E.

Do

COMMISSION OF THE EUROPEAN COMMUNITIES

APPLIES TO THE ENGLISH VERSION ONLY

COM(76) 152

Brussels, 14 September 1976.

Proposal for a

COUNCIL DIRECTIVE

for the coordination of laws

regulations and administrative provisions

regarding collective investment undertakings

for transferable securities

(submitted to the Council by the Commission)

COM(76) 152 final/2.

TABLE OF CONTENTS

Proposal for a Council Directive for the coordination of laws, regulations and administrative provisions regarding collective investment undertakings for transferable securities

Explanatory Memorandum

1. Introduction

Collective investment undertakings are institutions whose object is to ~~collect~~ the funds of as many savers as possible by issuing units (1) and to invest these funds, using the principle of risk spreading, in securities or other assets, without seeking to exert through the holding an influence extending beyond the objective of financial investment.

These institutions offer savers a number of advantages: they provide a wide spread of investments, however small the number of units held; they select the securities placed in the portfolio after carrying out careful comparisons which are often difficult for the individual saver, in particular as regards foreign markets, because of the inadequacy of information available to him concerning these markets.

Furthermore, the nature of these institutions and the technique they use to market their units - sales by means of offers to the public, often directed at small inexperienced savers - signifies that special attention is paid to safeguarding the latter's savings. Consequently, many countries have adopted special rules relating to the activities pursued by, and the controls to be laid down, in respect of collective investment undertakings.

---

(1) In the English text of this Memorandum and of the proposed Directive the words "unit" and "unitholder" are used conventionally to cover shares and shareholders respectively.

There is a need for coordination of Member States' legislation in this field with a view to affording savers in the Community more uniform safeguards and also to bring closer together the competitive conditions in which collective investment undertakings in the Community operate and to promote at Community level a more thorough interpenetration of markets in transferable securities (for further details see paragraph 3).

2. Scope of the proposal

a) Collective investment undertakings can be divided into two groups: the closed-end type and those other than the closed-end type. The essential difference between the two is that with closed-end institutions the capital is fixed and the units representing this capital are never repurchased or redeemed against the assets of the institutions. The group of closed-end institutions includes "sociétés d'investissement" in France, "investment trusts" in the United Kingdom and "sociatá invest" in Italy. Institutions other than of the closed-end type, however, issue their units continuously or in blocks at short intervals and/or directly or indirectly repurchase or redeem them at the request of the holder.

The proposed Directive is concerned only with collective investment undertakings other than of the closed-end type, for these are the most important at Community level and it is also in this field that savers' protection is most likely to fail unless strict rules and controls are applied: unlike the closed-end type, these institutions often lie outside the scope of company law and their units are not quoted on the stock exchange, so that company-law and stock-exchange safeguards are not applicable.

b) Two basic types of collective investment undertakings of other than the closed-end type exist in the Member States: those with a corporate structure and those other than with a corporate structure (i.e. contractual or "trust").

The collective investment undertakings with a corporate structure (referred to in the proposal as "investment companies") are similar in form to public limited companies. The unitholders are the shareholders in the company and can therefore influence directly - at least in theory - the decisions taken by the company by exercising their voting rights at meetings. As companies, these institutions have the further characteristic of being the legal owners of the assets contributed by the unitholders.

Investment companies exist at present in Denmark (investment associations), France, Luxembourg and the Netherlands. Of these countries, only France lays down specific rules for investment companies, while in the other countries they are, as a rule, governed by the laws on public limited companies. Finally, it should be noted that in Germany and Belgium special rules for investment companies have been deliberately avoided and only contractual institutions are authorised.

Collective investment undertakings other than with a corporate structure (referred to in the proposal as "unit trusts") are institutions without legal personality and consist generally of a management company which fulfils all functions connected with the management of the trust, a depositary company responsible for the custody of the assets of the trust and a special fund which collects the funds put up by the unitholders. These funds are either the property of the management company, the joint property of the unitholders, or simultaneously the property of the depositary company and of the unitholders according to the applicable legislation in the Member States where the unit trusts are established.

Unlike investment companies, unit trusts now exist in all the Member States except Italy and Denmark. They are subjected to specific regulations which take account of their particular legal status in Germany, Belgium, France and the United Kingdom. Such regulations are being planned

in Denmark, Italy, Ireland, Luxembourg and the Netherlands. In the Netherlands, however, the regulations will also apply to investment companies.

The proposed Directive covers these two forms of collective investment undertaking, but does not apply to those which do not invest their capital essentially in securities. The last mentioned undertakings, and in particular those which invest their capital in property, raise special problems which will have to be examined at a later stage.

c) In conclusion, the proposed Directive is concerned with collective investment undertakings for transferable securities other than of the closed-end type ("CIUTS"), i.e. investment companies (collective investment undertakings with a corporate structure) and unit trusts (collective investment undertakings with a non-corporate structure):

- whose object is collective investment in transferable securities or retention as liquid assets of at least 80% of the capital they collect;
- which raise this capital by means of offers to the public;
- which operate on the principle of risk spreading;
- and whose units are or have been issued continuously or in blocks at short intervals and/or are directly or indirectly repurchased or redeemed at the request of the holder using the assets of these undertakings.

It can be seen from this definition that the proposal also covers Luxembourg investment companies which indirectly repurchase their units through repurchase companies which they have set up and also certain Dutch investment companies which issue units continuously within the limit of their authorized capital but which are not obliged to repurchase their units although they in fact do so on the stock exchange.

The following, however, are some of the institutions which do not fall within the scope of the proposed Directive:

a) collective investment undertakings more than 20% of whose funds are invested in assets other than transferable securities or kept liquid (i.e. most of the mixed unit trusts, property funds, holiday funds, property development funds and commodity trusts);

b) institutions such as:

- portfolio companies whose object is to obtain the participation of a number of investors in financing firms whose access to the financial market is barred by legal or economic obstacles;
- holding companies, whose object is to acquire through trading investments a controlling and supervisory holding in firms;
- securities management departments through which banks or institutions specialized in portfolio management administer, on behalf of their customers and without issuing representative certificates, a fund made up of the deposits of a number of customers;
- investment clubs, made up of a small number of investors who are known to one another and grouped together for the purpose of jointly investing funds, without advertising;

c) certain special collective investment undertakings such as "fonds d'intéressement" (in France) and "exempted" unit trusts (in the United Kingdom), for these institutions do not raise their capital by offers to the public but by offers to specific categories of investors.

Finally, CIUTS whose assets are mainly invested, through subsidiary companies, in assets other than transferable securities or which are kept liquid are explicitly excluded from the scope of the proposed Directive. This exclusion, which takes special account of certain Luxembourg institutions, was deemed desirable in view of the fact that, from an economic viewpoint, these institutions fall within the category of funds referred to under a) above.

3. The case for coordination

The purpose of the proposed Directive is to coordinate the regulations governing the CIUTS defined above. To this end, it requires Member States to apply a number of minimum rules when such institutions are situated on their territory.

There are several objectives which this coordination Directive is designed to meet. The basic situation is that there are differences between regulations applying to CIUTS in the various Member States. In fact, the systems of legislation in the Member States, when they exist, vary considerably between each other, particularly as regards the obligations and controls imposed upon these institutions. Moreover, the differences between the legislative systems relating to CIUTS in the Community are widened still further by the fact that certain Member States do not have specific legislation relating to these institutions.

This situation - determined by historical factors, such as whether these institutions have existed for a long time in a Member State or whether they are a recent innovation and the differences between the structures of the financial markets in these States - leads, at Community level, to appreciable differences in the protection offered to persons investing their funds in these institutions. By coordinating the national legislation or regulations applying to CIUTS, it should therefore be possible to render this protection more effective at Community level and to provide more uniform safeguards for all savers.

Coordinating the legislation in question should also enable the conditions of competition in which the collective investment undertakings for transferable securities operate to be improved, which is not the case at the present time, the obligations imposed on these institutions varying with the national legislation or regulations governing them.

Finally, this coordination aims at making easier the realisation of another fundamental objective: removing restrictions on the free movement within the Community of units of collective investment undertakings for transferable securities. The first and second Directives adopted by the Council with a view to the removal of restrictions on capital movements contained no provision covering the free movement of units of collective investment undertakings[1]. One of the reasons for this was that the Member States' laws governing these undertakings are so different that they do not provide equivalent safeguards for savers and equivalent conditions of healthy competition between such undertakings. The Member States have, therefore, generally been reluctant to allow units of collective investment undertakings from the other Member States to be traded freely within their borders. The coordination of legislation, as envisaged by the present proposal is aimed at remedying this position and should therefore remove this obstacle to the opening up of frontiers as regards the units of CIUTS. Coordination is thus a prior condition for establishing the free movement of capital in this sector. In order that the envisaged coordination can be really effective it appears essential that the necessary measures must be taken in respect of movements in parellel with the implementation of the present Directive to ensure freedom of movement for units of CIUTS. This is the reason for which the Commission, having consulted the Monetary Committee in accordance with Article 69 of the EEC Treaty, will submit to the Council a proposed Directive aimed at bringing about this objective.

---

1) O.J.s of 12 July 1960 and 22 January 1963.

The planned coordination should therefore lead to the attainment of a number of objectives: provide better safeguards for savers, make for healthier conditions of competition in which CIUTS operate, and permit the removal of restrictions on dealings in their units within the Community. When this third objective has been attained, building on the foundation provided by the attainment of the other two objectives, it will then be possible for CIUTS to step up their activities throughout the Community in view of the increase in the number of savers they will be able to call on. Moreover, if these institutions are permitted to extend their operations to the entire Community, savers in the Community will find it easier to use this form of saving, which should be encouraged, and, at the same time, the outlook for the market in transferable securities will improve; this will help to achieve one of the fundamental aims of the Common Market - namely that of ensuring fuller interpenetration of capital markets in the Community.

4. General principles underlying CIUTS coordination

A. Single set of legal provisions

The proposed Directive is designed to make CIUTS located in any Member State subject to a single set of legal provisions, regardless of whether they operate in only one country or throughout the Community. There will likewise be a single set of rules for the authorisation of CIUTS and the supervision of their activities. The arrangements can be summarized as follows:

Each Member State must apply the Directive to CIUTS situated in its territory[1] but will be free to apply stricter and/or additional requirements, provided that such requirements are of general application and do not conflict with the Directive. But a Member State may not apply provisions of any kind to CIUTS situated in another Member State even if they market their units in its own territory, with the exception of the provisions governing capital movements and the marketing of units (see B. below).

---

1) For the purposes of the proposed Directive a CIUTS is deemed to be situated in the Member State where its management is effectively carried on (Art. 3).

In brief, it may be said that CIUTS of Member States will, subject to this last reservation, be governed exclusively, regardless of the Member States in which they operate, by the legislation of the Member State in which they are situated, and that this legislation must comply with the minimum rules laid down in the proposed Directive (Article 1).

The proposed Directive further provides that a CIUTS may not trade unless it has been authorised (Article 5(1)), and that the only authorities having power to grant valid authorisation are those of the Member State in which the CIUTS is situated (Article 4(h)). Such authorisation once granted is valid for all the Member States: once a CIUTS is authorised, it may, therefore, operate not only in the authorising Member State but also in the other Member States, without having to obtain authorisation in these other Member States.

Likewise, only the competent authorities, of the Member State in which the CIUTS is situated, are:

a) authorised and required to supervise the activities of the undertaking, even if they are carried on in another Member State, and in particular ensure that it complies with the rules laid down in the proposed Directive (Article 58(1));

b) authorised to take all appropriate measures concerning the undertaking, including withdrawal of authorisation, as provided for by national legislation, should the CIUTS infringe laws, regulations or administrative provisions or the fund rules of the unit trust or the memorandum and articles of association of the investment company (Article 61(1)).

To enable the competent authorities to fulfil their supervisory function properly, the proposed Directive provides that they should be granted all the powers necessary (Article 58(4)) and must be able to rely on the close collaboration of the authorities of the Member States where the units of CIUTS are marketed when such units are subject to their supervision (Article 59).

It has been felt reasonable to stipulate that Community CIUTS should normally be subject only to the regulations of the Member State in which they are situated. This is because the minimum rules laid down in the proposed Directive would appear to form an adequate basis for safeguarding savers and ensuring sound conditions of competition between the various CIUTS. The single system of authorisation and supervision mentioned above is also based on the mutual confidence which the competent authorities of the Member States should extend to each other as regards the diligence with which each of them will ensure that the Directive is properly applied and, generally speaking, that all savers will be adequately protected.

B, Marketing regulations

There is, however, as stated above, one important exception to the principle of a single set of legal provisions governing the CIUTS and of the exclusive competence of the authorities of the Member State in which the undertaking is situated for supervision purposes, even if the CIUTS operates in other Member States. This exception concerns the rules for marketing CIUTS units and the supervision of the application of these rules. In this connection, the proposed Directive provides that a Member State may apply its own marketing regulations to CIUTS situated in other Member States but marketing or intending to market their units on its territory (Article 55) and that the supervision of the proper application of these marketing regulations is the responsibility of the competent authorities of the Member State in which the units are marketed, these authorities being in the best position to exercise this supervision since they will in fact be checking that their own rules are being correctly applied (Article 58(3)).

The main argument against coordinating the marketing regulations as well is that any attempt to do so combined with the coordination measures provided for in the proposed Directive, would, in view of the market differences between the Member States in this field, have significantly delayed the latter. Furthermore, the problem of the coordination of the marketing regulations concerns transferable securities as a whole and not only the units of CIUTS: it was thus felt that this problem should be resolved in a more comprehensive manner, and should therefore be dealt with separately.

A Member State cannot, in any case, use the right to apply its own marketing regulations to CIUTS situated in the other Member States to circumvent the objectives of the Directive. This stipulates that the marketing regulations in question must be applied in a non-discriminatory manner and may not have the effect of imposing on CIUTS situated in the other Member States stricter conditions than those envisaged by the present proposal (Article 55(3)). Thus, if a Member State provides in the framework of its legislation that canvassing of units of CIUTS cannot take place unless these institutions publish four reports per financial year it would not be able to apply this regulation to CIUTS situated in other Member States because the proposed Directive provides that CIUTS must publish a maximum of three reports per financial year (Article 31).

C. Stricter or additional requirements

Finally it would appear useful to give two examples to demonstrate what is meant by the terms "stricter requirements" and "additional requirements" which Member States may apply to CIUTS situated within their territory (Article 1(3)):

a) Stricter requirement: Article 26 of the proposed Directive provides that a CIUTS may not invest more than 5% of its assets in securities issued by the same issuer. A Member State could apply this provision more strictly by laying down that CIUTS situated within its territory may not invest more than 4% of their assets in such securities.

b) Additional requirement: Article 10 of the proposal lists the functions which a unit trust's depositary company must fulfil. A Member State would be free to impose an additional requirement that the depositary companies of unit trusts situated within its territory must fulfil other functions such as, for instance, exercising vis-à-vis the management company or a previous depositary company the rights of unit-holders deriving from the units they hold in the unit trust.

5. Reasons for and explanation of certain provisions in the proposed Directive

In addition to the general principles described above, the proposed Directive contains a number of rules relating to:

- the structure of unit trusts and investment companies;
- the restrictions imposed on the investment policy that CIUTS pursue;
- the information they must disclose;
- a number of general obligations they must fulfil;
- CIUTS which market their units in a Member State other than that in which they are situated;
- the competent authorities responsible for authorising and supervising CIUTS;
- the setting up of a Contact Committee.

Some of these rules which require further clarification are dealt with below.

A. Remarks concerning the management company set up by unit trusts (Articles 8, 9 and 67)

1. The proposed Directive provides that the activities of the unit trust management company must be confined to the management of unit trusts (Article 8). This rule is designed to protect unitholders as it aims to ensure an optimum level of specialization by management companies and also to avoid any likelihood of a clash of interest with any other actitivities.

The rule is, however, subject to two exceptions. The first mainly concerns Belgian management companies which may also issue bearer certificates representing registered securities of foreign companies. They may continue with this additional activity subject to authorisation by Belgium (Article 67(1)).

The second exception mainly concerns management companies in Ireland, the United Kingdom and the Netherlands, which may at present carry out other activities such as banking or insurance. To take account of this situation, the proposal provides that Member States may authorise management companies which, at the time of notification of the Directive, also carry out other activities to continue these other activities provided that they do not prejudice the interests of unit holders (Article 67(2)). It did not appear advisable to prohibit these companies, which have acquired remarkable experience in the management of trusts, from continuing to carry out this management activity not only in respect of the trusts they manage at the time of notification of the Directive but also in respect of new trusts set up after such notification. Such a ban would have had the following drawbacks:

- in the case of trusts existing at the time of notification of the Directive: the obligation to change management companies in the event of their management companies not having decided to discontinue these other activities, such change being no easy matter for a unit trust;
- in the case of trusts set up after notification of the Directive: the impossibility for them to benefit from the experience acquired by the companies in question in the management of trusts.

2. The proposed Directive provides that the management company must inform the competent authorities of the names of all its members and of the amounts of their respective participation in the company (Article 9(1)). This rule is necessary in order to enable these authorities to satisfy themselves as to the good standing of all the members and to ensure that there is no possible clash of interest between the members and unitholders.

The proposed Directive, however, lays down less strict rules in cases where, as mentioned in 1. above, a unit trust is managed by a credit institution or an insurance undertaking, the latter being required to report the names of their major shareholders only (Article 67(3)). As these bodies are already subject to very strict controls laid down by national banking and insurance legislation, it was felt that less strict requirements could be imposed on them as regards the management of trusts. It must, in any case, be pointed out that these bodies are often not in a position to establish the identities of all the shareholders when the securities issued are bearer securities.

B. Remarks concerning the depositary company of unit trusts and investment companies (Articles 10, 11, 19, 20 and 68)

1. The depositary company oplays a very important part in protecting the interests of unitholders. In addition to keeping custody of the

assets of CIUTS, to carrying out a number of technical transactions relating to the day-to-day administration of those assets (among other things, the collection of dividends and interest, and redeeming securities which have matured) and to paying out distributions, the depositary company will be required to supervise a number of the activities of the management company or investment company to ensure that they are in conformity with the law and the "fund rules" of the unit trusts or the memorandum and articles of association of the investment company (Articles 10 and 19).

2. The proposed Directive provided (Article 11(1) and Article 20(1)) that the depositary company must either:

a) have its registered offices in the same Member State as that where the CIUTS is situated, i.e. the Member State where its management is effectively carried on, or

b) be established in or at least have a place of business in that Member State, if it has its registered office in another Member State.

This rule takes into account the fact that the arrangements for authorization and supervision provided for in the proposal are to form a single system. The competent authorities in the Member State in which the CIUTS is situated (i.e. the Member State in which its management is carried on) are responsible for approving the choice of depositary company and for supervising its operations and also for authorising the management company or the investment company. The rule also takes account of the fact that, owing to the tasks entrusted to it, the depositary company must remain in constant touch with the centre where the management of the CIUTS is carried on, because it must supervise this management to satisfy itself that it complies with contractual and statutory requirements. For all these arrangements to be fully effective and practicable, the depositary company must be located in the same Member State as that in which the CIUTS is situated, which is also the Member State where its effective management is carried on. It will be deemed to be located there if it has in that Member State either its registered office or at least a place of business, if the registered office is situated in another Member State.

3. The provision discussed in 2. above will not, however, apply for a temporary period to depositary companies which, at the time of notification of the Directive, are not located in the Member State where the CIUTS is situated (Article 63). This exception is designed mainly to take account of the situation in Luxembourg, where a substantial number of CIUTS have chosen credit establishments located outside Luxembourg as depositary companies. The proposal provides that this situation must be regularised no later than 5 years after entry into force of the Directive.

4. The directive stipulates that the depositary company must be responsible for the custody of the transferable securities and liquid assets which constitute the assets of a CIUTS. This does not, however, mean that these transferable securities and liquid assets cannot be held by a credit institution other than the depositary company provided that this institution acts as the agent of the depositary company, which alone remains responsible for carrying out the duties entrusted to it under the proposed Directive.

It is also to be noted that transferable securities forming part of the assets of a CIUTS need not necessarily be physically held by the depositary company, which may entrust them, for instance, to a depositary body such as the Sicovam in France.

5. The proposed Directive does not specify the legal form of the depositary company; this question will remain within the competence of the Member State, subject to the right for undertakings of Member States to establish themselves in another Member State without having to incorporate a company there in accordance with local law. At present, in the Member States where such legislation exists, only the following can act as depositary companies:

a) <u>In Germany</u>:

die inländischen Kreditinstitute;

b) In Belgium:

the companies governed by Belgian law which appear on the list of banks drawn up in accordance with Article 2 of Royal Decree No. 185 of 9 July 1935 on the control of banks and the arrangements governing the issuing of securities;

c) In France:

the banks and financial institutions referred to in the Acts of 13 and 14 June 1941, agents de change, compagnies d'assurances, établissements du secteur public ou semi-public habilités à exercer les fonctions de dépositaire;

d) In Ireland:

a trustee as described in Section 3(1)(c) of the Unit Trust Act 1972;

e) In Luxembourg:

banking and savings institutions within the meaning of Article 1 of the Grand-Ducal Decree of 19 June 1965;

f) In the United Kingdom:

a trustee as described in Section 17 of the Prevention of Fraud (Investments) Act, 1958.

6. The proposed Directive also provides that the depositary company of an investment company will have less extensive responsibilities than those borne by the depositary company of a unit trust: Article 19 does not repeat the duties referred to in Article 10(2)(c) and (d). Less extensive responsibilities have been allocated to the depositary company of investment companies since:

a) unitholders in investment companies are covered by company-law safeguards and, in particular, are able to exert direct influence and control over the management of such a company by taking part in meetings; this is not so in the case of unitholders in unit trusts since they do not have any control over the management of the fund as carried out by the management company;

b) in the case of an investment company, there is no danger of a clash of interests, as is possible in the case of a unit trust, between the management company and the unitholders, since the unitholders and the shareholders of the investment company are the same people.

C. Composition of the assets of CIUTS (Article 25)

1. Since it must be possible to assess easily the investments of a CIUTS and to realize them without difficulty in the event, for instance, of a massive demand for the redemption of units, the proposed Directive provides (Article 25(1) that the assets of a CIUTS must exclusively consist of:

a) transferable securities admitted to official stock exchange quotation in a Member State and, subject to certain conditions, transferable securities for which quotation has been sought;

b) transferable securities traded on another regulated market of a Member State which operates regularly and is recognized and open to the public. This covers inter alia the "geregelter Freiverkehr" in Germany, the "marché hors cote" in France and the market in Belgium on which additional public sales of securities take place;

c) transferable securities admitted to official stock exchange quotation in a non-Member State or traded on another regulated market of a non-Member State which operates regularly and is recognized and open to the public, provided that the choice of this stock exchange or market has been approved by the competent authorities;

d) liquid assets, including debt securities which, having regard to their short term nature and the guarantees attaching to them, rank as liquid assets. This category of securities includes cash and also medium-term certificates issued by credit institutions and Treasury bills due to mature in the very near future.

2. Provision is, however, made for two important exceptions to the principle referred to in 1. above: in order to allow some degree of flexibility in the management of a CIUTS, the Directive provides that (Article 25(2)):

a) a CIUTS may invest a maximum of 10% of its assets in transferable securities other than those referred to in 1. above; this category of securities includes inter alia medium-term certificates which are not due to mature in the very near future.

b) Member States may authorise CIUTS to invest a maximum of 5% of their funds in assets other than those referred to in 1. and 2(a) above. This last provision, which will make it possible for CIUTS to invest in such items as gold and property, provided that it receives authorisation from the Member State in question, should not entail any sizeable risks for unitholders, given the very tight restriction provided for in respect of such forms of investment (a maximum of 5% of its funds). Finally it should be noted that debt securities representing loans made under Article 47(2) are included in this category of assets.

D. Links between Article 2 and Article 25 of the proposed Directive

Article 2(1), which defines the CIUTS referred to in the proposed Directive, stipulates inter alia that this definition covers unit trusts and investment companies which invest at least 80% of their funds in transferable securities and liquid assets.

On the other hand, under Article 25 of the proposed Directive, CIUTS must invest at least 95% of their funds in transferable securities and liquid assets. There is an apparent inconsistency between the two Articles, but it should be remembered that they pursue two quite distinct objectives.

Article 2(1) defines the scope of application of the proposed Directive and, within this framework, stipulates that it applies not only to collective investment undertakings which invest all their funds in transferable securities and liquid assets, but also to those which invest a substantial proportion of their funds (under the proposed Directive, at least 80%) in transferable securities. The proposed Directive is based on the assumption that all such bodies pursue, from an economic viewpoint, the same objectives, that the investor thus considers them to be similar and that they must, therefore, be subject to the same rules.

Article 25 is one of the provisions relating to CIUTS investment policy, and here the interests of unitholders require that CIUTS should not be allowed to invest more than 5% of their funds in assets other than transferable securities and liquid assets.

It should also be pointed out that any problems resulting from these two percentages will, in essence, arise only for CIUTS in existence at the moment of entry into force of the proposed Directive[1], since CIUTS set up at a later date will have to comply with Article 25 from the outset. If, therefore, at the time of entry into force of the proposed Directive, a collective investment undertaking satisfies the criteria laid down in Article 2(1) of the proposed Directive and holds, for example, 12% of its funds in assets other than transferable securities and liquid assets:

- it will fall within the scope of the proposed Directive in pursuance of Article 2(1);
- but, in order to comply with Article 25 of the proposed Directive, will have to reduce its investment in assets other than transferable securities and liquid assets to not more than 5% of funds (provided, of course, that the Member State in which the undertaking in question is located, authorises this form of investment).

---

1) These problems must not be overestimated because examples of CIUTS investing more than 5% of their funds in assets other than transferable securities and liquid assets appear very exceptional.

As regards the sizeable difference between the 20% limit provided for in Article 2(1) and the 5% limit provided for in Article 25(2)(b) in respect of investment in assets other than transferable securities and liquid assets, this is necessary to prevent collective investment undertakings, which are able to invest their funds in assets other than transferable securities and liquid assets, deliberately avoiding the application of the proposed Directive by modifying slightly the composition of their portfolios where this is not prohibited by national legislation.

Thus, if both limits were identical, or if the gap between them was narrowed - for example, by fixing them at 10% and 5% respectively - a CIUTS investing 5% of its funds in assets other than transferable securities and liquid assets could easily move outside the scope of the proposed Directive, merely by investing a further 5% of its funds in these other assets. Given the limits laid down in Article 2 of the proposed Directive, the CIUTS in question would, however, have to place a further 15% of its funds in assets other than transferable securities and liquid assets to move outside the scope of the Directive: such an operation is unlikely as it would have far-reaching repercussions on the fundamental nature of the investment undertaking in question.

Finally it must be noted that the difference between the limits mentioned above can be justified by the fact that Article 30 of the proposal provides that in certain cases the limit of 5% provided by Article 25(2)(b) can be exceeded.

E. Investment policy of CIUTS (Articles 26, 27, 28, 29, 30 and 69)

The proposed Directive lays down a number of rules concerning CIUTS investment policy with particular regard to securing the protection of unitholders.

1. For instance, a CIUTS may not invest more than 5% of its assets in transferable securities of the same issuer (Article 25(1)). There are, however, the following exceptions to this rule, the aim of which is to ensure that the principle of risk spreading is observed in respect of investments by CIUTS:

- The limit of 5% may by raised by Member States to a maximum of 10% provided that the total value of the transferable securities held by the CIUTS in issuers in which it invests more than 5% of its assets does not exceed 40% of the value of those assets (Article 25(2)). This exception could apply in particular to CIUTS in Denmark and Ireland, where the market in securities is small and where there are relatively few quoted issuing bodies in which CIUTS can invest their assets.

- The limit of 5% need not be applied in respect of securities issued or guaranteed by a Member State or its local authorities or in respect of securities issued by public international organisations of which one or more Member States are members (Article 25(3)). Generally speaking, investment in these securities should be free of risks.

2. It was also deemed desirable, with a view to protecting unitholders, to limit the scope available to a CIUTS for investing in units of other CIUTS. Consequently, a CIUTS may not invest in all more than 10% of its assets in units issued by other CIUTS, irresepctive of whether these units are quoted or not (Article 27(1)) and, within this limit, a collective investment undertaking may not invest more than 5% of its assets in the units of other unit trusts managed by the same management company as its own (Article 27(2)). In addition to this limit, the proposed Directive provides that:

- a unit trust may not charge further costs where it invests its assets in units of other trusts managed by the same management company as its own (Article 27(2));

- CIUTS may not invest their assets in securities of a collective investment undertaking not ranking as a CIUTS for the purpose of the proposed Directive. This prohibition concerns mainly securities issued by collective investment undertakings which are of the open-ended type but which do not invest their funds essentially in transferable securities and liquid assets (such as undertakings for collective investment in property or commodities, or mixed or open-ended undertakings). This rule does not apply to securities issued by closed-end investment companies since these rank as transferable securities as referred to in Article 25 (Article 28).

3. Finally, the proposed Directive provides that a CIUTS may not hold more than 5% of the securities of the same type of an issuer and may not have, in respect of each matter on which a vote may be taken, more than 5% of the total votes attaching to the securities of this issuer. The aim of this rule is to ensure that a CIUTS does not pursue a policy of taking over control of companies in which it invests, as this is not one of the tasks entrusted to it. The limit, which may be raised to a maximum of 10% by the Member States in exceptional cases decided by the competent authorities, does not, however, apply to securities issued or guaranteed by a Member State or its local authorities or by public international organisations of which one or more Member States are members or to holdings in certain investment companies in non-Member States when this is the only possible way to invest in securities of issuers of the countries concerned (Article 29).

4. The limits laid down for the composition of the assets of CIUTS (Article 25 (2)) and those relating to the level of investment of these assets in the transferable securities of the same issuer (Article 26) or in units of other CIUTS (Article 27) may, however, be exceeded in the event of price variations in the assets of the CIUTS, the exercise by it of subscription

rights, or a contraction in the size of the CIUTS following the redemption or repurchase of units, provided that the total value of the excess is not more than 10% of the value of the assets of the CIUTS (Article 30): there would be little justification for requiring a CIUTS to liquidate investments in order to comply with limits which it had not deliberately overstepped, when they may be sound investments which it would be in the best interests of the CIUTS to retain in its portfolio. This exception does not concern the 5% ceiling on the holding of securities issued by the same issuer, for in the cases where CIUTS are authorised to exceed the limits mentioned, the percentage of securities held by the CIUTS will not vary.

5. For the same reason as that justifying the retention of the excess margins referred to in 4., it was deemed desirable to provide that Member States may authorise CIUTS which, at the time notification of the Directive, exceed the limits referred to in 4. above, including the maximum limit of 5% imposed on the holding of securities issued by the same issuer, to continue exceeding these limits provided that the total amount by which these limits are exceeded does not exceed 10% of the value of the assets of the CIUTS (Article 69). Such leeway is not, however, permitted in respect of the limits laid down on the composition of assets (Article 25(2)) in view of the liquidity problems relating to the assets of the CIUTS which could arise if the limits were exceeded. Of course, if the excess amounts authorised in this manner are subsequently reduced, they cannot once again come into existence. Thus, a CIUTS which at the moment of notification of the Directive holds 8% of the securities of the same issuer and subsequently reduces this percentage to 6%, cannot exceed this latter percentage in the future, unless the conditions of Article 30 apply (see point 2 above).

F. Authorisation to withhold particulars referred to in Schedule A annexed to the Directive (Articles 34 and 57)

The proposed Directive specifies the information to be published by CIUTS, i.e. a prospectus setting out the basic particulars of the CIUTS (its structure, objectives, procedures for issuing and repurchasing shares and units, etc.), an annual report and two half-yearly reports (or, if appropriate one half-yearly report) containing, in the main, financial

information relating to its activity. The information that must appear in these documents is listed in the Annex; as in the case of the proposed Directive's other provisions, this provision also contains minimum rules, in the sense that each Member State is free to stipulate that CIUTS located in that State, and those only, must publish additional information.

The competent authorities may, however, where the legislation of that State included detailed regulation of CIUTS situated in that State, authorise such undertakings to limit the information to be contained in the prospectus to information which is not regulated by such legislation (Article 34(b)). This rule, which is designed to avoid requiring publication of any information of which the public is already deemed to be informed, is directed, for example, at the present situation in France and in the United Kingdom, where several points in the "status" of "SICAVs" and in the fund rules of unit trusts respectively are governed by law. It should, however, be noted that if these undertakings should market their units in a Member State other than that in which they are situated, the prospectus to be published in respect of such marketing in the other Member State should be comprehensive, i.e. should contain at least all the information listed in Schedule A annexed to the proposed Directive (Article 57(2)).

G. Checking the information given by CIUTS (Article 37)

The proposed Directive provides that the prospectus to be published by a CIUTS and any changes to it must be submitted for prior checking by the competent authorities. Checking of the annual and half-yearly reports may, however, be carried out at a later date by these authorities. In both cases, the competent authorities have a period of one month within which to make any comments (Article 37(1)).

The reason why the proposed Directive lays down different checking arrangements for the prospectus, on the one hand, and for the periodical reports, on the other, is as follows:

The proposed Directive provides (Article 31(2)) that the periodical reports must be published within very strict time-limits (annual report: four months, half-yearly reports: two months). If these reports had had to be submitted for prior-checking by the competent authorities, this would have meant that the time-limit for publication would have had to be longer than those mentioned above. The prospectus is, however, a "one-off" document which need not necessarily be published within extremely strict time-limits such as those laid down for the periodical reports. A prior check by the competent authorities of the information contained in the prospectus is, therefore, possible; consequently, it should be made compulsory, particularly as the information contained in the prospectus is of great importance for the potential investor with regard to his investment decision.

H. Borrowings by CIUTS (Articles 41 and 70)

The proposed Directive stipulates that CIUTS may not borrow, (with the exception, subject to certain limits and conditions, of borrowings for the repurchase or redemption of units), for the exercise of subscription rights or, as regards investment companies, the acquisition of buildings necessary for the carrying on of their activities (Article 41). It should be pointed out that the following are not to be considered as borrowings within the meaning of this provision:

a) the opening of a current account with a credit institution on behalf of a CIUTS, with overdraft facilities;

b) the acquiring by a CIUTS of the foreign currency necessary to purchase foreign securities, where the CIUTS lodges as security for such a transaction an amount, in national currency, matching or exceeding the foreign currency acquired (back-to-back loans).

The ban on borrowing will not, however, apply to CIUTS whose fund rules or memorandum and articles of association included on 1 January 1976 provisions permitting borrowing for investment purposes, and which, during the two years preceding this date, actually made use of these provisions (Article 70). Application of this ban on borrowings by such CIUTS would unduly disrupt their character, and also unitholders may have taken this possibility of borrowing into consideration when making their investment.

Similarly, the rule whereby all units of a CIUTS must carry equal rights (Article 46) will not apply to such CIUTS since the unitholders lending funds are subject, by virtue of their lending, to laws different from that applicable to ordinary unitholders.

I. Suspension of the repurchase or redemption of units (Article 42)

The proposed Directive provides that a CIUTS may, in cases provided for by law, the fund rules or the memorandum and articles of association of the investment company, suspend the repurchase or redemption of its units (Article 42(2)(a)). For instance, this might arise if the CIUTS was to suspend calculation of the list value of its units on one of the following grounds:

a) the closure of one or more stock exchanges on which a large number of the securities held in the portfolio of the CIUTS;

b) inability of the CIUTS to enjoy normal disposal of its assets on account of the political, economic, military, monetary or social situation, or any other case of force majeure;

c) a breakdown of the means of communication used to determine the value of the assets of the CIUTS;

d) exchange restrictions or the application of abnormal exchange rates.

J. Income received by a CIUTS (Article 44)

The proposed Directive provides that the income received by a CIUTS must either be distributed to unitholders or reinvested (Article 41). "Income" refers, in particular, to dividends, interest and other financial accruals.

K. Particularly speculative transactions which CIUTS cannot undertake (Article 43)

The proposed Directive prohibits CIUTS from carrying out particularly speculative transactions, such as uncovered dealings in transferable securities (Article 43). The definition of transactions deemed to be particularly speculative is the responsibility of the national authorities, although uncovered dealings in transferable securitiesare in any case amongst the transactions prohibited: taking into account the differences between the Member States concerning the financial market structure and the nature of permitted transactions in securities, no common definition of "particularly speculative transactions" has been possible.

L. Regulations concerning names (Article 53)

Paragraphs 1 and 2 of Article 53 of the proposed Directive have different objectives.

Paragraph 1 is aimed at preventing a CIUTS falling within the scope of this proposed Directive from trading under a name which might mislead the public. Such would be the case if, for instance, a unit trust investing its assets in a very small number of countries described itself as a "world-wide unit trust".

Paragraph 2, on the other hand, provides that Member States must prohibit undertakings not meeting the definition provided for in Article 2(1) of the proposed Directive and remaining therefore outside it from using names similar to those used by undertakings covered by the scope of the proposed Directive. The aim of this ban is to prevent investors from being misled into believing that undertakings not ranking as CIUTS covered by this Directive do in fact enjoy this status.

M. Financial facilities (Article 54)

In order that unitholders may exercise their financial rights without difficulty, the proposed Directive provides that if a CIUTS markets its units in another Member State to that in which it is situated, it must possess financial facilities in that other Member State (Article 54(2)). This requirement will normally be complied with ipso facto when marketing of the units in that other Member State is carried out by a credit institution.

N. Savings plans (Article 55)

The proposed Directive mentions, amongst the marketing regulations, the rules governing various forms of savings plan (Article 55(2)). It should be pointed out, by way of example, that the expression "the various forms of savings plan" covers, amongst others:

a) the typical savings plan, i.e. a contract between the saver and the formulator of the savings plan, for securing, by a single payment or by regular or irregular payments units in one or more CIUTS with a view to achieving a specific savings objective;

b) the withdrawal plan, i.e. a plan providing for the periodical payment to the subscriber of a fixed amount deducted from the income from units and, if such income is not sufficient, from the unvested capital by repurchasing units.

0. Special scheme for certain investment companies (Articles 63 to 65)

By virtue of Section X of the proposed Directive, investment companies which market their units exclusively through one or more official stock exchanges are exempt from certain obligations. In particular, these companies are subject neither to the provisions of the proposed Directive concerning the depositary company (Articles 19 to 24 inclusive) nor to the legal obligation to repurchase their units at the request of the unit-holder (which obligation is provided for in Article 42(1)).

The reason that it appeared useful to exempt the companies in question from the obligation of having a depositary company like other investment companies stems from the fact that certain responsibilities applicable to depositary companies of investment companies (see Article 19) are not applicable to investment companies which market their shares exclusively through the medium of the stock exchange. However, the fundamental function of the depositary company which is to safeguard the assets of the investment company, has been retained; in this connection it is provided that the assets of these investment companies must be kept in a special account with one or more credit institutions (Article 65(3)).

In addition, the obligation to repurchase is meaningless in view of the use of this form of exclusive marketing; but, in order to protect the saver, the proposed Directive provides that the investment companies concerned must intervene on the market to prevent the quotation of their units from deviating by more than 5% from their net asset value. Nevertheless, the competent authorities may exempt these investment companies from intervening on the market in exceptional circumstances, which ought normally to be the same as those justifying the suspension of the repurchase or redemption of units by a CIUTS (Article 64). In other words, this means that these companies will, if need be, have to intervene on the stock exchange:

- to repurchase their units so that, at any given time, an investor may, if he wishes to sell his units, obtain a stock exchange price equal to at least 95% of their asset value;

- to sell their units (or to issue other units) so that, at any given time, an investor may, if he wishes to buy units, obtain a stock exchange price equal to not more than 105% of their asset value.

Proposal for a Council Directive for the coordination of laws, regulations and administrative provisions regarding collective investment undertakings for transferable securities

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas under the Treaty any discriminatory treatment based on nationality concerning establishment and provision of services has been prohibited since the end of the transitional period; whereas the Council Directive of 28 June 1973 concerning the abolition of restrictions on freedom of establishment and freedom to provide services in respect of self-employed activities of banks and other financial institutions[1] regards as coming within the scope of this prohibition the obligation for a company intending to carry on the activity of manager or trustee of a unit trust in another Member State to be incorporated in that State;

Whereas the laws of the Member States relating to collective investment undertakings differ appreciably from one State to another, particularly as regards the extent of the obligations and controls which are imposed on these undertakings; whereas these differences disturb competitive conditions between undertakings and do not ensure equivalent protection for unitholders;

Whereas national laws governing investment undertakings should therefore be coordinated with a view to approximating the conditions of competition between these undertakings at Community level, and at the same time ensuring the effective and more uniform protection of unitholders; whereas such coordination would also facilitate access by CIUTS situated in one Member State to activities in the other Member States;

---

1) O.J. No. L 194 of 16.7.1973, p. 1/10

Whereas the attainment of these objectives is essential for the removal of restrictions on the free circulation of units of collective investment undertakings in the Community and consequently this coordination comes within the terms of the creation of a European capital market;

Whereas to ensure these objectives, provision should be made for common minimum rules for collective investment undertakings situated in the Member States concerning their authorisation, supervision, structure, activities and the information they must publish;

Whereas the application of these common rules is a sufficient guarantee to collective investment undertakings situated in a Member State to permit them, subject to the provisions relating to the movement of capital, to market their units in other Member States without these Member States being able to make the undertakings or their units subject to any provision whatsoever other than marketing regulations; whereas, nevertheless, if a CIUTS markets its units in a different Member State than the one in which it is situated it must possess in that other Member State the necessary financial facilities to enable unitholders in that other Member State to exercise their financial rights without difficulty;

Whereas, as a first step, the coordination of the laws of Member States should be confined to collective investment undertakings other than of the "closed-end" type which invest mainly in transferable securities; whereas, on account of the various problems raised by collective investment undertakings which do not invest mainly in transferable securities and by those which are of the closed-end type, these should be coordinated at a later date;

HAS ADOPTED THIS DIRECTIVE:

Proposal for a Council Directive for the coordination of laws, regulations and administrative provisions regarding collective investment undertakings for transferable securities

Section I - General provisions and field of application

Article 1

1. Member States shall apply the provisions of this Directive to collective investment undertakings for transferable securities ("CIUTS") situated within their territories.

2. Subject to provisions relating to the movement of capital and to Articles 55(1) and 61(2) of this Directive, a Member State shall not apply any provisions whatsoever to CIUTS situated in another Member State or to the units issued by such CIUTS.

3. Member States may apply to CIUTS situated within their territories requirements which are stricter than or additional to those provided in Article 5 et seq of 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, CIUTS are hereby defined as investment companies and unit trusts:

- whose object is the collective investment, mainly in transferable securities and liquid assets, of capital raised by means of offers to the public and whose operations are based on the principles of spreading the investment risk. "Investment mainly in transferable securities and liquid assets" is hereby defined as the investment in

such transferable securities and liquid assets of at least 80% of the capital raised,

- and whose units are or have been issued continuously or in blocks at short intervals, and/or will be directly or indirectly repurchased or redeemed at the request of the holder out of their assets.

2. For the purposes of this Directive the following shall not be deemed to be CIUTS:

(a) closed-end investment companies;

(b) CIUTS whose assets are mainly invested through the medium of subsidiary companies otherwise than in transferable securities and liquid assets.

Article 3

For the purposes of this Directive, a CIUTS shall be deemed to be situated in the Member State where its management is effectively carried on.

Article 4

For the purposes of this Directive, the following definitions shall apply:

(a) investment company:
CIUTS with a corporate structure, i.e. established as a company;

(b) unit trusts:
CIUTS with a non-corporate structure;

(c) management company:
the company entrusted with managing a unit trust;

(d) depositary company:
the company entrusted with custody of the assets of a unit trust or investment company;

(e) fund rules:
all the contractual rules or "trust rules" governing the legal

relationship, within the framework of a unit trust, between the management company, the depositary company and the unitholders;

(f) unit:
any physical representation of unitholders' rights in CIUTS assets, whether such representation take the form of securities issued by the CIUTS or by the registration of the unitholders in a register kept by the CIUTS;

(g) directors:
persons who by virtue of the law or the memorandum and articles of association represent the management, investment or depositary company, or who carry on their management at a senior level;

(h) competent authorities:
those of the Member States in which the CIUTS is situated.

Section II - Authorisation of the CIUTS

Article 5

1. A CIUTS shall not carry on activities unless it has been authorised by the competent authorities. Such authorisation shall be valid for all Member States.

2. A unit trust shall only be authorised if the competent authorities have approved the management company, the fund rules and the choice of depositary company. An investment company shall only be authorised if the competent authorities have approved both the memorandum and articles of association and the choice of depositary company.

3. The competent authorities shall not authorise a CIUTS if the directors of the management company, the investment company or the depositary company are not of good repute or are not competent to carry out their duties. To this end, the names of the directors of the management company and of the investment company and of every person succeeding them

in office shall be notified immediately to the competent authorities. The same shall apply to the directors of the depositary company, unless such notification has already been given to other authorities of the Member State in which the CIUTS is situated.

4. The management company or the depositary company may not be replaced, or the fund rules or memorandum and articles of association of the investment company amended, without the approval of the competent authorities.

5. Any amendmend of the memorandum and articles of association of the management company shall be reported immediately to the competent authorities.

Section III - Obligations regarding the structure of unit trusts

Article 6

For the purposes of this Directive a unit trust shall be deemed to include, in addition to the capital raised by it, a management company and a depositary company.

Article 7

1. The management company shall have its registered office in the Member State where the unit trust is situated, or shall be established there if its registered office is in another Member State.

2. The management company shall have sufficient paid up capital to enable it to carry on its business effectively and to meet its liabilities.

Article 8

The activities of the management company shall be limited to the management of unit trusts.

Article 9

1. The management company shall inform the competent authorities of the names of all its members and of the amounts of their respective holdings in the company.

2. Shares in the management company shall not be sold or otherwise disposed of without the approval of the competent organs of the management company.

Article 10

1. The custody of transferable securities and liquid assets which form part of the assets of the unit trust shall be the responsibility of the depositary company which shall hold them in a separate account. This shall apply also to all other assets of the unit trust whose safekeeping can be physically assured by the depositary company.

2. The depositary company shall, moreover, be responsible for the following duties:

(a) taking all necessary measures to ensure the day-to-day administration of the unit trust's assets for whose custody it is responsible;

(b) taking all necessary measures to ensure that the sale, issue, repurchase, redemption and cancellation of units by the unit trust is carried out in compliance with the law and the fund rules;

(c) taking all necessary measures to ensure that the value of the units is calculated in compliance with the law and the fund rules;

(d) carrying out the instructions of the management company relating to the assets of the unit trust, unless these are not in compliance with the law or the fund rules;

(e) taking all necessary measures to ensure that:

- the transfer of securities sold on behalf of the unit trust takes place only on payment of their equivalent value and that such equivalent value is deposited with it;

- payment for the securities purchased on behalf of the unit trust is made only on the physical transfer of such securities and that the latter be deposited with it to the extent that their safekeeping can be physically assured by it;

(f) taking all necessary measures to ensure that distributions are made in compliance with the procedures laid down in the fund rules.

Article 11

1. The depositary company shall either have its registered office in the same Member State as that where the unit trust is situated, or be established in or at least have a place of business in that Member State if it has its registered office in another Member State.

2. The depositary company shall have sufficient paid up capital to enable it to carry on its business effectively and to meet its liabilities.

Article 12

The depositary company shall be liable to the management company and the unitholders for all loss suffered by them as a result of failure to carry out or properly execute its duties. Liability towards unitholders shall be direct, or indirect through the management company, depending on the legal nature of the relationship between the depositary company and the unitholders. Clauses in the fund rules or any other agreement aimed at excluding or restricting such liability shall have no effect.

Article 13

1. The same company shall not act as management company and depositary company.

2. The management company and the depositary company shall act, in carrying out their respective roles in the unit trust, in the sole interest of the unitholders.

Article 14

1. The procedures for the replacement of the management company and the depositary company shall be laid down by the law or by the fund rules. The law shall provide, in any event, that the competent authorities will require the replacement of the management company or the depositary company when these companies are no longer capable of carrying out their duties.

2. The law or the fund rules shall provide regulations to ensure the protection of the unitholders where the management company or the depositary company is replaced.

Article 15

The assets of a unit trust may not be the subject of any claim whatsoever by persons other than the management company and the unitholders.

In all cases claims by the management company or the unitholders may only be satisfied from the assets of the unit trust where there are charges expressly attaching to these assets under the law or the fund rules.

Article 16

Member States shall take measures to ensure that the assets of a unit trust are protected if the management company or the depositary company are wound up.

Section IV - Obligations regarding the structure of investment companies and their depositary companies

Article 17

The investment company shall have sufficient initial paid up capital to enable it to carry on its business effectively.

Article 18

The investment company may not engage in activities other than that referred to in Article 2. It shall be responsible for the management of its assets.

Article 19

1. The custody of transferable securities and liquid assets which form part of the assets of an investment company shall be the responsibility of a depositary company which shall hold them in a separate account. This shall apply also to all other assets of the investment company whose safe-keeping can be physically assured by the depositary company.

2. The depositary company shall, moreover, be responsible for the following duties:

(a) taking all necessary measures to ensure the day-to-day administration of the investment company's assets for whose custody it is responsible;

(b) taking all necessary measures to ensure that the sale, issue, repurchase, redemption and cancellation of units by the investment company is carried out in compliance with the law and with the memorandum and articles of association of the investment company;

(c) taking all necessary measures to ensure that:

- the transfer of securities sold on behalf of the investment company takes place only on payment of their equivalent value and that such equivalent value is deposited with it;

- payment for the securities purchased on behalf of the investment company is made only on the physical transfer of such securities and that the latter be deposited with it to the extent that their safe-keeping can be physically assured by it;

(d) taking all necessary measures to ensure that distributions are made in compliance with the procedures laid down in the memorandum and articles of association of the investment company.

Article 20

1. The depositary company shall either have its registered office in the same Member State as that where the investment company is situated, or be established in or at least have a place of business in that Member State if it has its registered office in another Member State.

2. The depositary company shall have sufficient paid up capital to enable it to carry on its business effectively and to meet its liabilities.

Article 21

1. The depositary company shall act, in carrying out its role as depositary company, in the sole interest of the unitholders.

2. The depositary company shall be liable to the investment company for all loss suffered by the latter as a result of failure to carry out or properly execute its duties. Any agreement aimed at excluding or restricting such liability shall have no effect.

Article 22

The same company shall not act as investment company and depositary company.

Article 23

1. The procedures for the replacement of the depositary company shall be laid down by the law or the memorandum and articles of association of the investment company. The law shall provide, in any event, that the competent authorities will require the replacement of the depositary company when this company is no longer capable of carrying out its duties.

2. The law or the memorandum and articles of association of the investment company shall provide regulations to ensure the protection of unitholders where the depositary company is replaced.

Article 24

Member States shall take measures to ensure that the assets of an investment company are protected if the depositary company is wound up.

Section V - Obligations concerning the investment policy of CIUTS

Article 25

1. The assets of CIUTS shall exclusively consist of:

(a) transferable securities admitted to official stock exchange quotation in a Member State or for which quotation has been sought and also recently issued transferable securities of the same type as those already admitted to official quotation, provided that the admission of the new transferable securities to official quotation is applied for;

(b) transferable securities traded on another regulated market of a Member State which operates regularly and is recognized and open to the public;

(c) transferable securities admitted to official stock exchange quotation in a non-Member State or traded on another regulated market of a non-Member State which operates regularly and is recognized and open to the public, provided that the choice of this stock exchange or market has been approved by the competent authorities;

(d) liquid assets, including debt securities which, having regard to their short term nature and to the guarantees attaching to them, rank as liquid assets.

2. However:

(a) a CIUTS may invest a maximum of 10 % of its assets in transferable securities other than those referred to in paragraph 1;

(b) Member States may provide in their legislation that CIUTS may invest a maximum of 5 % of their funds in assets other than transferable securities and liquid assets.

Article 26

1. A CIUTS shall not invest more than 5 % of its assets in transferable securities of the same issuer.

2. Member States may raise the limit stipulated in paragraph 1 to a maximum of 10 % provided that the total value of the transferable securities held by the CIUTS in issuers in which it invests more than 5% of its assets does not exceed 40 % of the value of its assets.

3. Member States may waive application of paragraphs 1 and 2 in respect of securities issued or guaranteed by a Member State or its local authorities or in respect of securities issued by public international organisations of which one or more Member States are members.

Article 27

1. A CIUTS shall not invest more than 10 % of its assets in units issued by other CIUTS.

2. Without prejudice to paragraph 1 a unit trust shall not invest more than 5 % of its assets in the units of other unit trusts managed by the same management company as its own, and in such cases charging of further costs shall be prohibited.

3. Subject to paragraph 2, whenever a CIUTS invests part of its assets in the units of another CIUTS, any charging of further costs shall be shown in the periodical reports referred to in Article 31.

Article 28

A CIUTS shall not invest its assets in securities of a collective investment undertaking not defined as a CIUTS for the purposes of this Directive. This rule, however, shall not apply to securities issued by a closed-end investment company.

Article 29

1. A CIUTS shall not hold more than 5% of the securities of the same type of an issuer and shall not have, in respect of each matter upon which a vote may be taken, more than 5% of the total votes attaching to the securities of this issuer.

2. In exceptional cases, Member States may authorize the competent authorities to raise the limits provided for in paragraph 1 to a maximum of 10 %.

3. Member States may waive application of paragraphs 1 and 2 in the following cases :

(a) transferable securities issued or guaranteed by a Member State or its local authorities or transferable securities issued by public international organizations of which one or more Member States are members ;

(b) the holdings of a CIUTS in a company incorporated in a non-Member State inverting its assets mainly in securities of issuers who are nationals of that country, where, under the legislation of that country, such a holding constitutes for the CIUTS the only way in which it can invest in the securities of issuers of that country. This waiver shall, however, only apply where the company in the non-Member State respects, in its investment policy, the limits set in Articles 26(1) 27 and 29(1). Where the limits set in Articles 26(1) and 27 are exceeded, Article 30 shall apply mutatis mutandis ;

(c) the holdings of a CIUTS in subsidiary companies exclusively carrying on the business of management investment or marketing on behalf of the the CIUTS.

Article 30

The limits provided for in Articles 25(2), 26(1) and (2) and 27(1) and (2) may be exceeded on condition that any such excess stems from price variations in the assets of the CIUTS, the exercise by the CIUTS of subscription rights relating to securities making up its assets, or from a contraction in size by the CIUTS, and on condition that the toal value of the excess is not more than 10 % of the value of the assets of the CIUTS.

Section VI - Obligations concerning information to be supplied to unitholders

A. Publication of a prospectus and periodical reports

Article 31

1. The CIUTS shall publish :

- a prospectus and, each financial year,
- an annual report
- and two half-yearly reports.

2. The annual and half-yearly reports shall be published within the following limits from the end of the period to which they refer :

- 4 months for the annual report
- 2 months for the half-yearly reports.

3. By way of derogation from paragraph 1, the CIUTS shall not be obliged to publish the half-yearly report relating to the second six-month period of the financial year if the annual report for that financial year is published during the two month period.

Article 32

1. The prospectus must contain the information provided for in Schedule A annexed to this Directive.

2. The annual report shall contain the information provided for in Schedule B annexed to this Directive.

3. The half-yearly report shall contain the information provided for in Chapters I and II of Schedule B annexed to this Directive.

If the CIUTS distributes dividends during the first half of a financial year, the half-yearly report relating to the period during which this distribution is made shall also include the information provided for in Chapter III of Schedule B annexed to this Directive, concerning the revenue account for the period following the period for which a revenue account was last published.

Article 33

1. The fund rules or the memorandum and articles of association of the investment company shall constitute an integral part of the prospectus and shall be annexed thereto.

2. The documents mentioned in paragraph 1 need not, however, be annexed to the prospectus, if in each Member State where the units are offered they are readily available to the public, free of charge, at the places mentioned in the prospectus.

Article 34

Article 32 notwithstanding :

(a) the competent authorities may permit a CIUTS to withhold certain particulars provided for in Schedules A and B annexed to this Directive where such particulars are unlikely to affect an assessment of the assets, financial position, performance and prospects of that undertaking;

b) where the legislation of a Member State provides for the detailed regulation of CIUTS situated in that State, the competent authorities may permit such undertakings to limit the information contained in the prospectus to data which is not regulated by law.

Article 35

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

Article 36

1. Member States shall specify the independent persons or the bodies whose duty it is to verify the financial data contained in the annual reports.

2. Each annual report shall indicate precisely the person or body whose duty it is to verify the financial data.

Article 37

1. The CIUTS shall submit its prospectus and any amendments thereto, as well as the annual and half-yearly reports, for checking by the competent authorities, who have a period of one month within which to make any comments. The CIUTS shall take these comments into account. As far as the prospectus is concerned, this check shall be carried out prior to publication.

2. The competent authorities shall ensure that the prospectus and the reports do not contain any information or make any omissions which could mislead the public.

Article 38

1. The prospectus, the most recent annual report and the subsequent half-yearly report shall be sent free of charge to the potential subscriber when he is canvassed or at his own request.

2. Moreover, the annual and half-yearly reports shall be made available to the public.

B. Publication of other information

Article 39

The CIUTS shall make public the issue, sale, repurchase or redemption price of its units each time it issues, sells, repurchases or redeems them, and in any event at least twice a month. The competent authorities may, however, permit a CIUTS to reduce the frequency to once a month on condition that this does not prejudice the interests of the unitholders.

Article 40

1. All publicity involving an invitation to purchase units of a CIUTS shall indicate that a prospectus exists and the places where it may be obtained by the public.

2. A CIUTS, and such marketing organisations and financial intermediaries as may be concerned in the issue or sale of the units or their distribution by a stock exchange, shall not furnish any information likely to influence the assessment of the units where such information is not contained in the prospectus or the periodical reports or is not common knowledge.

Section VII - General obligations of the CIUTS

Article 41

1. A CIUTS shall not borrow.

2. Paragraph 1 notwithstanding, Member States may provide that the competent authorities may permit :

a) CIUTS to borrow funds up to 10 % of the value of their assets for the repurchase or redemption of their units or for the exercise of subscription rights, on condition that the funds borrowed are repaid within a short period and are not secured by a charge on the assets of the CIUTS ;

b) investment companies to borrow funds to acquire buildings which are necessary in order to carry on their business.

Article 42

1. A CIUTS shall, at the request of the unitholder, repurchase or redeem its units.

2. Paragrah 1 notwithstanding :

a) a CIUTS may, in cases provided for by the law, the fund rules or the memorandum and articles of association of the investment company, suspend the repurchase or redemption of its units. The procedure for this suspension shall be laid down in the fund rules or in the memorandum and articles of association of the investment company ;

b) the competent authorities may demand in the interest of the unitholders or in the public interest the suspension by a CIUTS of the repurchase or redemption of its units.

3. In the cases mentioned in paragraph 2(a), the CIUTS shall inform the competent authorities without delay of its decision.

Article 43

The procedures for valuation of assets and the methods of calculation of the sale or issue price and the repurchase or redemption price of the units of a CIUTS shall be indicated in the fund rules or in the memorandum and articles of association of the investment company.

Article 44

1. The income received by a CIUTS shall either be distributed to unitholders or reinvested in accordance with regulations which shall be laid down in the fund rules or in the memorandum and articles of association of the investment company.

Distribution of income shall take place at least once a year. In the case of reinvestment of income, unitholders shall be informed at least once a year of the amount reinvested.

2. The net gains realised from the sale of the assets of the CIUTS may be distributed where such a distribution is in accordance with the law and is provided for by the fund rules or the memorandum and articles of association of the investment company.

3. Unrealised gains shall not be distributed.

Article 45

Units of a CIUTS shall not be issued unless the cash equivalent to the net issue price is simultaneously paid in to the funds of the CIUTS. This provision shall not preclude the distribution of bonus units.

Article 46

All the units of a CIUTS shall carry equal rights.

Article 47

1. Without prejudice to Article 25(1)(d), a CIUTS shall neither grant loans nor act as a guarantor.

2. By way of derogation from paragraph 1. Member States may provide that the competent authorities may authorise a CIUTS to make loans to undertakings of up to 5 % of the value of its assets, provided that these are short term loans only. This authorisation shall be given in each case, and prior to the making of the loan.

Article 48

A CIUTS shall not carry out particularly speculative transactions, such as uncovered dealings in transferable securities.

Article 49

1. A CIUTS shall only carry out transactions in the transferable securities referred to in Article 25(1) which are or shall be part of its assets on the official market of a stock exchange or on another regulated market which operates regularly and is recognised and open to the public.

2. Paragraph 1 notwithstanding, a CIUTS may carry out transactions outside the markets referred to in that paragraph if they are carried out at a price which is more advantageous for the unitholders than that which could have been obtained on these markets if these transactions had been carried out on them.

3. Where a CIUTS carries out transactions in the securities referred to in Article 25(2), the price on the basis of which these transactions are carried out shall be certified by an expert approved by the competent authorities.

Article 50

The following persons :

- the management company and the depositary company ;
- the directors and staff of these companies or of the investment company ;
- subsidiaries of the management company or depositary company ;
- the investment advisers of the management company, the investment company, or the depositary company ;

- any persons holding more than 10 % of the voting rights in the management company, investment company or depositary company,

shall not act as a party to transactions effected on behalf of a CIUTS unless such transactions concern transferable securities and are carried out :

a) at a price which is equal to or more advantageous for the unitholders than the price of the official quotation of a stock exchange, if the transferable securities involved have been admitted to its quotation ;

b) at a price which is equal to or more advantageous for the unitholders than that observed on any other regulated market which operates regularly and is recognised and open to the public, if the transferable securities involved have been traded on this market ;

c) at the price calculated in accordance with regulations laid down by the fund rules or the memorandum and articles of association of the investment company in the case of transferable securities other than those referred to in subparagraphs (a) and (b) ;

d) at the issue price to the public in the case of new issues in respect of which the depositary company acts as an intermediary.

Article 51

A CIUTS shall place at the disposal of each unitholder a document confirming his rights over its assets.

Article 52

The fund rules or the memorandum and articles of association of the investment company shall indicate all the categories of costs chargeable to the unitholders.

Article 53

1. The competent authorities shall ensure that the name of a CIUTS cannot mislead the public.

2. Member States shall take the necessary measures in order to prevent undertakings which are not regarded as CIUTS as defined in this Directive, from using names which might lead the public to believe that those undertakings come within the scope of this Directive.

Section VIII - Special provisions applicable to CIUTS which market their units in Member States other than those in which they are situated

Article 54

1. If a CIUTS intends to market its units in a Member State other than that in which it is situated, it shall notify such intention to the competent authorities as well as the authorities of the other Member State.

2. In the case referred to in paragraph 1, the CIUTS must possess financial facilities in the other Member State through which the unitholders may exercise their rights.

Article 55

1. By way of derogation from Article 1(2), a Member State may apply its own marketing regulations to CIUTS situated in other Member States and marketing or intending to market their units in its territory.

2. For the purposes of paragraph 1, the term "marketing regulations" shall cover mainly :

a) the rules relating to entries in trade registers ;

b) the rules relating to sales promotion ;

c) the rules relating to unfair competition ;

d) the rules relating to canvassing or other marketing techniques ;

e) the rules governing the various forms of savings plan.

3. The marketing regulations referred to in paragraph 1 shall be applied in a non-discriminatory manner and must not have the effect of imposing on CIUTS situated in the other Member States stricter conditions than those envisaged in this Directive.

Article 56

A CIUTS must be able to carry out the marketing of its units in a Member State other than that in which it is situated through a sales office situated in that Member State. The setting up of this office shall not be dependent on authorisation by the authorities of that Member State.

Article 57

1. If a CIUTS markets its units in a Member State other than that in which it is situated, it shall distribute in the other Member State, in at least one official language of the other Member State, the documents and information which have to be published in the Member State in which it is situated, in accordance with the same procedures as those provided for in that last-mentioned State.

2. By way of derogation from paragraph 1, a CIUTS granted the permission provided for in Article 34(b) shall, if it markets its units in a Member State other than that in which it is situated, publish in this other Member State a prospectus in accordance with Article 32(1).

Section IX - Provisions concerning the competent authorities

Article 58

Member States shall designate the competent authorities who are to carry out the duties conferred upon them by this Directive. They shall inform the Commission thereof indicating any division of duties.

The competent authorities shall supervise the activities throughout the territory of the Community of CIUTS situated on their national territory and shall, in particular, ensure that the rules laid down by this Directive are respected, subject to the provisions of paragraph 3.

2. The competent authorities referred to in Articles 5, 9(1), 14(1), 42(3), 53(1), 60(1) and (3), 61(4), 62 and 67(3) shall be government authorities.

3. If recourse is had to the power provided by Article 55(1), then the authorities responsible for supervising the observance of the marketing regulations referred to in therein shall be those of the Member State in which the units are marketed.

4. The competent authorities shall be granted all the powers, including those of supervision, necessary to carry out their task. In particular, they shall have the power to carry out on-the-spot investigations and to require the CIUTS concerned to provide any information or documents they may need in order to carry out their task.

Article 59

The competent authorities of Member States shall collaborate closely in order to carry out their task and shall for this purpose communicate to each other all information requested.

Article 60

1. The competent authorities shall state the reasons for all decisions refusing applications for authorisation and shall communicate these reasons to the applicant.

2. Member States shall provide a right of appeal to a court of law against all refusals of authorisation.

3. Provision shall also be made for a right of appeal to a court of law where an application for authorisation which was properly presented has not been acted upon by the competent authorities within three months from the date of receipt thereof.

Article 61

1. Member States shall specify such measures, including the possibility of withdrawal of authorisation, which the competent authorities referred to in Article 58(1) may take with regard to a CIUTS which has violated any law, regulation or administrative provision, or the regulations laid down in the fund rules or the memorandum and articles of association of the investment company.

2. Member States shall specify such measures which the authorities referred to in Articles58(3) may take with regard to a CIUTS which has violated the rules provided for in Articles 54(1) and 55(1).

3. All decisions taken by the authorities pursuant to the preceding paragraphs shall state the reasons on which they are based and be communicated to the CIUTS.

Member States shall provide a right of appeal to a court of law against such a decision.

4. All decisions to withdraw authorisation shall be communicated without delay by the competent authorities of the Member State in which the CIUTS in question is situated to the authorities of the other Member States in which the units of this CIUTS are marketed.

Article 62

1. The winding up of a CIUTS shall be carried out under the supervision of the competent authorities in accordance with the regulations laid down by national legislation.

2. The competent authorities shall have all the necessary powers in order to ensure that the interests of unitholders are protected. Without prejudice to the powers conferred upon courts in such a matter, Member States may authorise the competent authorities to appoint liquidators or to have them appointed by courts.

3. The winding up shall not be carried out in a discriminatory manner with regard to unitholders from other Member States.

Section X - Specific provisions relating to investment companies which market their units exclusively through one or more stock exchanges

Article 63

Investment companies which market their units exclusively through one or more official stock exchanges to whose official quotation the units are admitted shall not be required to have a depositary company within the meaning of this Directive.

The provisions of this Directive which relate to the depositary company and to its managers shall not therefore apply to these companies.

Article 64

The provisions of Article 42 shall not apply to investment companies referred to in Article 63. However, these companies shall, if necessary, intervene on the market to prevent the quotation of their units from deviating by more than 5% from net asset value of such units. The competent authorities may exempt these companies from this latter requirement in exceptional cases.

Article 65

1. The provisions of Articles 39 and 43 shall not apply to the investment companies referred to in Article 63.

2. The methods of asset valuation and the methods of calculation of the net asset value of the units of the companies referred to in Article 63 shall be set out in the memorandum and articles of association of these companies. The net asset value shall be established and made public at least twice a week, and its calculation shall be certified as correct by an independent auditor.

3. The transferable securities and liquid assets which are part of the assets of the companies referred to in Article 63 shall be kept in a special account with one or more credit institutions. This rule shall also apply to all assets the safekeeping of which can be physically assured by a credit institution.

Section XI - Contact Committee

Article 66

1. A Contact Committee shall be set up at the Commission. The task of this Committee will be:

a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, the harmonized implementation of the directive through regular consultation relating in particular to practical problems of implementation;

b) to facilitate consultation between Member States as regards the stricter or supplementary requirements on the one hand and the marketing rules on the other hand which they are free to apply in accordance with Articles 1(3) and 55(1) of this Directive;

c) to advise the Commission, if necessary, on additions or amendments to the Directive.

2. The Contact Committee shall be composed of representatives of the Member States and representatives of the Commission. It shall be presided over by a representative of the Commission. The secretariat shall be provided by the Commission.

3. The Committee shall be convened by the Chairman either on his own initiative or at the request of one of its members.

Section XII - Transitional provisions, derogations and final provisions

Article 67

1. By way of derogation from Article 8, Member States may authorise management companies to issue bearer certificates representing registered securities of other companies.

2. Member States may authorise management companies which, at the time of notification of the Directive, carry on activities in addition to those provided for in Article 8, to continue those activities provided that they are not of such a nature that they could prejudice the interests of unitholders.

3. If, in the case referred to in paragraph 2, the management company is a credit institution or an insurance undertaking, it need only, notwithstanding Article 9(1), inform the competent authorities of the name of any shareholder holding a number of securities giving voting rights in excess of 5% of the total votes attaching to its own securities.

4. Article 9(2) shall not apply to the management companies referred to in paragraph 3.

Article 68

Member States may allow CIUTS whose depositary companies do not comply with the conditions provided for in Articles 11(1) and 20(1) at the time of the notification of this Directive a period of five years from the date of entry into force of this Directive to comply with these conditions.

Article 69

1. Member States may authorise CIUTS which, at the time of the notification of this Directive, exceed the limits laid down in Articles 26, 27 and 29, to continue exceeding these limits, provided that the total value of the amounts by which those limits are exceeded is not more than 10% of the value of the assets of the CIUTS.

2. The amounts referred to in paragraph 1 by which the limits laid down in Articles 26 and 27 may be exceeded may be increased under the conditions provided for in Article 30.

Article 70

1. Articles 41 and 46 shall not apply to CIUTS whose fund rules or memorandum and articles of association included on 1 January 1976 provisions permitting borrowing for investment purposes and which, during the two years preceding this date, actually made use of these provisions.

2. The possibility of such borrowing shall be clearly indicated in the prospectus.

3. However, the amount of the loans contracted under paragraph 1 shall not exceed 15% of the amount of the assets of the CIUTS.

Article 71

Member States shall bring the laws, regulations and administrative provisions necessary to comply with this Directive into force within a period of 12 months from the date of its notification and shall inform the Commission immediately thereof.

Article 72

Member States shall ensure that the Commission is notified of the text of essential provisions subsequently adopted under national law in the fields covered by this Directive.

Article 73

This Directive is addressed to the Member States.

SCHEDULE A

INFORMATION TO BE INCLUDED

IN THE CIUTS PROSPECTUS

A) Regarding unit trusts

B) Regarding investment companies

Unit trusts in general	Management company	
1. General data 11. General characteristics	1. General data 11. General characteristics	1. General data 11. General characteristics
11.1 Name	11.1 Name or style, registered office and the principal headquarters if this differs from the registered office.	11.1 Name or style, registered office and the principal headquarters if this differs from the registered office.
11.2 Dates of creation and of the first sale of units to the public. Indicate the duration, if limited.	11.2 Duration, if limited.	11.2 Dates of the company's incorporation and of the first sale of units to the public. Indicate the duration, if limited.
	11.3 If the company manages other unit trusts or has other business, indication of the other trusts and activities.	
11.4 Indication of the place where the fund rules and periodical reports may be consulted.		11.4 Indication of the place where the memorandum and articles of association and periodical reports of the company may be consulted.
11.5 Brief indications relevant to unitholders of the taxation of the fund. Details of whether deductions are made at source from the income and capital gains paid by the fund to unitholders.		11.5 Brief indications relevant to unitholders of the taxation of the company. Details of whether deductions are made at source from the income and capital gains paid by the company to unitholders.

A) Regarding unit trusts		B) Regarding investment companies
Unit trusts in general	Management company	
11.6 Accounting and distribution dates.		11.6 Accounting and distribution dates.
	12. Management and auditing 12.1 Name and position of the undermentioned persons within the company, with details of their main activities outside the company (viz. relevant directorships and main duties in other companies): - Members of the Board of Directors, the Supervisory Board and the Managing Board, partners and managers and other persons responsible for management at a senior level. - Founders, if they still have responsibilities vis-à-vis the management company.	12. Management and auditing 12.1 Name and position of the undermentioned persons within the company, with details of their main activities outside the company (viz. relevant directorships and main duties in other companies): - Members of the Board of Directors, the Supervisory Board and the Managing Board, partners and managers and other persons responsible for management at a senior level. - Founders, if they still have responsibilities vis-à-vis the investment company.
	13. Company capital 13.1 Paid-up capital plus statutory and voluntary reserves (as per latest balance sheet)	
		13.2 In the event of an authorised capital, indication of the amount.

A) Regarding unit trusts	B) Regarding investment companies
13.3 Details of the types and main characteristics of the units, in particular: - the nature of the right (.. ..., ...onal or other title) represented by the unit; - original securities or certificates providing evidence of title; entry in a register or in an account; - characteristics of the units: registered or bearer. Indication of denomination in the latter case; - indication of unitholders' voting rights if these exist; - circumstances in which winding-up can be decided by the unit trust and winding-up procedure, in particular as regards the rights of unitholders.	13.3 Details of the different types and main characteristics of the units and in particular: - original securities or certificates providing evidence of title; entry in a register or in an account; - characteristics of the units: registered or bearer. Indication of denomination in the latter case; - indication of unitholders' voting rights; - circumstances in which winding-up can be decided by the investment company and winding-up procedure, in particular as regards the rights of unitholders.
13.4 Indication of stock exchanges or markets where the units are quoted.	13.4 Indication of stock exchanges or markets where the units are quoted.
14. Procedures and conditions of issue of units 14.1 Continuous or block issues.	14. Procedures and conditions of issue of units 14.1 Continuous or block issues.
14.2 Issue or sale by the unit trust, by a marketing organisation, through an intermediary, through the stock exchange or another market.	14.2 Issue or sale by the investment company, by a marketing organisation, through an intermediary, through the stock exchange or another market.
14.3 Number of units or duration of issue.	14.3 Number of units or duration of issue.
14.4 Circumstances in which issue or sale may be suspended.	14.4 Circumstances in which issue or sale may be suspended.

A) Regarding unit trusts	B) Regarding investment companies
15. Procedures and conditions for repurchase or redemption of units and circumstances in which repurchase or redemption may be suspended	15. Procedures and conditions for repurchase or redemption of units and circumstances in which repurchase or redemption may be suspended.
16. Outline of distribution rules	16. Outline of distribution rules
16.1 Distribution or reinvestment of profits.	16.1 Distribution or reinvestment of profits.
16.2 Precise description of methods used for determining net profit and sums available for distribution (whether capital gains or losses taken into account, whether a revenue equalisation account is employed, method of charging fees and costs).	16.2 Precise description of methods used for determining net profit and sums available for distribution (whether capital gains or losses taken into account, whether a revenue equalisation account is employed, method of charging fees and costs).
16.3 Details of whether the profit is distributed in full or only in part and in the latter case names of the bodies having authority to take the relevant decisions.	16.3 Details of whether the profit is distributed in full or only in part and in the latter case names of the bodies having authority to take the relevant decisions.
16.4 Form of the distribution of profits (in cash or units).	16.4 Form of the distribution of profits (in cash or units).
2. Business policy	2. Business policy
20. Description of policy and methods of investment	20. Description of policy and methods of investment
20.1 Object of the fund e.g. aims for income, capital growth, etc.	20.1 Object of the company e.g. aims for income, capital growth, etc.
20.2 Direction of the fund's investment policy (particularly diversification or specialisation in geographical terms or as to industry).	20.2 Direction of the company's investment policy (particularly diversification or specialisation in geographical terms or as to industry).
20.3 Limitations and obligations on investment policy.	20.3 Limitations and obligations on investment policy.

A) Regarding unit trusts	B) Regarding investment companies
20.4 Indication of specific techniques, such as contracting of debts or option dealings which are permissible in the management of the assets.	20.4 Indication of specific techniques, such as contracting of debts or option dealings which are permissible in the management of the assets.
21. Main rules for valuation of assets	21. Main rules for valuation of assets
22. Determination of the sale or issue price and the repurchase or redemption price of units, in particular: - Frequency of calculation of the sale or issue price and the repurchase or redemption price; - Details of charges and commissions of all kinds, including taxes relating to sales or issues and redemption or repurchase; - Method, place and frequency of publication of these prices.	22. Determination of the sale or issue price and the repurchase or redemption price of units, in particular (1): - Frequency of calculation of the sale or issue price and the repurchase or redemption price; - Details of expenses and commissions of all kinds, including taxes relating to sales or issues and redemption or repurchase; - Method, place and frequency of publication of these prices.
23. Remunerations payable to the management company, the depositary company or third parties by the fund and refunds of costs to the management company, the depositary company or third parties by the fund.	23. Remunerations payable to the directors, the depositary company or to third parties by the company and refunds of costs to the directors, the depositary company or to third parties.

(1) For the investment companies referred to in Article 63 of the Directive, this heading is hereby replaced by the following :

22. Method and frequency of calculation of the net asset value of the shares. Method, place and frequency of publication of this value.

3. Information concerning the depositary company of unit trusts and investment companies

3.1 Name or style, registered office and the principal headquarters if this differs from the registered office.

3.2 Material provisions of the contract with the management company or the investment company not arising from the law, the fund rules or the memorandum and articles of association of the investment company, and relevant to the unitholders.

3.3 Main activity.

4. Information concerning investment advisers of unit trusts and investment companies

4.1 Name or style.

4.2 Material provisions of the contract with the management company or the investment company which may be relevant to the unitholders.

4.3 Other significant activities.

SCHEDULE B

INFORMATION TO BE INCLUDED IN THE PERIODICAL REPORTS

I. Statement of assets and liabilities

The following items shall be shown separately:

a) transferable securities.

Particulars of transferable securities must be given in the form of a table with a separate line for each different type of security. Transferable securities must also be analysed according to one or more of the following criteria:

- nature of the security (shares, bonds or debentures, convertible bonds, etc.);
- location (country of issuer, country of quotation, etc.);
- economic sector;
- currency.

For each security mentioned above the following shall be stated:

- number or total nominal value;
- total value determined in accordance with the valuation rules laid down by the law, the fund rules or the memorandum and articles of association of the investment company. The total value shall be expressed in the currency of the CIUTS;
- proportion in relation to the total assets of the CIUTS.

b) Deposits with banking institutions.

c) Dividends and interest receivable, where not already included in the valuation of assets under a), b) and e).

d) Other amounts receivable.

e) Other assets.

The following particulars shall be given for each asset:

- description and value;
- proportion in relation to the total assets of the CIUTS.

f) Loans obtained, indicating the purpose, the currency of the loan, the rate of interest and the term.

g) Other amounts payable.

h) Value of net assets.

i) The number of units in circulation.

II. Notes on the statement of assets and liabilities

a) Transferable securities not admitted to an official stock exchange quotation shall be identified as such.

b) Where the price used for transferable securities is not an official quotation, the market referred to or the valuation criteria used shall be specified.

c) Where the free negotiability of securities is restricted by statutory or contractual requirements, this shall be stated, and the valuation criteria used shall be indicated.

d) Contingent tax liabilities, particularly those relating to capital gains, shall be mentioned, indicating how far these taxes have been taken into account in determining the position of the CIUTS.

e) Transactions in progress (such as conditional operations) on the date when the statement of assets and liabilities of the CIUTS is drawn up which are relevant from the point of view of assets shall be shown.

f) Amounts to be received or to be paid by the CIUTS under the heading of forward exchange transactions in progress on the date when the statement of assets and liabilities of the CIUTS is established shall be listed by foreign currency; these amounts shall be expressed in the relevant foreign currency with indication of their equivalent in the currency of the Member State where the CIUTS is situated. Foreign currency means currencies other than those in which the CIUTS accounts are kept.

III. Revenue account for the reference period

The following items shall be shown separately:

a) Dividends on shares:

- in cash;

- in securities, where such dividends are considered as income.

b) Interest on bonds (including lottery draws and premiums).

c) Other income (including subscription rights, bonus issues and warrants).

d) Appreciation in value where this appears in the revenue account.

e) Balance of the revenue equalisation account, if such an accounting system is used.

f) Management costs where these appear in the revenue account.

g) Custody charges where these appear in the revenue account.

h) Financial charges and, in particular, interest paid on loans.

i) Depreciation in value where this appears in the revenue account.

j) Taxes.

k) Net amount of revenue.

Items f) and g) shall be apportioned, if these costs are invoiced separately, according to nature or according to persons making the charge. An apportionment shall not be required when the CIUTS pays only lump sums to those persons.

IV. Changes in capital account during the reference period

The following items shall be shown separately:

a) Value of net assets at the beginning of the period.

b) Capital movements by way of sale or issue of units and repurchase or redemption of units.

c) Management costs where these appear in the capital account.

d) Custody charges where these appear in the capital account.

e) Appreciation or depreciation in capital value since the beginning of the period.

f) Value of the net assets at the end of the period.

Items c) and d) shall be apportioned, if these costs are invoiced separately, according to nature or according to persons making the charge. An apportionment shall not be required when the CIUTS pays only lump sums to those persons.

V. Transactions carried out during the reference period[1)]

The following transactions shall be shown:

a) Sales and purchases of transferable securities during the reference period shall be shown in terms of number or total nominal value. Where transactions are not the result of a decision of the CIUTS (for example scrip issues) these shall be shown separately.

---

1) This information shall not be required to be included in the annual report if it has been published in the half-yearly report.

b) For each security referred to in paragraph I(e) the gross sale or purchase price.

c) Transactions referred to in paragraph II(e) which have been settled during the period, unless they have given rise to a sale or purchase included in the statement referred to at (a) above.