COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.07.1998
COM(1998) 451 final

98/ 0242 (COD)

Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

AMENDING DIRECTIVE 85/611/EEC ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS) WITH A VIEW TO REGULATING MANAGEMENT COMPANIES AND SIMPLIFIED PROSPECTUSES

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

With the adoption of the UCITS Directive ([1]) in 1985 the first important step was taken toward co-ordinating the laws and regulations for certain collective investment undertakings. The Directive laid down provisions concerning the authorisation, supervision, investment policy and transparency requirements for UCITS ("undertakings for collective investment in transferable securities"). The main purpose of the co-ordination was to approximate the conditions of competition between UCITS at Community level and to ensure effective and uniform protection for investors. The Directive also introduced – for the first time in the financial sector- the principle of mutual recognition on the basis of which a UCITS authorised in its home Member State is permitted to market its units in other Member States without being subject to any further authorisation by host Member States.

The collective investment undertakings which, for the time being, are covered by the Directive are those of the open-ended type which promote the sale of their units to the public and the sole objective of which is to invest in transferable securities (e.g. essentially in listed shares and bonds). However at the time of adoption of the Directive there was a consensus that other types of collective investment undertakings should be harmonised at a later stage ([2]).

The Commission presented in 1993 a proposal amending the UCITS Directive the main aim of which was to extend the scope of the Directive to other types of collective investment undertakings. However, Member States failed to agree on a common approach. It was therefore necessary for the Commission to explore new solutions.

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1 Council Directive 85/611/EEC of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ N° L 375, 31.12.1985, p.3.

2 Sixth recital of the preamble of Directive 85/611/EEC.

As highlighted by the Commission Action Plan for the Single Market which was endorsed by the European Council in June 1997, the sector of collective investment undertakings is one of the financial services areas in which the Single Market is still incomplete. Existing barriers to a free cross-border marketing of units issued by such undertakings need urgently to be removed through further legislative actions which extend the Single Market benefits to other types of collective investment undertakings, while preserving a uniform minimum level of protection of investors. For the completion of the Single Market in this area, the Action Plan also considered it necessary to introduce harmonised market access rules and operating conditions for management companies – completely lacking for the time being – so as to ensure the level-playing field among operators in the financial services area.

The Commission has therefore prepared a package of measures distributed in two separate proposals: one ("proposal n° 1") focusing essentially on the "product" (the types of investment funds), the other ("proposal n° 2") focusing essentially on the "service provider" (the management company) and on prospectuses for UCITS. The separation of topics involving different problems could facilitate the negotiating process in the Council. It will not matter if one of the two Directives is adopted more rapidly than the other one.

Summary

The aim of proposal n° 2 is to reinforce the Single Market in the field of UCITS by:

- Up-dating the regulation for management companies, aligning it with that existing for other operators of the financial services area (banks, investment firms, insurance companies) which is of utmost importance considering the ongoing growth of this sector. In particular, these operators would receive a European Passport, which – in accordance with the principles of the Treaty – would allow them to set up branches in other Member States and to operate within the EU under the freedom to provide services;
- Revising the current restrictions which prevent management companies from engaging in activities other than the management of the assets of common funds/unit trusts and investment companies (collective portfolio management). In the future, such companies will be permitted to provide, in addition to the collective portfolio management, individual portfolio management services (to single private or institutional investors, such as pension funds), as well as some specific non-core activities linked to the core-business;
- Identifying the functions comprised in the activity of collective portfolio management and defining the conditions under which such functions can be delegated to third parties;
- Modernising the information documents to be given to investors. The proposal introduces simplified prospectuses.

2. GENERAL CONSIDERATIONS

2.1. The approach of the UCITS Directive is quite different from that adopted later by the Directives of the financial services area of the second generation (i.e. the 2nd Banking Co-ordinating Directive, the third Life Assurance Directive and the Investment Services Directive). While these Directives focused more on the "service provider", the UCITS

Directive laid down rules referring essentially to the "product"([3]) which bears the EU passport, whereas the regulation for management companies is very poor

In fact, the UCITS Directive contains no harmonised market access rules for management companies (including minimum capital requirements), no prudential regulation, no rules ensuring the monitoring of the relevant shareholders in such companies.

2.2. Moreover, the cross-border activity is regulated only from the point of view of the distribution of the "product" (the units of the collective investment undertakings), but nothing is said as to who may distribute units (for instance, it does not say whether the management company itself may market the units) and no provisions regulating – in accordance to the principles of the Treaty - the establishment of branches and the free provision of services by management companies are foreseen.

2.3. Moreover, the UCITS Directive confines the scope of management companies to the sole activity of collective portfolio management (i.e. management of the assets of common funds and of investment companies). On several occasions such a restriction has been criticised by Member State and by operators, as it prevents important economies of scale and creates an irrational segmentation between collective and individual portfolio management .

2.4. Regarding the regulation of the activity of collective portfolio management, the UCITS Directive gives raise to some further relevant questions:

(1) It contains no definition of "collective portfolio management". As a consequence, it is not clear which types of functions a management company may carry out. In particular, there are doubts as to whether the activity is limited to investment management (i.e. the investment of the funds raised from the public in securities and other financial instruments) or whether it includes other functions (such as marketing and administration activities.). The solutions adopted differ in all Member States.

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[3] I.e.: the way in which the assets of the UCITS have to be invested; information to be provided to the supervisory authorities and to investors; rules concerning the cross-border marketing of the units, etc.

(2) If we assume that the activity of a management company may comprise a variety of functions, some of which may refer to different markets, it is not clear whether the entire activity has to be carried out directly by the management company or whether for a more efficient organisation of its business, it may delegate, its tasks to third parties. As a matter of fact, the structure of the investment fund industry in Member States is divergent: while in some Member States management companies are normally allowed to delegate their own functions, in others such a delegation is essentially forbidden or admitted only in limited cases.

In consideration of the increasing importance of the investment fund industry in Europe, these loopholes in the existing UCITS Directive can no longer be justified and must be urgently solved, as they create legal uncertainties, prevent a real level playing field among operators of the financial services area, hinder an effective supervision and an effective investor protection and, in general, undermine the stability and reliability of the financial system in Europe.

Moreover, the introduction of a single currency and of a single monetary policy increases the need to prevent crises and irregularities in the financial services area which may also have a negative impact on other economic systems. It is the Commission's challenge to put in place all the necessary measures eliminating existing grey zones in the community legislation of the financial services area and enforcing the soundness of the financial system.

3. MAIN OBJECTIVES

The main objective of this proposal is to amend the UCITS Directive in order to up-date the regulation of the management company through:

3.1. The introduction of a European Passport for management companies.

For that purpose, the proposal lays down an authorisation procedure, adapting it to that existing for competing operators in the financial services area (banks, investment firms, insurance companies). Accordingly, many of the Articles of this proposal reflect, mutatis mutandis, the provisions of the 2nd banking, investment services and life assurance Directives.

On the basis of such authorisation, management companies will be allowed to set up within the EU their own distribution networks for the units of the collective investment undertakings they manage (e.g. branches, electronic distribution channels, etc.).

Taking into account discussions with Member States, the proposal also clarifies in its preamble that:

- in order to prevent the use of "letter box" companies and to limit the phenomenon of "forum shopping", the European Passport can be granted only by the Member State in which the management company carries out effectively the main part of its activity;

- the principle of home country supervision fully applies also in the case of management of common funds/unit trust: the approval of the fund rules will continue to fall within the competence of the supervisory authorities of a management company's home country.

3.2. The revision of the existing restriction of the scope of management companies.

The aim of the existing principle of exclusivity is to achieve investor protection by ensuring an optimum level of specialisation of the management company. Moreover, the fact that a management company may not carry out investment business on its own behalf prevents conflicts of interest and problems of stability of such intermediaries. This objective needs to be preserved.

However, taking into account the evolution of national legislation which tends to overcome the existing segmentation between collective portfolio management (management of collective investment undertakings) and individual portfolio management (management of the portfolios of individual clients, including those of pension funds), the proposal allows Member States to authorise management companies to engage in both types of management activities and in two non-core activities (investment advice and safe-keeping of units of collective investment undertakings).

For the sake of investor protection, management companies shall not be permitted to carry out additional activities.

Given that the service of individual portfolio management is already regulated by the Investment Services Directive (ISD) ([4]), it is necessary to ensure a coherent solution with that Directive. Thus, the proposal states that management companies, the authorisation of which covers also the individual portfolio management service, are subject – for that activity only – to ISD provisions and consequently, as is already the case for banks, to the CAD regime ([5]).

3.3. The clarification of crucial aspects concerning the management company's activity.

Considering that today Member States have a different understanding on how the business of "collective portfolio management" should be conceived and organised, it is necessary to ensure the mutual recognition of the different solutions adopted by Member States. The aim of the proposal is therefore to make clear:

- which functions can be considered to be comprised in the activity of collective portfolio management (a list will be included in the new Annex 2);

- that Member States may permit management companies to delegate, for a more rational organisation of their business, functions to third parties, provided that certain pre-conditions are respected. The proposal underlines that in no case can the management company's liabilities be affected by the fact that it delegated its own functions.

3.4. A more rational regulation of the notification procedure in the case of cross- border distribution of units.

Up to now the cross-border distribution of the units has been subject to a double ex-ante notification: one to the competent authorities of the home Member State and another to the competent authorities to the host Member State. The proposal aligns the procedure to that provided for the cross-border provision of services, which is more consistent with the principle of home country control. The management company will therefore have to

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4 Directive 93/22/EEC on Investment Services, OJ N° L 141, 11.6.1993.

5 Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions of 15.3.1993, OJ N° L 141, 11.6.1993

notify its intention to distribute – either via own branches or under the freedom to provide services - the units of the collective investment undertakings it manages to the competent authorities of its home Member State, which will then inform the authorities of the host country.

As the implementation of and the supervision of compliance with the marketing rules still falls within the competence of the host country, the proposal will not change the existing rule according to which the distribution of the units may begin only after the expiry of a certain period of time (two months), during which the host country authorities may check the compliance with such rules. In the case of cross-border distribution of units without establishment of branches, the proposal reduces that period from two months to one month.

3.5. The introduction of simplified prospectuses.

Up to now it has been considered appropriate to provide investors with a substantial amount of detailed information, in order to allow them to make an informed judgement on the quality and desirability of the proposed investment in units of a given collective investment undertaking.

In recent years, however, it has become widely accepted that the current information framework of the UCITS Directive is unsatisfactory, in the sense that it does not fit well into the needs of the average investor and that investor protection can be achieved more effectively through the provision of clear, simple and essential information.

The proposal therefore introduces simplified prospectuses, which shall contain the information listed in the scheme included in the new Schedule C, to be added to the existing Annex of the Directive.

The simplified prospectus is conceived as a mandatory information document, which has always to be offered to the potential investor before the conclusion of the contract. The distribution of the full prospectus, containing more detailed information on the UCITS as well as the fund rules (or, in the case of an investment companies, instruments of incorporation) will no longer be compulsory. These documents could however be obtained free of charge at the investor's request.

Several Member States have already adopted a similar approach and introduced simplified prospectuses. The European fund industry also has been promoting such a reform for some time.

4. COMMENTARY ON INDIVIDUAL AMENDMENTS

Article 1 – Amendments of Directive 85/611/EEC

Amendment n° 1

This sets out definitions of a certain number of terms used in the Directive.

Amendment n° 2- Article 4 (authorisation of UCITS)

This is a technical amendment referring to the pre-conditions the competent authorities have to verify when granting authorisation to a UCITS.

The criteria for granting authorisation to the management company are now mentioned in the new Articles 5, 5a and 5b.

Amendment n° 3 - Articles 5 and 6 (management company)

This amendment introduces a number of new Articles, replacing the existing Articles 5 and 6 and referring to the new regulation of management companies.

Article 5

This Article announces:

- the principle of mutual recognition of the authorisation granted to management companies;
- that management companies may only manage the assets of common funds/unit trusts and investment companies (collective portfolio management); the functions included in that activity are listed in a new Annex to be added to the Directive;
- that Member States may however authorise management companies to carry out the additional service of individual portfolio management. As this service is already covered by the ISD, management companies will be subject - for that service only and in accordance with the solution adopted for banks - to relevant ISD provisions (a

cross reference to the ISD rules, including Article 8 (2), which refers to the application of CAD provisions is included).

- that Member States may authorise management companies to engage in two specific non-core activities considered to be functionally linked to the core activities: investment advice and safekeeping of units of collective investment undertakings.

Article 5a

This Article sets out the criteria for granting authorisation in the home Member State to a management company and the cases in which the authorisation has to be withdrawn. It is based on comparable requirements provided for by the ISD for investment firms.

The proposal also lays down rules establishing the minimum amount of initial capital which management companies need to have for receiving authorisation. The proposal distinguishes between:

a) management companies, the authorisation of which covers only the collective portfolio management activity: a minimum capital of 50.000 ECU is foreseen. This amount would be consistent with the solution adopted by the CAD ([6]) for firms which are not permitted to hold investors' money or securities (which is the case of management companies which have to deposit the assets of the investment funds they manage with a depositary);

b) management companies, the authorisation of which also covers the activity of individual portfolio management: such companies would need to have, in addition to 50.000 ECU, the initial capital provided for in the CAD for investment firms carrying out the same activity (i.e. either 125.000 ECU which can be reduced to 50.000 ECU if the company is not authorised to hold the investors' money or securities).

Finally, taking into account the provisions laid down in the so-called BCCI Directive on the reinforcement of supervision ([7]), the amendment introduces rules requiring that the

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6 Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions of 15.3.1993, OJ N° L 141, 11.6.1993

7 Directive 95/26/EC of 29 June 1995, OJ N° L 168

competent authorities may grant authorisation to the management company only if they have verified that, notwithstanding the existence of close links between the management company and any natural or legal person, the effectiveness of supervision will not be undermined.

Article 5b

This Article parallels similar provisions of the ISD (Articles 4, 5 and 6). It requires the competent authorities to comply with further criteria when granting an authorisation:

- to verify the identity of the shareholders having direct or indirect qualifying holdings in the management company's capital (paragraph 1);
- not to accord to branches of non-EU management companies a more favourable treatment than that applied to branches of management companies established in a Member State (paragraph 2);
- to consult beforehand the competent authorities of another Member State if the management company is a subsidiary of another financial institution (bank, investment firm, another management company) or controlled by the same person who also controls other financial institutions (paragraph 3).

Article 5c

This extends to non-EU management companies the reciprocity regime provided for in the ISD for investment firms.

Article 5d

This Article provides that the rules laid down for initial authorisation must continue to be respected once the management company has started to carry out its activity.

The home country supervisors are responsible for monitoring compliance with these requirements in the case of management companies carrying out business in other Member States.

Article 5e

This Article applies to management companies the ISD provisions concerning the monitoring of qualifying holdings in such companies' capital and of the relevant changes of such holdings.

Article 5f

This Article refers to the prudential rules which the home Member States authorities have to lay down for management companies managing only investment funds. Companies which will also be authorised to carry out the activity of individual portfolio management will have to comply – with regard to that service only - with the prudential rules laid down in the ISD.

In order to ensure a professional and reliable conduct of the business, the Article underlines the need that management companies be provided with adequate organisational structures and internal control mechanisms.

The second paragraph of this Article contains some rules preventing conflict of interests which may arise in the case where a management company is authorised to provide both the collective and individual portfolio management service.

Article 5g

This Article regulates the conditions under which Member States may permit management companies to delegate their own functions to third parties..

Recent discussions with Member States and operators show that - due also to different legal traditions - the structure of the investment fund industry varies considerably in Member States. While in some Member States the use of delegation mechanisms is quite common, in other Member States it is either not foreseen or allowed only in very specific cases.

With the aim of ensuring the mutual recognition of authorisation and of the supervisory regime and adequate investor protection, this amendment lays down minimum requirements which the competent home country authorities have to verify before approving any mandate given by a management company to a third party.

The amendment underlines that in no case must the management company's liability be affected by the fact that it delegated functions to third parties.

Article 5h

For the time being no harmonised rules for compensation mechanisms exist ensuring minimum cover to unit holders in the event of a UCITS being unable to meet its obligations to its unit-holders.

This Article therefore announces that, depending on the outcome of the report the Commission has to submit no later than 31 December 1999 to the Council and the Parliament on the application of Directive 97/9/EC on Investor Compensation Schemes ([8]), the Commission may consider it appropriate to submit a proposal for the introduction of compensation arrangements for unit-holders of UCITS.

Article 6

The Article sets out the rule that once a management company has been authorised by its home Member State, it may carry out its business throughout the EU either by the establishment of branches or under the freedom to provide services, without being subject to further requirements or authorisation by Member States.

Article 6a

This Article deals with the notification to be made and formalities to be accomplished when a branch is opened in a host Member State. The Article parallels similar provisions in the ISD which have been adapted to the case where a management company is intended to market the units of the investment funds it manages.

Given that the implementation of and the supervision of compliance with the marketing rules of the product (the units of the UCITS) still fall within the competence of the country of distribution (host country) ([9]), paragraph 5 of this Article incorporates the

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8 Directive 97/9/EC of 3 March 1997, OJ N° L 84, 26.3.1997

9 It should be noted that one of the existing requirements for UCITS wishing to market their units in another Member State is to ensure in that State facilities (i.e. contact points) for payments to be made to unit-holders, redemptions/re-purchasing of units and the distribution of the mandatory information documents.

existing rule of the UCITS Directive, according to which the marketing of the units may begin only after the expiry of a certain period of time, during which the host country authorities may check the compliance with such rules (two months, which is also the time necessary for the host country to prepare for supervision).

Article 6b

This provides for the notification to be made when services and the distribution of the units are intended to be carried out in the host Member State without establishment of branches.

Paragraph 3 of this Article refers to the marketing of the units. Like the previous Article 6a, this Article too incorporates the existing rule of the UCITS Directive which gives the competent authorities of the host Member State the possibility to verify the compliance of the UCITS with the marketing rules in force in that country. The period of time has been reduced from two months to one month.

Paragraph 5 underlines that in the case of cross-border distribution of the units, including the case where the management company entrusted this to a third party, the notification procedure laid down in this Article has always to be respected.

Article 6c

This Article is based on Article 19 of the ISD. It deals with the powers of host Member States as regards management companies from other Member States which establish branches or operate under the freedom to provide services within the territory of the host country.

Amendment n° 4

This is a formal amendment aiming at keeping separate – through the inclusion of a new Section IIIa (only the title) - the rules referring to management companies from that referring to depositaries.

Amendment n° 5 - Article 27 (1)

This amendment includes the simplified prospectus among the documents which management companies have to publish for each fund they manage. The obligation is extended to investment companies.

Amendment n° 6 - Article 28 (1)

Paragraphs 1 and 2 refer to technical consequences of including simplified prospectuses in the list of information documents to be published by UCITS.

Paragraph 3 refers to the substantial and formal pre-conditions simplified prospectuses have to comply with, listed in a new Schedule C to be added to the existing Annex of the Directive. This paragraph also gives Member States the possibility of simplified prospectuses as a removable part of the full prospectus (a sort of summary and reading guide of the latter).

Taking into account the development of new information systems, paragraph 4 recognises the possibility of incorporating the simplified prospectus in mediums other than written documents (i.e. electronic texts), having equivalent legal status and approved by the competent authorities.

Amendments n° 7, 8, 9 - Articles 29, 30 and 32

They refer to technical consequences of the introduction of simplified prospectuses.

Amendment n° 10 - Article 33

It underlines that it will become compulsory to offer to investors, before the conclusion of the contract, a simplified prospectus (instead of the full prospectus). This will represent the fulfilment of the legal obligation under this Directive to provide information to investors.

The full prospectus, together with the fund rules (or, in the case of investment companies, the instruments of incorporation), and the periodical reports can be obtained by the investor at any time free of charge on his/her request.

Amendment n° 11 - Article 35

It refers to technical consequences of the introduction of simplified prospectuses.

Amendment n° 12 - Article 46

This Article originally referred to the notification procedure in the case of cross-border distribution of the units of UCITS.

Given that the proposal introduces a separate notification procedure when units are distributed across the borders by a management company, (see new Article 6b), the amended Article would refer only to the cross-border distribution of the units of UCITS structured as investment companies not carried out by a management company.

The amendment reduces from two months to one month the period of time within which the host Member States' competent authorities may verify the compliance with the marketing rules in force in that country.

Amendment n° 13 - Article 47

It regulates the language regime of both the simplified prospectus and the full prospectus when the units are marketed in a host Member State.

As regards the simplified prospectus, given that it is conceived as an information document suitable for average investors, the prospectus offered to the investor shall be written in a language which is easily understandable for such investors. That could be the official language(s) of the host Member State or other languages spoken by the investor.

As to the full prospectus and the other information documents to be published, considering that these documents contain information relevant for experienced or professional investors and for supervisors, these documents shall be translated into at least one of the official language of the host country, or in another language normally used in sphere of finance and accepted by the host country. The proposed solution is coherent with that adopted in the so-called "Eurolist" Directive ([10]).

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10 Directive 94/18/EC of 30 May 1994, OJ N° L 135

Amendment n° 14 - Articles 52a and 52b

This Article is based on Article 23 (3) and 24 of the ISD and deals with the co-operation between supervisors of different Member States in the case of a management company carrying out business across the borders.

Amendment n° 15 - Schedule A of the existing Annex

It aligns the information to be included in the full prospectus to that provided for the simplified prospectus.

Article 2 - Transitional and final provisions

Paragraph 1 would permit ISD firms wishing to specialise in portfolio management to demand authorisation according the new UCITS Directive for both collective and individual portfolio management, giving up the ISD licence.

Paragraph 2 contains a "grandfathering" provision for management companies having obtained authorisation under the UCITS Directive before the entrance into force of this proposal. Such companies, whose existing authorisation meets the proposal's standards do not need to be authorised again when the Directive enters into force.

Paragraph 3 gives management companies whose authorisation does not comply with the rules of this proposal the possibility of continuing business, provided that they adapt themselves to the new regime and receive– within a certain period of time – a new authorisation.

The new Annex 2

It identifies the functions which are considered to be included in the activity of collective portfolio management. It refers not only to the investment activity, but also to marketing and administration functions.

5. JUSTIFICATION OF THE PROPOSAL IN THE LIGHT OF THE PRINCIPLE OF SUBSIDIARITY

5.1. What are the objectives of the proposed action with respect to the obligations placed upon the Community?

The objective is to strengthen the internal Market in the field of collective investment undertakings, by up-dating the rules for management companies and of information requirements for UCITS so as to ensure the level playing field among competing operators of the financial services area, reinforce supervision and increase investor protection.

5.2. Is the action envisaged a matter of exclusive Community competence or one shared with Member States?

Considering that the major objective of this proposal is to introduce a harmonised authorisation procedure for management companies, a regulation for the opening of branches and the free provision of services by such companies, rules ensuring the co-operation of supervisors of different Member States, the improvement of the quality of information to be provided to the investing public, only a binding Community Directive can achieve the desired objectives.

5.3. What means of action are available to the Community?

Only a Community Directive laying down agreed minimum standards can achieve the desired objective.

5.4. Are uniform rules necessary?

Apart from the basic minimum standards, Member States are free to define in detail the regulation for management companies and simplified prospectuses, prescribing even stricter and additional requirements. The scope left for national discretion is therefore large.

PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE AMENDING DIRECTIVE 85/611/EEC ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS) WITH A VIEW TO REGULATING MANAGEMENT COMPANIES AND SIMPLIFIED PROSPECTUSES

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

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

Having regard to the proposal from the Commission([1]),

Having regard to the opinion of the Economic and Social Committee([2]),

Acting in accordance with the procedure laid down in Article 189b of the Treaty,

1. Whereas Directive 85/611/EEC on undertakings for collective investment in transferable securities (UCITS) ([3]), as last amended by Directive 88/220/EEC ([4]), has already contributed substantially to the achievement of the Single Market in this field, laying down - for the first time in the financial services sector – the principle of mutual recognition of authorisation and other provisions which facilitate the free circulation within the European Union of the units of the collective investment undertakings (unit trusts/common funds or as investment companies) covered by that Directive;

2. Whereas, however, Directive 85/611/EEC does not regulate to a great extent the companies which manage collective investment undertakings (so-called "management companies"); whereas, in particular, Directive 85/611/EEC does not lay down provisions assuring in all Member States equivalent market access rules and operating conditions for such companies; whereas, Directive 85/611/EEC does not lay down provisions regulating the establishment of branches and the free provision of services by such companies in Member States other than their home Member State;

3. Whereas, authorisation granted in the management company's home Member State must ensure investor protection and the stability of the financial system; whereas the approach adopted is to ensure the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and of prudential supervision systems, making possible the grant of a single authorisation valid throughout the European Union and the application of the home Member State supervision;

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1 OJ No C.....

2 OJ No C.....

3 OJ No L 375, 31.12.1985

4 OJ No L 100, 19.4.1988

4. Whereas it is necessary, for the protection of investors, to guarantee the internal supervision of every management company in particular by means of a two-man management and by adequate internal control mechanisms;

5. Whereas by virtue of mutual recognition, management companies authorised in their home Member States shall be permitted to carry on the services for which they have received authorisation throughout the European Union by establishing branches or under the freedom to provide services; whereas the approval of the fund rules of common funds/unit trusts falls within the competence of the management company's home Member State;

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

7. Whereas this Directive represents therefore an important step to complete the Single Market in the field of collective investment undertakings;

8. Whereas the principles of mutual recognition and of home Member State supervision require that the Member States' competent authorities should not grant or should withdraw authorisation where factors, such as the content of programmes of operations, the geographical distribution or the activities actually carried on indicate clearly that a management company has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities; whereas, for the purpose of this Directive, a management company must be authorised in the Member State in which it has its registered office; whereas, in accordance with the principle of the home country control, only the Member State in which the management company has its registered office can be considered competent to approve the fund rules of unit trusts/common funds set up by such a company and the choice of the depositary;

9. Whereas Directive 85/611/EEC limits the scope of management companies to the sole activity of management of unit trusts/common funds and of investment companies (collective portfolio management); whereas, in order to take into account recent developments in national legislation of Member States and to permit such companies to achieve important economies of scale, it is desirable to revise this restriction; whereas therefore it is desirable to permit such companies to carry out also the activity of management of portfolios of investments on a client-by-client basis (individual portfolio

management) including the management of pension funds as well as some specific non-core activities linked to the main business; whereas such an extension of the scope of the activity of the management company would not prejudge the stability of such companies; whereas, however, specific rules shall be introduced preventing conflicts of interest when management companies are authorised to carry on both the business of collective and individual portfolio management;

10. Whereas the activity of management of portfolios of investments is an investment service already covered by Directive 93/22/EEC (Investment Services Directive – ISD); whereas, in order to ensure a homogeneous regulatory framework in this area, it is desirable to subject management companies the authorisation of which covers also that service to the operating conditions laid down in the ISD;

11. Whereas a home Member State may, as a general rule, establish rules stricter than those laid down in this Directive, in particular as regards authorisation conditions, prudential requirements and the rules of reporting and prospectuses;

12. Whereas it is desirable to lay down rules defining the pre-conditions under which a management company may delegate, on the basis of mandates, specific tasks and functions to third parties so as to increase the efficiency of the conduct of its business; whereas, in order to ensure the correct functioning of the principles of mutual recognition of the authorisation and of the home country control, Member States permitting such delegations shall ensure that the management company to which they granted an authorisation does not delegate globally its functions to one or more third parties, so as to become an empty entity, and that the existence of mandates does not hinder an effective supervision over the management company; whereas, however, the fact that the management company delegated own functions shall in no case affect the liabilities of that company and of the depositary vis-à-vis the unit holders and the competent authorities;

13. Whereas to take into account developments of information techniques, it is desirable to revise the current information framework provided for in Directive 85/611/EEC; whereas, in particular, it is desirable to introduce, in addition to the existing full prospectus, a new type of prospectus for UCITS (simplified prospectus); whereas such a new prospectus should be designed to be an investor-friendly and should therefore represent a source of valuable information for the average investor; whereas such a prospectus should give key information about the UCITS in a clear, synthetic and easy understandable way; whereas, however, the investor must always be informed, by an appropriate statement to be included in the simplified prospectus, that more detailed information is contained in the full prospectus and in the UCITS yearly and half-yearly report, which can be obtained free of charge at his/her request; whereas the simplified prospectus shall always be offered free of charge to subscribers before the conclusion of the contract; whereas this shall be a sufficient pre-condition to meet the legal obligation under this Directive to provide information to subscribers before the conclusion of the contract;

14. Whereas, considering the need to ensure the level-playing field among intermediaries in the financial services area when providing the same services and a harmonised minimum degree of investor protection; whereas a harmonised minimum degree of harmonisation of the conditions for taking up business and operating conditions represents the essential pre-condition to complete the internal market for these operators; whereas, therefore, only a binding Community Directive laying down agreed minimum standards can achieve the desired objectives; whereas this Directive effects only the minimum harmonisation required;

15. Whereas, for the time being, no harmonised rules for compensation arrangements for unit-holders exist when a management company or an investment company is unable to redeem or to repurchase the units from unit-holders; whereas Directive 97/9/EC provides harmonised rules for compensation arrangements for investors demanding investment services from investment firms (including banks); whereas, according to Article 14 of that Directive, the Commission will submit no later than 31 December 1999 to the Council and the Parliament a report on the application of the Directive; whereas, depending on the outcome of that report, the Commission might consider it appropriate to submit a proposal for the introduction of compensation arrangements for unit-holders;

HAVE ADOPTED THIS DIRECTIVE

Article 1([5])

Directive 85/611/EEC is amended as follows:

1) The following Article 1a is inserted:

"Article 1a

For the purposes of this Directive:

1. *depositary* shall mean any institution entrusted with the duties mentioned in Articles 7 and 14 and subject to the other provisions laid down in Sections III and IV;

2. *management company* shall mean any company the regular business of which is the management of unit trusts/common funds and of investment companies (collective portfolio management);

3. *a management company's home Member State* shall mean the Member State in which is situated the management company's registered office;

4. *a management company's host Member State* shall mean the Member State, other than the home Member State, within the territory of which a management company has a branch or provides services;

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5 Changes compared with the text of the existing Directive 85/611/EEC are underlined.

5. *a UCITS home Member State* shall mean:

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

b) with regard to a UCITS constituted as investment company, the Member State in which is situated the investment company's registered office;

6. a UCITS host Member State shall mean a Member State in which the units of the common fund/unit trust or of the investment company are marketed;

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

8. competent authorities shall mean the authorities which each Member State designates under Article 49 of Directive 85/611/EEC;

9. close links shall mean a situation as defined in Article 2, paragraph 1 of Directive 95/26/EC ([6]);

10. *qualifying holdings* shall mean any direct or indirect holding in a management company which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the management company in which that holding subsists.

For the purpose of this definition, the voting rights referred to in Article 7 of Directive 88/627/EEC ([7]) shall be taken into account;

11. ISD shall mean Directive 93/22/EEC on Investment Services ([8]).

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6 OJ No L 168/9, 18.7.1995

7 OJ No L 348, 17.12.1988, p. 62

8 OJ No. L 141/33, 11.6.1993

2) In Article 4, paragraph 3 shall be replaced by the following:

"3. The competent authorities may not authorise a UCITS if the management company does not comply with the pre-conditions laid down in Section III of this Directive. Moreover the competent authorities may not authorise a UCITS if the directors of the investment company or of the depositary are not of sufficiently good repute or lack the experience required for the performance of their duties. To that end, the names of the directors of the investment company and of the depositary and of every person succeeding them in office must be communicated forthwith to the competent authorities.

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

3) Articles 5 and 6 shall be replaced by the following:

"Section III

Obligations regarding *management companies*

Title A

Conditions for taking up business

Article 5

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

2. No management company may engage in activities other than the management of unit trusts/common funds and of investment companies.

The activity of management of unit trusts/common funds and of investment companies includes, for the purpose of this Directive, the activities mentioned in Annex 2.

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

- management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section B of the Annex of the ISD;

- as non-core services:

a) investment advice concerning one or more of the instruments listed in Section B of the annex of the ISD;

b) safekeeping and administration in relation to units of collective investment undertakings.

Management companies may in no case be authorised under this Directive to provide only the services mentioned in this paragraph.

4. Articles 2 (4), 8 (2), 10, 11, 12 (1) and 13 of the ISD shall apply to management companies, the authorisation of which covers the discretionary portfolio management service mentioned in the first indent of paragraph 3.

Article 5a

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

- it has sufficient initial capital of the following amount:

a) if it is authorised to manage only unit trusts/common funds and investment companies, 50.000 ECU;

b) if its authorisation covers also the discretionary portfolio management service mentioned in Article 5 (3), first indent, in addition to the capital mentioned in the previous letter a), an amount of capital to be determined in accordance with the rules laid down in Article 3, paragraphs 1 and 2 of Directive 93/6/EEC ([9]) having regard the nature of the service in question;

- the persons who effectively direct the business of a management company are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company. The direction of a management company's business must be decided by at least two persons meeting these conditions;

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9 OJ No. L 141/1, 11.6.1993

- the application for authorisation is accompanied by a programme of activity setting out, *inter alia*, the organisational structure of the management company;

- both its head office and its registered office are located in the same Member State.

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

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

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

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

4. A management company may commence business as soon as authorisation has been granted.

5. The competent authorities may withdraw the authorisation issued to a management company subject to this Directive only where that company:

a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by this Directive more than 6 months previously unless the Member State concerned has provided for authorisation to lapse in such cases;

b) has obtained the authorisation by making false statements or by any other irregular means;

c) no longer fulfils the conditions under which authorisation was granted;

d) no longer complies with Directive 93/6/EEC if its authorisation covers also the discretionary portfolio management service mentioned in Article 5 (3), first indent,;

e) has seriously and systematically infringed the provisions adopted pursuant to this Directive;

f) falls within any of the cases where national law provides for withdrawal.

Article 5b

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

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

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

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

- a subsidiary of another management company, an investment firm or a credit institution authorised in another Member State,

- a subsidiary of the parent undertaking of another management company, an investment firm or a credit institution authorised in another Member State,

or

- controlled by the same natural or legal persons as control another management company, an investment firm or a credit institution authorised in another Member State.

Title B

Relations with third countries

Article 5c

1. Relations with third countries are regulated according to the relevant rules laid down in Article 7 of Directive 93/22/EEC.

For the purpose of this Directive, the expressions "firm/investment firm" and "investment firms" contained in Article 7 of the ISD shall be read respectively as "management company" and "management

companies"; the expression "providing investment services" in Article 7 (2) of the ISD shall be read as "providing services".

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

Title C

Operating conditions

Article 5d

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

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

Article 5e

1. Qualifying holdings in management companies shall be subject to the same rules as those laid down in Article 9 of the ISD.

For the purpose of this Directive, the expressions "firm/investment firm" and "investment firms" contained in Article 9 of the ISD shall be read respectively as "management company" and "management companies".

Article 5f

1. Each home Member State shall draw up prudential rules which management companies, the authorisation of which covers only the activity of management of unit trusts/common funds and investment companies, shall observe at all times.

In particular, the competent authorities of the home Member State having regard also to the nature of the UCITS managed by a management company, shall require that each such company has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms ensuring – inter alia – that the assets of the unit trusts/common funds or of the investment companies managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force .

2. Each management company the authorisation of which covers also the discretionary portfolio management service mentioned in Article 5 (3), first indent:

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

- shall not be permitted to provide the discretionary portfolio management service to the depositary which performs for that management company the duties mentioned in Articles 7 and 14 of this Directive;

- shall be subject to the provisions laid down in Directive 97/9/EC on investor-compensation schemes ([10]).

Article 5g

1. When a Member State permits a management company to delegate to third parties, on the basis of specific mandates and for the purpose of a more efficient conduct of the company's business, to carry out on its behalf one or more of the functions included in the activity of collective portfolio management mentioned in Annex 2, each mandate must be submitted to the competent authorities for prior approval.

2. The competent authorities shall approve the mandate only after having verified the compliance with the following pre-conditions:

- the mandate shall not prevent the effectiveness of supervision over the management company;

- in order to prevent conflicts of interest, the mandate shall not be given to the depositary and to persons having qualifying holdings in the management company's or the depositary's capital or to any other person whose interests may conflict with those of the management company or the unit-holders;

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10 OJ No. L 84/22, 26.3.1997

- measures shall exist which enable the persons who direct the business of the management company to monitor at any time the activity of the person to whom the mandate is given;

- the mandate shall not prevent the persons who direct the business of the management company to give at any time further instructions to the person to whom functions are delegated and to withdraw the mandate at any time;

- having regard to the nature of the functions to be delegated, the person to whom functions will be delegated must furnish sufficient professional and financial guarantees;

- the UCITS' prospectuses and any promotional literature list the functions which the management company has been permitted to delegate.

3. In no case the management company's and the depositary's liabilities shall be affected by the fact that the management company delegated own functions to third parties.

Article 5h

The Council and the Parliament note the Commission's statement to the effect that, based on the outcome of the report the Commission will submit, according to Article 14 of Directive 97/9/EC on investor compensation schemes no later than 31 December 1999 to the Council and the Parliament, it may, if appropriate, propose the introduction of compensation arrangements for unit-holders of UCITS.

Title D

The right of establishment and the freedom to provide services

Article 6

1. Member States shall ensure that a management company, authorised in accordance with this Directive by the competent authorities of another Member State, may carry on within their territories the activity for which it has been authorised, either by the establishment of a branch or under the freedom to provide services.

2. Member States may not make the establishment of a branch or the provision of the services subject to any authorisation requirement, to any requirement to provide endowment capital or to any other measure having equivalent effect.

Article 6a

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

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

I. general information:

a) the Member State within the territory of which the management company plans to establish a branch;

b) a programme of the activity envisaged and the organisational structure of the branch;

c) the address in the host Member State from which documents may be obtained;

d) the names of those responsible for the management of the branch.

II. information concerning the distribution, by the branch, of the units of the unit trusts/common funds and of the investment companies subject to this Directive which are managed by the management company:

a) details about the planned distribution and of the arrangements made for the marketing of the units in that other Member State;

b) for each unit trust/common fund and investment company concerned: the fund rules or the instruments of incorporation; the prospectuses and, where appropriate, its latest annual report and any subsequent half-yearly report;

3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of a management company, taking into account the activities envisaged, they shall, within three months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the host Member State and shall inform the management company accordingly.

They shall also communicate:

- details of any compensation scheme intended to protect investors;

- an attestation for each unit trust/common fund or investment company, the units of which are distributed in the host country, that it fulfils the conditions imposed by this Directive.

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

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

5. On receipt of a communication from the competent authorities of the host Member State or on the expiry of the period provided for in paragraph 4 without receipt of any communication from those authorities, the branch may be established and commence business. From that moment the management company may also begin distributing the units of the unit trusts/common funds and of the investment companies subject to this Directive which it manages, unless the competent authorities of the host Member State establish, in a reasoned decision taken before the expiry of that period of two months – to be communicated to the competent authorities of the home Member State – that the arrangements made for the marketing of the units do not comply with the provisions referred to in Articles 44(1) and 45.

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

7. In the event of a change in the particulars communicated in accordance with the second subparagraph of paragraph 3, the authorities of the home Member State shall inform the authorities of the host Member State accordingly.

Article 6b

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

I. general information:

a) the Member State within the territory of which the management company intends to operate;

b) a programme of the activity envisaged.

II. information concerning the distribution, in the host Member State, of units of the unit trusts/common funds and of the investment companies subject to this Directive which are managed by the management company:

a) details about the planned distribution and of the arrangements made for the marketing of the units in that other Member State;

b) for each unit trust/common fund and investment company concerned: the fund rules or the instruments of incorporation; the prospectuses and, where appropriate, its latest annual report and any subsequent half-yearly report;

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

They shall also communicate:

- details of any compensation scheme intended to protect investors;

- an attestation for each unit trust/common fund or investment company, the units of which are distributed in the host country, that it fulfils the conditions imposed by this Directive.

3. The management company may then commence business in the host Member State. The distribution of the units of the unit trusts/common funds and of the investment companies subject to this Directive may begin one month after the host Member State's competent authorities receive of the information referred to in paragraphs 1 and 2, unless the competent authorities of the host Member State establish, in a reasoned decision taken before the expiry of that period of one month to be communicated to the competent authorities of the home Member State, that the arrangements made for the marketing of the units do not comply with the provisions referred to in Articles 44(1) and 45.

When appropriate, the competent authorities of the host Member State shall, on receipt of the information referred to in paragraph 1, indicate to the management company the conditions, including the rules of conduct to be respected in the case of provision of the portfolio management service mentioned in Article 5 (3), with which, in the interest of the general good, the management company must comply in the host Member State.

4. Should the content of the information communicated in accordance with paragraph 1, subparagraph I (b) and subparagraph II be amended, the management company shall give notice of the amendment in writing to the competent authorities of the home Member State and of the host Member State before implementing the change, so that the competent authorities of the host Member State may, if necessary, inform the company of any change or addition to be made to the information communicated under paragraph 2.

5. A management company shall also be subject to the notification procedure laid down in this Article in the case where it entrusts a third party with the marketing of the units in a host Member State.

Article 6c

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

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

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

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

4. If the management company concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly. The latter shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State.

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

6. The foregoing provisions shall not affect the powers of host Member States to take appropriate measures to prevent or to penalise irregularities committed within their territories which are contrary to legal or regulatory provisions adopted in the interest of the general good. This shall include the possibility of

preventing offending management companies from initiating any further transactions within their territories.

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

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

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

9. In the event of the withdrawal of authorisation, the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the management company concerned from initiating any further transactions within its territory and to safeguard investors' interests. Every two years the Commission shall submit a report on such cases to the Contact Committee set up according to Article 53.

10. The Member States shall inform the Commission of the number and type of cases in which there have been refusals pursuant to Article 6a or measures have been taken in accordance with paragraph 5. Every two years the Commission shall submit a report on such cases to the Contact Committee set up according to Article 53 of this Directive.

4) Before Article 7 the following shall be included:

"Section III a

Obligations regarding the depositary"

5) Article 27, paragraph 1 shall be replaced by the following:

" 1. An investment company and, for each of the unit trusts it manages, a management company, must publish :

- a simplified prospectus,
- a full prospectus,
- an annual report for each financial year, and
- a half-yearly report covering the first six months of the financial year."

6) Article 28, paragraph 1 shall be replaced by the following:

"1. Both the simplified and the full prospectuses must include the information necessary for investors to be able to make an informed judgement of the investment proposed to them.

2. The full prospectus shall contain at least the information provided for in Schedule A annexed to this Directive, insofar as that information does not already appear in the fund rules or instruments of incorporation annexed to the full prospectus in accordance with Article 29(1).

3. The simplified prospectus shall contain synthetically at least the key information provided for in Schedule C annexed to this Directive. It shall be structured and written in such a way that it can be easily understood by the average investor. Member States may permit that the simplified prospectus be attached to the full prospectus as a removable part of it.

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

7) Article 29 shall be replaced by the following:

"Article 29

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

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

8) Article 30 shall be replaced by the following:

"Article 30

The essential elements of the simplified and the full prospectuses must be kept up to date."

9) Article 32 shall be replaced by the following:

"Article 32

UCITS must send their simplified and full prospectuses and any amendments thereto, as well as their annual and half-yearly reports, to the competent authorities."

10) Article 33 shall be replaced by the following:

"Article 33

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

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

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

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

11) Article 35 shall be replaced by the following:

"Article 35

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

12) Article 46 shall be replaced by the following:

"Article 46

If an investment company proposes to market its units in a Member State other than that in which it is situated, it must first inform the competent authorities of that other Member State accordingly. It must simultaneously send the latter authorities:

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

- its instruments of incorporation;

- its full prospectus and its simplified prospectus;

- where appropriate, its latest annual report and any subsequent half-yearly report and

- details of the arrangements made of the marketing of its units in that other Member States.

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

13) Article 47 shall be replaced by the following:

"Article 47

If a UCITS markets its units in a Member State other than that in which it is situated, it must distribute in that other Member State, in accordance with the same procedures as those provided for in the home Member State:

(1) the simplified prospectus and the other information provided for in Articles 29 and 30 of this Directive in a language which is easily understandable for the investors concerned in the host Member State;

(2) the full prospectus and the annual and half-yearly reports in the official language or in one of the official languages of the host Member State or in another language, provided that in the Member State in question that other language is customary in the sphere of finance, accepted by the competent authorities and, when appropriate, such further conditions as they may impose are complied with."

14) After Article 52 the following Articles shall be added:

"Article 52a

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

They shall supply one another on request with all the information concerning the management and ownership of such management companies that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such companies. In particular, the authorities of the home Member State shall co-operate to ensure that the authorities of the host Member State collect the particulars referred to in Article 6c (2).

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

Article 52b

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

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

3. This Article shall not affect the right of the competent authorities of the host Member State, in discharging their responsibilities under this Directive, to carry out on-the-spot verifications of branches established within their territory."

15) Schedule A of the Annex shall be amended as follows:

Under the column "Information concerning the investment company", after paragraph 1.2. the following shall be added:

"1.3. In the case of investment companies having different investment compartments, the indication of the compartments."

Under the column "Information concerning the investment company", in paragraph 1.13. the following sentence shall be added:

"In the case of investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases."

After paragraph 4 the following paragraphs 5 and 6 shall be added:

"5. Other investment information

5.1. Historical performance of the unit trust/common fund or of the investment company (where applicable);

5.2. Profile of the typical investor the unit trust/common fund or the investment company is designed for

6. Economic information

6.1. Possible expenses or fees, other than the charges mentioned in paragraph 1.17, distinguishing between those to be paid by the unit-holder and those to be paid out of the unit trust's/ common fund's or of the investment company's assets."

Transitional and final provisions

Article 2

1. Investment firms, as defined in Article 1 (2) of the ISD, authorised to carry out only the services provided for in Section A (3) and in Section C (1) and (6) of the annex of Directive 93/22/EEC, may obtain authorisation under this Directive to manage unit trusts/common funds and investment companies and to qualify themselves as "management companies". In that case, such investment firms must give up the authorisation obtained under the ISD.

2. Management companies already authorised before 31 December 2002, in their home Member State under Directive 85/611/EEC to manage unit trusts/common funds and investment companies shall be deemed to be authorised for the purposes of this directive if the laws of those Member States provide that to take up such activity they must comply with conditions equivalent to those imposed in Articles 5a and 5b.

3. Management companies, already authorised before 31 December 2002, which are not included among those referred to in paragraph 2 may continue such activity provided that, no later than 31 December 2005 and pursuant the provisions of their home Member State, they obtain authorisation to continue such activity in accordance with the provisions adopted in implementation of this Directive.

Only the grant of such authorisation shall enable such management companies to qualify under the provisions of this Directive on the right of establishment and the freedom to provide services.

Article 3

No later than 30 June 2002 Member States shall adopt the laws, regulations and administrative provisions necessary for them to comply with this Directive.

These provisions shall enter into force no later than 31 December 2002. The Member States shall forthwith inform the Commission thereof.

When Member States adopt these provisions they shall include a reference to this Directive or accompany them with such a reference on the occasion of their official publication. The manner in which such references are to be made shall be laid down by the Member States.

Article 4

This Directive shall enter into force 20 days after the date of publication in the Official Journal of the European Communities.

Article 5

This Directive is addressed to the Member States.

Done at Brussels

For the European Parliament
The President

For the Council
The President

SCHEDULE C

CONTENTS OF THE SIMPLIFIED PROSPECTUS

Brief presentation of the UCITS

- when the unit trust/common fund or the investment company was created and indication of the Member State where the unit trust/common fund or the investment company has been registered/incorporated
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- expected period of existence (when applicable)
- depositary
- auditors
- financial group (e.g. a bank) promoting the UCITS

Investment information

- short definition of the UCITS' objectives
- in the case of investment companies having different investment compartments, the indication of this circumstance
- the unit trust's/common fund's or the investment company's investment policy
- historical performance of the common fund/ investment company (where applicable)
- profile of the typical investor the unit trust/common fund or the investment company is designed for

Economic information

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- entry and exit commissions
- other possible expenses or fees, distinguishing between those to be paid by the unit-holder and those to be paid out of the unit trust's/common fund's or the investment company's assets

Commercial information

- how to buy the units
- how to sell the units
- in the case of investment companies having different investment compartments how to pass from one investment compartment into another and the charges applicable in such cases
- when and how dividends (if applicable) are distributed
- frequency and where/how prices are published or made available
- indication of a contact point (person/department, timing, etc.) where additional explanations may be obtained if needed

Additional information

- statement that, on request, the full prospectus, the annual and half-yearly reports may be obtained free of charge before the conclusion of the contract and afterwards.

Functions included in the activity of

collective portfolio management

- Investment activity:

  a) Investment management;

  b) Investment administration (such as: instructing brokers, arranging settlement, instructing the depositary on the exercise of voting rights)

- Marketing:

  a) production of literature

  b) distribution of the units of the unit trusts/common funds and of the investment companies managed by the management company

  c) relations with distribution agents

- Administration:

  a) legal and fund management accounting services

  b) customer inquiries

  c) valuation and pricing (including tax returns)

  d) regulatory compliance monitoring

  e) maintenance of unit-holder register

  f) distribution of income

  g) unit issues and redemptions

  h) contact settlements (including certificate dispatch)

  i) record keeping

ISSN 0254-1475

COM(98) 451 final

DOCUMENTS

EN 06 09 10 17

Catalogue number : CB-CO-98-462-EN-C

ISBN 92-78-38210-8

Office for Official Publications of the European Communities

L-2985 Luxembourg