DIRECTIVE 2001/107/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 January 2002

amending Council 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 47(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 251 of the Treaty [3],

Whereas:

(1) Council Directive 85/611/EEC of 20 December 1985 on undertakings for collective investment in transferable securities (UCITS) [4], has already contributed significantly 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) However, Directive 85/611/EEC does not regulate to a great extent the companies which manage collective investment undertakings (so-called 'management companies'). In particular, Directive 85/611/EEC does not lay down provisions ensuring in all Member States equivalent market access rules and operating conditions for such companies. 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) Authorisation granted in the management company's home Member State should ensure investor protection and the solvency of management companies, with a view to contributing to the stability of the financial system. The approach adopted is to ensure the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and of prudential supervision systems, making possible the grant of a single authorisation valid throughout the European Union and the application of the home Member State supervision.

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

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

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

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

[1] OJ C 272, 1.9.1998, p. 7 and OJ C 311 E, 31.10.2000, p. 273.
[2] OJ C 116, 28.4.1999, p. 1.
[3] Opinion of the European Parliament of 17 February 2000 (OJ C 339, 29.11.2000, p. 228), Council Common Position of 5 June 2001 (OJ C 297, 23.10.2001, p. 10) and Decision of the European Parliament of 23 October 2001. Council Decision of 4 December 2001.
[4] OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2000/64/EC of the European Parliament and the Council (OJ L 290, 17.11.2000, p. 27).

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

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

(10) The activity of management of portfolios of investments is an investment service already covered by Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field [1]. In order to ensure a homogeneous regulatory framework in this area, it is desirable to subject management companies, the authorisation of which also covers that service, to the operating conditions laid down in that Directive.

(11) A home Member State may, as a general rule, establish rules stricter than those laid down in this Directive, in particular as regards authorisation conditions, prudential requirements and the rules on reporting and the full prospectus.

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

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

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

(15) To take into account developments of information techniques, it is desirable to revise the current information framework provided for in Directive 85/611/EEC. In particular, it is desirable to introduce, in addition to the existing full prospectus, a new type of prospectus for UCITS (simplified prospectus). Such a new prospectus should be designed to be investor-friendly and should therefore represent a source of valuable information for the average investor. Such a prospectus should give key information about the UCITS in a clear, concise and easily understandable way. However, the investor should 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. The simplified prospectus should always be offered free of charge to subscribers before the conclusion of the contract. This should be a sufficient precondition to meet the legal obligation under this Directive to provide information to subscribers before the conclusion of the contract.

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

(16) There is a need to ensure a level playing field among intermediaries in the financial services area when providing the same services and to ensure a harmonised minimum degree of investor protection. A harmonised minimum degree of harmonisation of the conditions for taking up business and operating conditions represents the essential precondition for achieving the internal market for these operators. Therefore, only a binding Community Directive laying down agreed minimum standards in this respect can achieve the desired objectives. This Directive effects only the minimum harmonisation required, and does not go beyond what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.

(17) The Commission may consider proposing codification in due time after adoption of the proposals,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 85/611/EEC is hereby amended as follows:

1. the following Article 1a shall be 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 IIIa and IVa;

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

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

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;

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 the management company's registered office is situated,

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

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

7. "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 this Directive;

9. "close links" shall mean a situation as defined in Article 2(1) of Directive 95/26/EC (*);

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 (**) shall be taken into account;

11. "ISD" shall mean Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (***);

12. "parent undertaking" shall mean a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC (****);

13. "subsidiary" shall mean a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; any subsidiary of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is the ultimate parent of those undertakings;

14. "initial capital" shall mean capital as defined in items 1 and 2 of Article 34(2) of Directive 2000/12/EC (*****);

15. "own funds" shall mean own funds as defined in Title V, Chapter 2, Section 1 of Directive 2000/12/EC; this definition may, however, be amended in the circumstances described in Annex V of Directive 93/6/EEC (******).

(*) OJ L 168, 18.7.1995, p. 7.
(**) OJ L 348, 17.12.1988, p. 62.
(***) OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2000/64/EC (OJ L 290, 17.11.2000, p. 27).
(****) OJ L 193, 18.7.1983, p. 1. Directive as last amended by the 1994 Act of Accession.
(*****) OJ L 126, 26.5.2000, p. 1. Directive as amended by Directive 2000/28/EC of the European Parliament and of the Council (OJ L 275, 27.10.2000, p. 37).
(******) OJ L 141, 11.6.1993, p. 1. Directive as last amended by Directive 98/33/EC of the European Parliament and of the Council (OJ L 204, 21.7.1998, p. 29).';

2. Article 4(3) shall be replaced by the following:

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

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

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

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

3. the title of Section III and 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. 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 UCITS authorised according to this Directive except the additional management of other collective investment undertakings which are not covered by this Directive and for which the management company is subject to prudential supervision but which cannot be marketed in other Member States under this Directive.

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

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

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

(b) as non-core services:

— investment advice concerning one or more of the instruments listed in Section B of the Annex to the ISD,

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

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

4. Article 2(4), Article 8(2), Articles 10, 11 and 13 of the ISD shall apply to the provision of the services mentioned in paragraph 3 of this Article by management companies.

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:

(a) the management company has an initial capital of at least EUR 125 000:

— When the value of the portfolios of the management company, exceeds EUR 250 000 000, the management company shall be required to provide an additional amount of own funds. This additional amount of own funds shall be equal to 0,02 % of the amount by which the value of the portfolios of the management company exceeds EUR 250 000 000. The required total of the initial capital and the additional amount shall not, however, exceed EUR 10 000 000.

— For the purpose of this paragraph, the following portfolios shall be deemed to be the portfolios of the management company:

(i) unit trusts/common funds managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;

(ii) investment companies for which the management company is the designated management company;

(iii) other collective investment undertakings managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation.

— Irrespective of the amount of these requirements, the own funds of the management company shall never be less than the amount prescribed in Annex IV of Directive 93/6/EEC.

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

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

(b) the persons who effectively conduct the business of a management company are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company. To that end, the names of these persons and of every person succeeding them in office must be communicated forthwith to the competent authorities. The conduct of a management company's business must be decided by at least two persons meeting such conditions;

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

(d) 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 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 paragraph on a continuous basis.

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

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

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

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

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

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

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

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

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

Article 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 starting or carrying on business, the Member States shall not apply provisions that result in treatment more favourable than that accorded to branches of management companies that have registered offices in Member States.

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

(a) a subsidiary of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State,

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

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

Title B

Relations with third countries

Article 5c

1. Relations with third countries shall be regulated in accordance with the relevant rules laid down in Article 7 of the ISD.

For the purpose of this Directive, the expressions "firm/investment firm" and "investment firms" contained in Article 7 of the ISD shall be construed respectively as "management company" and "management companies"; the expression "providing investment services" in Article 7(2) of the ISD shall be construed as "providing services".

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

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 laid down in Article 5 and Article 5a(1) and (2) of this Directive. The own funds of a management company may not fall below the level specified in Article 5a(1)(a). If they do, however, the competent authorities may, where the circumstances justify it, allow such firms a limited period in which to rectify their situations or cease their activities.

2. The prudential supervision of a management company shall be the responsibility of the competent authorities of the 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.

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

Article 5f

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

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

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

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

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

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

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

Article 5g

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

(a) the competent authority must be informed in an appropriate manner;

(b) the mandate shall not prevent the effectiveness of supervision over the management company, and in particular it must not prevent the management company from acting, or the UCITS from being managed, in the best interests of its investors;

(c) when the delegation concerns the investment management, the mandate may only be given to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision; the delegation must be in accordance with investment-allocation criteria periodically laid down by the management companies;

(d) where the mandate concerns the investment management and is given to a third-country undertaking, cooperation between the supervisory authorities concerned must be ensured;

(e) a mandate with regard to the core function of investment management shall not be given to the depositary or to any other undertaking whose interests may conflict with those of the management company or the unit-holders;

(f) measures shall exist which enable the persons who conduct the business of the management company to monitor effectively at any time the activity of the undertaking to which the mandate is given;

(g) the mandate shall not prevent the persons who conduct the business of the management company to give at any time further instructions to the undertaking to which functions are delegated and to withdraw the mandate with immediate effect when this is in the interest of investors;

(h) having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated must be qualified and capable of undertaking the functions in question, and

(i) the UCITS' prospectuses list the functions which the management company has been permitted to delegate.

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

Article 5h

Each Member State shall draw up rules of conduct which management companies authorised in that Member State shall observe at all times. Such rules must implement at least the principles set out in the following indents. These principles shall ensure that a management company:

(a) acts honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market;

(b) acts with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market;

(c) has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities;

(d) tries to avoid conflicts of interests and, when they cannot be avoided, ensures that the UCITS it manages are fairly treated, and

(e) complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

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 Articles 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:

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

(b) a programme of operations setting out the activities and services according to Article 5(2) and (3) 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.

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.

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 starts 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) and of investment advisory services and custody, 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 start business. From that moment the management company may also begin distributing the units of the unit trusts/common funds and of the investment companies subject to this Directive which it manages, unless the competent authorities of the host Member State establish, in a reasoned decision taken before the expiry of that period of two months — to be communicated to the competent authorities of the home Member State – that the arrangements made for the marketing of the units do not comply with the provisions referred to in Article 44(1) and Article 45.

6. In the event of change of any particulars communicated in accordance with paragraphs 2(b), (c) or (d), a management company shall give written notice of that change to the competent authorities of the 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 first 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:

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

(b) a programme of operations stating the activities and services referred to in Article 5(2) and (3) envisaged.

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 applicable compensation scheme intended to protect investors.

3. The management company may then start business in the host Member State notwithstanding the provisions of Article 46.

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) and of investment advisory services and custody, 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(b) 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 3.

5. A management company shall also be subject to the notification procedure laid down in this Article in cases 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 Member State in question, the management company persists in breaching 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, insofar as necessary, to prevent that management company from initiating any further transaction within its territory. The Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on management companies.

6. The foregoing provisions 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 under 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 under Article 53.

(*) OJ L 84, 26.3.1997, p. 22.';

4. the following shall be inserted before Article 7:

'SECTION IIIa

Obligations regarding the depositary';

5. the title of Section IV and Article 12 shall be replaced by the following:

'SECTION IV

Obligations regarding investment companies

Title A

Conditions for taking up business

Article 12

Access to the business of investment companies shall be subject to prior official authorisation to be granted by the home Member States competent authorities.

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

6. the following Articles shall be inserted after Article 13:

'*Article 13a*

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

In addition, when an investment company has not designated a management company authorised pursuant to this Directive:

— the authorisation shall not be granted unless the application for authorisation is accompanied by a programme of activity setting out, *inter alia*, the organisational structure of the investment company;

— the directors of the investment company shall be of sufficiently good repute and be sufficiently experienced also in relation to the type of business carried out by the investment company. To that end, the names of the directors and of every person succeeding them in office must be communicated forthwith to the competent authorities. The conduct of an investment company's business must be decided by at least two persons meeting such conditions. Directors shall mean those persons who, under the law or the instruments of incorporation, represent the investment company, or who effectively determine the policy of the company;

— moreover, where close links exist between the investment company and other natural or legal persons, the competent authorities shall grant authorisation only if those 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 investment company has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities shall require investment companies to provide them with the information they require.

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

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

4. The competent authorities may withdraw the authorisation issued to an investment company subject to this Directive only where that company:

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

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

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

(d) has seriously and/or systematically infringed the provisions adopted pursuant to this Directive; or

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

Title B

Operating conditions

Article 13b

Articles 5g and 5h shall apply to investment companies that have not designated a management company authorised pursuant to this Directive. For the purpose of this Article "management company" shall be construed as "investment company".

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

Article 13c

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

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

7. the following shall be inserted before Article 14:

'SECTION IVa

Obligations regarding the depositary';

8. Article 27(1) shall be replaced by the following:

'1. An investment company and, for each of the unit trusts and common funds 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.';

9. Article 28 shall be replaced by the following:

'*Article 28*

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, and, in particular, of the risks attached thereto. The latter shall include, independent of the instruments invested in, a clear and easily understandable explanation of the fund's risk profile.

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

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

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

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

6. The half-yearly report must include at least the information provided for in Chapters I to IV of Schedule B, Annex I to this Directive; where a UCITS has paid or proposes to pay an interim dividend, the figures must indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.';

10. 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.';

11. 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.';

12. 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.';

13. 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.';

14. 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.';

15. Article 46 shall be replaced by the following:

'*Article 46*

If a UCITS 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 fund rules or its instruments of incorporation,

— its full and simplified prospectuses,

— 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 State.

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

16. 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, the full and simplified prospectuses, the annual and half-yearly reports and the other information provided for in Articles 29 and 30.

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

17. the following Articles shall be added after Article 52:

'*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 cooperate to ensure that the authorities of the host Member State collect the particulars referred to in Article 6c(2).

2. Insofar 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.';

18. the Annex to Directive 85/611/EEC shall be renumbered as Annex I;

19. Schedule A of Annex I shall be amended as follows:

1. 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.'

2. 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.'

3. The following paragraphs shall be added after paragraph 4:

'5. Other investment information

5.1. Historical performance of the unit trust/common fund or of the investment company (where applicable) — such information may be either included in or attached to the prospectus;

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

6. Economic information

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.';

20. the text of Annex I to this Directive shall be added to Annex I to Directive 85/611/EEC;

21. Annex II to this Directive shall be added as Annex II to Directive 85/611/EEC.

Transitional and final provisions

Article 2

1. Investment firms, as defined in Article 1(2) of Directive 93/22/EEC, authorised to carry out only the services provided for in Section A(3) and in Section C(1) and (6) of the Annex to that Directive, 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 Directive 93/22/EEC.

2. Management companies already authorised before 13 February 2004 in their home Member State under Directive 85/611/EEC to manage UCITS in the form of 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 13 February 2004, which are not included among those referred to in paragraph 2 may continue such activity provided that, no later than 13 February 2007 and pursuant to the provisions of their home Member State, they obtain authorisation to continue such activity in accordance with the provisions adopted in implementation of this Directive.

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

Article 3

No later than 13 August 2003 Member States shall adopt the laws, regulations and administrative provisions necessary for them to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply these measures no later than 13 February 2004.

When Member States adopt these measures they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 4

This Directive shall enter into force on the date of its publication in the *Official Journal of the European Communities*.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 21 January 2002.

For the European Parliament	*For the Council*
The President	*The President*
P. COX	M. ARIAS CAÑETE

ANNEX I

'SCHEDULE C

Contents of the simplified prospectus

Brief presentation of the UCITS

— when the unit trust/common fund or the investment company was created and indication of the Member State where the unit trust/common fund or the investment company has been registered/incorporated,

— in the case of UCITS having different investment compartments, the indication of this circumstance,

— management company (when applicable),

— expected period of existence (when applicable),

— depositary,

— auditors,

— financial group (e.g. a bank) promoting the UCITS.

Investment information

— short definition of the UCITS' objectives,

— the unit trust's/common fund's or the investment company's investment policy and a brief assessment of the fund's risk profile (including, if applicable, information according to Article 24a and by investment compartment),

— historical performance of the unit trust/common fund/investment company (where applicable) and a warning that this is not an indicator of future performance — such information may be either included in or attached to the prospectus,

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

Economic information

— tax regime,

— entry and exit commissions,

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

Commercial information

— how to buy the units,

— how to sell the units,

— in the case of UCITS having different investment compartments how to pass from one investment compartment into another and the charges applicable in such cases,

— when and how dividends on units or shares of the UCITS (if applicable) are distributed,

— frequency and where/how prices are published or made available.

Additional information

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

— competent authority,

— indication of a contact point (person/department, timing, etc.) where additional explanations may be obtained if needed,

— publishing date of the prospectus.'

ANNEX II

'ANNEX II

Functions included in the activity of collective portfolio management:

— Investment management.

— Administration:

(a) legal and fund management accounting services;

(b) customer inquiries;

(c) valuation and pricing (including tax returns);

(d) regulatory compliance monitoring;

(e) maintenance of unit-holder register;

(f) distribution of income;

(g) unit issues and redemptions;

(h) contract settlements (including certificate dispatch);

(i) record keeping.

— Marketing.'