### *Scope and approval*

##### *Article 53*

1. A feeder UCITS is a UCITS or an investment compartment thereof, which has been approved to invest, 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 or an investment compartment thereof ("the master UCITS") (...).
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, which may be used only for hedging purposes, 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 compliance with Article 46(3), (...) the feeder UCITS may calculate its global exposure related to financial derivative instruments by combining its own direct exposure under paragraph (b) with:

- either the master UCITS' actual exposure to financial derivative instruments in proportion to the feeder UCITS' investment into the master UCITS; or

- the master UCITS potential maximum global exposure to financial derivative instruments provided for in the master UCITS' fund rules or instruments of incorporation in proportion to the feeder UCITS investment into the master UCITS.

3. A master UCITS is a UCITS or an investment compartment thereof which:

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

4. The following derogations for a master UCITS shall apply:

(a) (...) If a master UCITS has at least two feeder UCITS as unit-holders, Article 1(2) point (a) and Article 3 point (b) shall not apply, giving the master UCITS the choice whether or not to raise capital from other investors.

(b) If a master UCITS does not raise capital from the public in a Member State other than that in which it is established, but only has one or more feeder UCITS in that Member State, Chapter XI and subparagraph 2 of 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 which exceeds the limit applicable under Article 50(1) for investments into other UCITS be subject to prior approval by the competent authorities of the feeder UCITS' home Member State.

2. (...) 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. (...) The competent authorities of the feeder UCITS home 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 or the internal conduct of business rules referred to in Article 55(1) and Article 55 (1a);
- (d) where applicable, the information to be provided to unit-holders referred to in Article 59(1);
- (...)
- (f) if 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) if the master UCITS and the feeder UCITS have different auditors, the information-sharing agreement referred to in Article 57(1) between their respective auditors.

(...) When the feeder UCITS is established in another Member State than the master UCITS, the feeder UCITS should also provide an attestation by the competent authorities of the master UCITS that the master UCITS is a UCITS, or an investment compartment thereof, which fulfills the conditions set by Article 53 par. 3 (b) and (c). Documents shall be provided by the feeder in the official language, or one of the official languages, of the feeder UCITS home Member State or in a language approved by its competent authorities..

## Section 2

### *Common provisions for feeder UCITS and master UCITS*

#### *Article 55*

1. Member States shall require that the master UCITS provide the feeder UCITS with all documents and information necessary for the latter to meet the requirements laid down in this directive. For this purpose, the feeder UCITS shall enter into an agreement with the master UCITS.

(...)

The feeder UCITS shall not invest in excess of the limits applicable under Article 50 (1) in units of that master UCITS until the agreement referred to in subparagraph 1 has become effective. This agreement shall be available, on request and without charges, to all unit-holders of the master.

1a. In the event that both master and feeder UCITS are managed by the same management company, the agreement may be replaced by internal conduct of business rules ensuring compliance with the requirements set out in this paragraph.

2. The master UCITS and the feeder UCITS shall take appropriate measures to coordinate the timing of their net asset value calculation and publication in order to avoid market timing in their fund units, preventing arbitrage opportunities (...).

3. If a master UCITS temporarily suspends the re-purchase, (...) redemption or subscription 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, (...) redemption or subscription 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.

Without prejudice to specific national provisions regarding compulsory liquidation, a master UCITS may only be liquidated three months after the master UCITS informed all of its unit-holders 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 of the master UCITS or another UCITS resulting from the merger or division of the master UCITS; 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 unit-holders and the competent authorities of its 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 master UCITS shall enable the feeder UCITS to 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 content of the agreement or of the internal conduct of business rules referred to in (...) 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.

Neither the depositary of the master UCITS nor that of the feeder UCITS, when complying with the requirements laid down in this chapter, shall be in breach of any restriction on disclosure of information or of data protection imposed by contract or by any legislative, regulatory or administrative provision nor shall such behaviour involve such depositary or any person acting on its behalf in liability of any kind.

Member States shall require that the feeder UCITS or, when applicable, the management company of the feeder UCITS shall be in charge of communicating to the depositary of the feeder UCITS any information about the master UCITS and required for the completion of the duties of the depositary of the feeder UCITS.

2. The depositary of the master UCITS shall immediately inform the competent authorities of the master UCITS home Member State, 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 which are deemed to have a negative impact on the feeder 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 (...);
  - (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, including the arrangements taken to comply with the requirements of par. 2.

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. If the feeder UCITS and the master UCITS do not have the same accounting year, the auditor of the master UCITS shall make an ad hoc report on the same closing date as the closing date of the feeder 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.

2a. Neither the auditor of the master UCITS nor that of the feeder UCITS, when complying with the requirements laid down in this chapter, shall be in breach of any restriction on disclosure of information or of data protection imposed by contract or by any legislative, regulatory or administrative provision nor shall such behaviour involve such auditor or any person acting on its behalf in liability of any kind.

3. The Commission may adopt implementing measures specifying the content of the agreement referred to in paragraph 1 subparagraph 1.

These 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).

## 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) the investment objective and policy, including the risk profile and whether the performance of the feeder UCITS and the master UCITS are identical, or to what extent and for which reasons they differ, including a description of 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, and an indication of how the prospectus of the master UCITS may be obtained ;
- (...)
- (e) a summary of the agreement entered into between the feeder UCITS and the master UCITS or of the internal conduct of business rules 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);
- (...)

- (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.

(...)

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 feeder UCITS shall indicate how the annual and the half-yearly report of the master UCITS can be obtained.

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 (...) permanently invests 85 % or more of its assets in units of such master UCITS.

5. A paper copy of the prospectus, annual and half-yearly report of the master shall be delivered by the feeder UCITS to investors upon their request.

## Section 5

### *Conversion of existing UCITS into feeder UCITS and change of master*

#### *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 or, if it has already invested into the master, the date when its investment is to exceed the limit applicable under Article 50(1);
  - (d) a statement that the unit-holders have the right to request within 30 days the re-purchase or redemption of their units without any other charges than those retained by the UCITS to cover disinvestment costs; 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 referred to in 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 in excess of the limit applicable under Article 50(1) 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 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).

## Section 6

### *obligations and competent authorities*

#### *Article 60*

(...)

2. The feeder UCITS (...) shall monitor effectively the activity of the master UCITS. In performing this obligation, the feeder UCITS 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, in connection with an investment in the units of the master UCITS, a distribution fee, commission or non-monetary benefit 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 fee, commission or the value of the non-monetary benefit 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. When the feeder UCITS and the master UCITS are managed, directly or by delegation, by the same management company or by any company with which the management company is linked by common management or control, or by a substantial direct or indirect holding, 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, 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.



## CHAPTER IX

### Obligations concerning information to be provided to investors

#### Section 1

#### Publication of a prospectus and periodical reports

##### *Article 63*

1. An investment company and, for each of the common funds it manages, a management company, shall publish the following:
  - (a) a prospectus;
  - (b) an annual report for each financial year,
  - (c) a half-yearly report covering the first six months of the financial year.
2. The annual and half-yearly reports 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.

##### *Article 64*

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

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

3. The annual report 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 B, of Annex I 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.

4. The half-yearly report shall include at least the information provided for in Sections I to IV of Schedule B of Annex I. 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.

#### *Article 65*

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 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. Where a UCITS invests principally in any category of assets defined in Article 45 other than transferable securities and money market instruments or replicates a stock or debt securities index in accordance with Article 48, its prospectus and, where necessary, marketing communications 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, marketing communications shall include a prominent statement drawing attention to this characteristic.

4. Upon request of an investor, the management company 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.

#### *Article 66*

1. The fund rules or instruments of incorporation of an investment company shall form an integral part of the prospectus and shall be annexed thereto.

2. The documents referred to in paragraph 1 need not, however, be annexed to the prospectus provided that the 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 marketed, he or she may consult them.

#### *Article 67*

The essential elements of the prospectus shall be kept up to date.

#### *Article 68*

The accounting information given in the annual report shall be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC of the European Parliament and of the Council<sup>1</sup>. The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

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<sup>1</sup> OJ L 157, 9.6.2006, p. 87.

### *Article 69*

UCITS shall send their prospectus and any amendments thereto, as well as their annual and half-yearly reports, to the competent authorities of the UCITS home Member State. UCITS shall provide this documentation to the competent authorities of the management company's home Member State on request.

### *Article 70*

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 by means of a website. A paper copy shall be provided to the investors on request, free of charge.
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. A paper copy of the annual and half-yearly reports shall be delivered to the investors on request, free of charge.
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 or 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).

## Section 2

### Publication of other information

#### *Article 71*

A UCITS 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*

All marketing communications to investors shall be clearly identifiable as such. They shall be fair, clear and not misleading. In particular, any marketing communications comprising an invitation to purchase units of UCITS that contains specific information about a UCITS shall not make statements which contradict or diminish the significance of the information contained in the prospectus and the key investor information referred to in Article 73. It 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 (...) information for investors. This document shall be referred to as “key investor information” in this directive. The words “key investor information” should be clearly mentioned on this document, in the language referred to in article 89 par. 1 b).
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 provide information on (...) the following essential elements in respect of the UCITS concerned:
  - (- a) identification of the UCITS;
  - (a) a short description of its investment objectives and investment policy;
  - (b) past performance presentation or, where relevant, performance scenarios;
  - (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 or supplements, except translation, in all Member States where the UCITS is notified to market its units in accordance with Article 88.
7. The Commission shall adopt implementing measures which define the following:
- (a) the detailed and exhaustive content of the key investor information to be provided to investors as referred to under paragraphs 2,3 and 4;
  - (b) the detailed and exhaustive 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;
    - (...)

- (vi) for structured, capital protected and other comparable UCITS, the key investor information to be provided to investors in relation to the special characteristics of such UCITS;
- (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 another natural or legal person who acts on its behalf and under its full and unconditional responsibility, provides investors (...) with 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 another natural or legal person who acts on its behalf and under its full and unconditional responsibility to investors, provides 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 upon their request. Member States shall require that the intermediaries selling or advising investors on potential investments in UCITS, provide key investor information to their clients or potential clients (...).

3. Key investor information shall be provided to investors free of charge.

#### *Article 76*

1. Member States shall allow investment companies and, for each of the common funds they manage, management companies, to provide key investor information in a durable medium or by means of a website. A paper copy shall be delivered free of charge to the investor, upon request.

2. The Commission may adopt implementing measures which define the specific conditions which need to be met when providing key investor information in a durable medium other than on paper or 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.

## CHAPTER X

### General obligations of UCITS

#### *Article 78*

1. Neither:

- (a) an investment company, nor
  - (b) a management company or depositary acting on behalf of a common fund,
- 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 common fund,provided that the borrowing is on a temporary basis;
- (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 point (a) may not in any case in total exceed 15 % of the borrower's assets.

### *Article 79*

1. A UCITS 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, 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) 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 shall without delay communicate its decision to the competent authorities and to the authorities of all Member States in which it markets its units.

### *Article 80*

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 shall be laid down in the law, in the fund rules or in the instruments of incorporation of the investment company.

### *Article 81*

The distribution or reinvestment of the income of a common fund or of an investment company shall be effected in accordance with the law and with the fund rules or the instruments of incorporation of the investment company.

*Article 82*

A UCITS unit 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*

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

- (a) an investment company, nor
- (b) a management company or depositary acting on behalf of a common fund,

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

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

*Article 84*

Neither:

- (a) an investment company, nor
- (b) a management company or depositary acting on behalf of a common fund

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

*Article 85*

The law or the fund rules shall prescribe the remuneration and the expenditure which a management company is empowered to charge to a common fund and the method of calculation of such remuneration.

The law or the instruments of incorporation of an investment company shall prescribe the nature of the cost to be borne by the company.

## CHAPTER XI

### **Special provisions applicable to UCITS which market their units in Member States other than those in which they are established**

#### *Article 86*

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 specifically relevant to the arrangements made for 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.
4. For the purpose of this Chapter, a UCITS shall include investment compartments thereof.

#### *Article 87*

UCITS shall, in accordance with the laws, regulations and administrative provisions in force in the (...) Member State where the UCITS is marketed, 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.

*Article 88*

1. If a UCITS proposes to market its units in a Member State other than its home Member State, it shall first submit a notification letter to the competent authorities of its home Member State.

The notification letter shall include information on arrangements made for marketing of units of the UCITS in the host Member State, including where relevant in respect of share classes. In the case referred to in Article 15(1), it shall include an indication that the UCITS is marketed by the management company which manages the UCITS.

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

- (a) its fund rules or its instruments of incorporation, its prospectus and, where appropriate, its latest annual report and any subsequent half-yearly report translated in accordance with the provisions of Article 89(1) (c) and (d).
- (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 ten working days after the date of receipt of the notification letter accompanied by the complete documentation provided for in paragraph 2. 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 access the market of 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, unless the UCITS home Member State and the UCITS host Member State agree to the notification letter as referred to in paragraph 1 and the attestation as referred to in paragraph 3 being provided in an official language of both Member States.

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. It shall ensure that the UCITS keeps those documents and translations (...) up to date. The UCITS shall notify any amendments to the documents referred to in paragraph 2 to the competent authority of the host Member State and indicate where these documents can be obtained electronically.

8. In the event of a change in the information regarding the (...) arrangements made for marketing communicated in the notification letter in accordance with paragraph 1, or a change regarding share classes to be marketed, the UCITS shall give a written notice of this change to the competent authorities of the host Member State before implementing the change.



*Article 89*

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, and any additional information that the key investor information specifically identifies as relevant to an investor's understanding of the nature and risk of the UCITS, 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 (...) scope of the information as referred to in Article 86 (3);

(...)

(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), including an indication as to which documents the translations refer;

(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).

*Article 91*

For the purpose of carrying on its activities, a UCITS may use the same reference to its legal form (such as investment company or common fund) in its designation in a UCITS host Member State as it uses in its home Member State.

## CHAPTER XII

### Provisions concerning the authorities responsible for authorisation and supervision

#### *Article 92*

1. Member States shall designate the competent 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 shall be public authorities or bodies appointed by public authorities.
3. The authorities of the UCITS home Member State shall be competent to supervise that UCITS including, where relevant, pursuant to Article 17a. However, the authorities of the UCITS host Member State shall be competent to supervise compliance with the provisions falling outside the field governed by the Directive and requirements set out in Articles 87 and 89.

#### *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 issue, 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 measures and 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. Without prejudice to the procedures for the withdrawal of authorization or to the right of Member States to impose criminal sanctions, Member States shall in particular ensure, in conformity with their national law, that the appropriate administrative measures can be taken or administrative sanctions be imposed against the persons responsible where the provisions adopted in the implementation of this Directive have not been complied with.

The measures and penalties provided for must be effective, proportionate and dissuasive.

2. Without precluding rules on measures and 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 measures and 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).

3. 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, be detrimental to the interests of investors 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.

## Article 96

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.

2a. Where a competent authority has good reasons to suspect that acts contrary to the provisions of this Directive, carried out by entities not subject to its supervision, are being or have been carried out on the territory of another Member State, it shall notify this in a manner as specific as possible to the competent authority of the other Member State. The latter authority shall take appropriate action. It shall inform the notifying competent authority of the outcome of the action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competences of the competent authority that has forwarded the information.

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 Regulators<sup>1</sup>:

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<sup>1</sup> As established by Commission Decision 2001/527/EC of 6 June 2001, OJ L 191, 13 July 2001, p 43.



- (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).

#### *Article 97*

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, be bound by the obligation of professional secrecy. Such obligation implies that no confidential information which they 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 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.

However, when a UCITS 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. Paragraph 1 shall not prevent the competent authorities of the Member States from exchanging information in accordance with this Directive or other Directives applicable to UCITS or to undertakings contributing towards their business activity. That information shall be subject to the conditions of professional secrecy imposed in paragraph 1.

Competent authorities exchanging information with other competent authorities under this Directive may indicate at the time of communication that such information must not be disclosed without their express agreement, in which case such information may be exchanged solely for the purposes for which those authorities gave their agreement.

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 determined in paragraph 5 of this Article and 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 shall be intended for the performance of the supervisory task of those authorities or bodies.

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.

4. Competent authorities receiving confidential information under paragraphs 1 or 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 business of UCITS 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 102 (2).

5. Paragraphs 1 and 4 shall not preclude the exchange of information 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 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 supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions.

Information exchanged pursuant to the first subparagraph shall be subject to the conditions of professional secrecy imposed in paragraph 1.

#### *Article 98*

1. Notwithstanding Article 97(1) to (4), Member States may authorise exchanges of information between the competent authorities and

- (a) the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of UCITS or undertakings contributing towards their business activity and other similar procedures;
- (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 provided for in paragraph 1 shall require that at least the following conditions are met:

- (a) the information is used for the purpose of performing the task of overseeing referred to in paragraph 1;
- (b) the information received is subject to the conditions of professional secrecy imposed in 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 paragraph 1.

4. Notwithstanding Article 97(1) to (4), 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 provided for in paragraph 4 shall require that at least the following conditions are met:

- (a) the information is used for the purpose of performing the task referred to in paragraph 4;
- (b) the information received is subject to the conditions of professional secrecy imposed in 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 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 that paragraph may be extended to such persons under the conditions stipulated in paragraph 5.

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 paragraph 4.

#### *Article 99*

1. 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 Article 97(4). Information received in this context shall be subject to the conditions of professional secrecy imposed in Article 97(1).

2. Articles 97 and 98 shall not prevent the competent authorities from communicating the information referred to in Article 97(1) to (4) 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 Article 97(1).

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

3. Notwithstanding Article 97(1) and (4), 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 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 Article 97(2) and (5) 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.

#### *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).

## *Article 101*

1. Member States shall provide at least that:
  - (a) any person authorised within the meaning of Directive 2006/43/EC, performing in a UCITS or an undertaking contributing towards its business activity the statutory audit referred to in Article 51 of Directive 78/660/EEC, Article 37 of Directive 83/349/EEC or Article 68 of this Directive 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) 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 UCITS or undertakings contributing towards their business activity;
    - (ii) impairment of the continuous functioning of the UCITS or an undertaking contributing towards its business activity;
    - (iii) a refusal to certify the accounts or to the expression of reservations;
  - (b) the person referred to in point (a) shall 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 (a) in an undertaking having close links resulting from a control relationship with the UCITS or an undertaking contributing towards its business activity, within which he is carrying out that task.
2. The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 2006/43/EC of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

### *Article 102*

1. The competent authorities shall give, in writing, 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. Member States shall provide that any decision taken under laws, regulations or administrative provisions adopted in accordance with this Directive is properly reasoned and is subject to the right to apply to the courts. The right to apply to the courts shall apply also where, in respect of an application for authorization which provides all the information required, no decision is taken within six months of its submission (...).
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.

### *Article 103*

1. Only the authorities of the UCITS home Member State 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 instruments of incorporation of the investment company.

However, the authorities of the UCITS host Member State may take action against it if it infringes the laws, regulations and administrative provisions 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. Any decision to withdraw authorisation, or any other serious measure taken against a UCITS, or any suspension of issue, re-purchase or redemption imposed upon it, shall be communicated without delay by the authorities of the UCITS home Member State to the authorities of the UCITS host Member States and, if the management company of a UCITS is situated in another Member State, to the competent authorities of the management company's home Member State.

2a. The competent authorities of the management company's home Member State and those of the UCITS home Member State shall, respectively, have the ability to take action against the management company if it infringes rules under their respective responsibility.

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 consequently 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) if necessary, 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 legally 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.

#### *Article 104*

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 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 18 (6) which involve measures and penalties imposed on a management company or restrictions on a management company's activities.

3. The competent authorities of the management company's home Member State shall notify, without delay, the competent authority of the UCITS home Member State of any problem identified at the level of the management company and which would materially affect the ability of the management company to properly perform its duties with respect to the UCITS or of any breach of the requirements under Chapter III of this Directive.

4. The competent authorities of the UCITS home Member State shall notify, without delay, the competent authority of the management company's home Member State of any problem identified at the level of the UCITS and which may materially affect the ability of the management company to properly perform its duties or to comply with the requirements of this Directive which fall within the remit of the UCITS home Member State.

*Article 105*

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 104.
2. 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.

## CHAPTER XIII

### European Securities Committee

#### *Article 106*

The Commission may 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 (2).

#### *Article 107*

1. The Commission shall be assisted by the European Securities Committee instituted by Commission Decision 2001/528/EC<sup>1</sup>.
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.
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.

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<sup>1</sup> OJ L 191, 13.7.2001, p. 45.

## CHAPTER XIV

### Derogations, transitional and final provisions

#### Section 1

#### Derogations

##### *Article 108*

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 45 (1)(b).
2. By way of derogation from Articles 19(1) and 29(1), the competent authorities may authorise those UCITS which, on 20 December 1985, 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) will be performed in practice.
3. By way of derogation from Article 15, the Member States may authorise management companies to issue bearer certificates representing the registered securities of other companies.

##### *Article 109*

1. Investment firms, as defined in Article 4(1) of Directive 2004/39/EC, authorised to carry out only the services provided for in Section A(4) and (5) 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.

2. Management companies already authorised before 13 February 2004 in their home Member State under this Directive to manage UCITS in the form of common funds and investment companies shall be deemed to be authorised for the purposes of this Article 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.

## Section 2

### Transitional and final provisions

#### Article 110

1. Member States shall adopt and publish by 1<sup>st</sup> July 2011 at the latest, the laws, regulations and administrative provisions necessary to comply with Articles **1(2) last sentence**, 1(3)(b), 2(1)(e), (...) 2(1)(n), **2(5)**, 4, **5(1) to 5(3)**, **5(5)**, **5(6)**, **6(1)**, **12(1)**, **12(3)**, **13(1) introductory phrase**, **13(1)(a)**, **13(1)(i)**, **14(2)**, **14a**, **15(1) second subparagraph**, **15(3)**, **16(1)**, **16(3) first and third subparagraphs**, **16(3a) to 16(5)**, **16(7) second subparagraph**, **17(1) introductory phrase**, **17(2) second to fourth subparagraphs**, **17(3)**, **17(4)**, **17a**, **17b**, **18(2)**, **18(3)**, **18(5)**, **18(7)**, **18(9)**, **18(10)**, 19(1), 19(3)(a), 19(3)(d), 19(3)(e), **20(1)**, **20(2)**, **20(4)**, **20(5)**, **21 first paragraph**, **24 third subparagraph**, **26(2)**, **30(2)**, **30(4)**, **30(5)**, **34 introductory phrase**, 34 to **44b**, 45(1) introductory phrase, 45(3), **46(1) third subparagraph**, **46(4)**, 49(3), 51(1), 51(2) subparagraph 1 introductory phrase, 53 to 62, 63(1), 64**(1) to (2)**, 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 **to 96**, **97(2) second subparagraph**, **97(5)**, 102 (...), 103, (...), **104(2) to (4)**, 105, 110 to 112 and Annex I. They shall forthwith inform the Commission thereof.

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, par 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 time limits for transpositions 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.

References to the simplified prospectus shall be construed as references to the key investor information referred to in Article 73.

### 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) **except the last sentence**, 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 **(4), 2(6), 2(7)**, 3, 5**(4)**, (...) 6**(2) to (4), 7 to 11, 12(2), 13(1)(b) to (h), 13(2), 14(1), 15(1) first subparagraph, 15(2), 16(2), 16(3) second subparagraph,** 16(6), 16(7) **first subparagraph,** 17**(1) except the introductory phrase, 17(2) first subparagraph,** 18**(1), 18(4), 18(8)**, 19(2), 19(3)(b), 19(3)(c), 20**(3), 21 second paragraph, 22, 23, 24 first and second subparagraphs, 25, 26(1), 26(3), 26(4), 27 to 29, 30(1), 30(3), 31 to 33,** 45(1)(a) to (h), 45(2), **46(1) first and second subparagraphs, 46(2), 46(3), 47,** 48, 49(1), 49(2), 50, 51(2) first subparagraph points (a) to (c), 51(2) second subparagraph, **51(3),** 52, 63(2), **64(3) to (4),** 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**(1), 97(2) first subparagraph, 97(3), 97(4), 98 to** 101, (...) 104**(1)**, 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).



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 deadline for implementing, in national laws, all the implementing measures referred to in Article 73(7) has expired. 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*

**ANNEX I**  
SCHEDULE A

|  |   |   |
|--|---|---|
| 1. Information concerning the common fund  | 1. <u>Information concerning the management company including an indication whether the management company is domiciled in another Member State than in the UCITS home Member State</u> | 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 common fund. 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.                          |

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|   | <p>1.3. If the company manages other common funds, indication of those other funds.</p> | <p>1.3. In the case of investment companies having different investment compartments, the indication of the compartments.</p>               |
| <p>1.4. Statement of the place where the fund rules, if they are not annexed, and periodic reports may be obtained.</p> |   | <p>1.4. Statement of the place where the instruments of incorporation, if they are not annexed, and periodical reports may be obtained.</p> |

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| <p>1.5. Brief indications relevant to unit-holders of the tax system applicable to the common fund. Details of whether deductions are made at source from the income and capital gains paid by the common fund to unit-holders.</p> |  | <p>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.</p> |
| <p>1.6. Accounting and distribution dates</p>   |  | <p>1.6. Accounting and distribution dates.</p>  |
| <p>1.7. Names of the persons responsible for auditing the accounting information referred to in Article 68.</p>   |  | <p>1.7. Names of the persons responsible for auditing the accounting information referred to in Article 68.</p>   |

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|  | <p>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.</p> | <p>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.</p> |
|  | <p>1.9. Amount of the subscribed capital with an indication of the capital paid-up</p>   | <p>1.9. Capital</p>  |

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| <p>1.10. Details of the types and main characteristics of the units and in particular:</p> <ul style="list-style-type: none"> <li>– the nature of the right (real, personal or other) represented by the unit,</li> <li>– original securities or certificates providing evidence of title; entry in a register or in an account,</li> <li>– characteristics of the units: registered or bearer. Indication of any denominations which may be provided for,</li> </ul> | – | <p>1.10. Details of the types and main characteristics of the units and in particular:</p> <ul style="list-style-type: none"> <li>– original securities or certificates providing evidence of title; entry in a register or in an account,</li> <li>– characteristics of the units: registered or bearer. Indication of any denominations which may be provided for,</li> </ul> |
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| <ul style="list-style-type: none"> <li>– indication of unit-holders' voting rights if these exist,</li> <li>– circumstances in which winding-up of the common fund can be decided on and winding-up procedure, in particular as regards the rights of unit-holders.</li> </ul> |  | <ul style="list-style-type: none"> <li>– indication of unit-holders' voting rights,</li> <li>– 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.</li> </ul> |
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| 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.  |



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|---|--|---|
| <p>1.13. Procedures and conditions for re-purchase or redemption of units, and circumstances in which re-purchase or redemption may be suspended.</p> |  | <p>1.13. Procedures and conditions for re-purchase or redemption of units, and circumstances in which re-purchase or redemption may be suspended. 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.</p> |
| <p>1.14. Description of rules for determining and applying income.</p>  |  | <p>1.14. Description of rules for determining and applying income.</p>  |

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| <p>1.15. Description of the 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 common fund.</p> |  | <p>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 the management of the company.</p> |
| <p>1.16. Rules for the valuation of assets.</p>   |  | <p>1.16. Rules for the valuation of assets.</p>   |

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| <p>1.17. Determination of the sale or issue price and the re-purchase or redemption price of units, in particular:</p> <ul style="list-style-type: none"> <li>– the method and frequency of the calculation of those prices,</li> <li>– information concerning the charges relating to the sale or issue and the re-purchase or redemption of units,</li> <li>– the means, places and frequency of the publication of those prices.</li> </ul> | – | <p>1.17. Determination of the sale or issue price and the re-purchase or redemption price of units, in particular:</p> <ul style="list-style-type: none"> <li>– the method and frequency of the calculation of those prices,</li> <li>– information concerning the charges relating to the sale or issue and the re-purchase or redemption of units,</li> <li>– the means, places and frequency of the publication of those prices<sup>1</sup>.</li> </ul> |
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| <p>1.18. Information concerning the manner, amount and calculation of remuneration payable by the common fund to the management company, the depositary or third parties, and reimbursement of costs by the common fund to the management company, to the depositary or to third parties.</p> |  | <p>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.</p> |
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<sup>1</sup> Investment companies within the meaning of Article 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.

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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, re-purchasing 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. 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.

5. Other investment information:
  - 5.1. Historical performance of the 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 common fund or the investment company is designed.
6. Economic information:
  - 6.1. Possible expenses or fees, other than the charges mentioned in point 1.17., distinguishing between those to be paid by the unit-holder and those to be paid out of the common fund's or of the investment company's assets.

## SCHEDULE B

### **Information to be included in the periodic reports**

#### **I. Statement of assets and liabilities**

- transferable securities,
- 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;
- (c) recently issued transferable securities of the type referred to in Article 45 (1)(d);
- (d) other transferable securities of the type referred to in Article 45 (2)(a);

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.

**VII. Details, by category of transaction within the meaning of Article 46 carried out by the UCITS during the reference period, of the resulting amount of commitments.**



## 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

Article 1 fourth indent, Article 4(7) and Article 5 fifth indent only

(OJ L 168, 18.7.1995, p. 7)

Directive 2000/64/EC of the European Parliament and of the Council

Article 1 only

(OJ L 290, 17.11.2000, p. 27)

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

Article 66 only

(OJ L 145, 30.4.2004, p. 1)

Directive 2005/1/EC of the European Parliament and of the Council Article 9 only

(OJ L 79, 24.3.2005, p. 9)

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 |
|-------------|------------------------------|---------------------|
| 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,<br>introductory phrase | Article 26(1), second subparagraph,<br>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)                                |

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| 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)   |



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| Article 24   | Article 50  |
| Article 24a  | Article 65  |
| Article 25(1)  | Article 51(1)   |
| Article 25(2), first subparagraph,<br>introductory phrase                    | Article 51(2), first subparagraph,<br>introductory phrase         |
| Article 25(2), first subparagraph, first,<br>second, third and fourth indent | Article 51(2) first subparagraph, points (a),<br>(b), (c) and (d) |
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| Article 25(3)  | Article 51(3)   |
| Article 26   | Article 52  |
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| 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   |

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| Article 30  | Article 67  |
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| Article 34  | Article 71  |
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| -   | Article 77  |
| Article 36(1), first subparagraph,<br>introductory word       | Article 78(1), first subparagraph,<br>introductory word |
| Article 36(1), first subparagraph, first and<br>second indent | Article 78(1) first subparagraph, points (a)<br>and (b) |
| Article 36(1), first subparagraph, final words                | Article 78(1), first subparagraph final words           |
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| Article 41(1), introductory phrase                            | Article 83(1), introductory phrase                      |
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| Article 41(1), final phrase                                   | Article 83(1), final phrase                             |
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| Article 42, first and second indent                  | Article 84, points (a) and (b)     |
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| Article 46, first paragraph, introductory phrase     | Article 88(1), first subparagraph  |
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| Article 50(5), introductory phrase                                 | Article 97(4), introductory phrase                           |
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| Article 50(6)(b), first, second and third indent                   | Article 97(5), first subparagraph points (i), (ii) and (iii) |
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| Article 50(7), first subparagraph, introductory phrase             | Article 98(1)(a) and (b)                                     |
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| Article 50(7), second subparagraph, introductory phrase            | Article 98(2), introductory phrase                           |
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| Article 50(8), second subparagraph, introductory phrase            | Article 98(5), introductory phrase                           |
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| 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)                             |
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| Annex I, schedule C       | -                        |
| <b><u>Annex II</u></b>    | <b><u>Annex II</u></b>   |
| -                         | Annex III                |
| -                         | Annex IV                 |

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