

DIRECTIVE 2001/108/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 regard to investments of UCITS

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) The scope of Council Directive 85/611/EEC ⁽⁴⁾ was confined initially to collective investment undertakings of the open-ended type which promote the sale of their units to the public in the Community and the sole object of which is investment in transferable securities (UCITS). It was envisaged in the preamble to Directive 85/611/EEC that collective investment undertakings falling outside its scope would be the subject of coordination at a later stage.
- (2) Taking into account market developments, it is desirable that the investment objective of UCITS be widened in order to permit them to invest in financial instruments, other than transferable securities, which are sufficiently liquid. The financial instruments which are eligible to be investment assets of the portfolio of the UCITS are listed in this Directive. The selection of investments for a portfolio by means of an index is a management technique.
- (3) The definition of transferable securities included in this Directive is valid only for this Directive and in no way affects the various definitions used in national legislation for other purposes such as taxation. Consequently, shares and other securities equivalent to shares issued by bodies such as building societies and industrial and provident societies, the ownership of which cannot in practice be transferred except by the issuing body buying them back, are not covered by this definition.
- (4) Money market instruments cover those transferable instruments which are normally not traded on regulated markets but dealt in on the money market, for example

treasury and local authority bills, certificates of deposit, commercial paper, medium-term notes and bankers' acceptances.

- (5) It is useful to ensure that the concept of regulated market in this Directive corresponds to that in Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ⁽⁵⁾.
- (6) It is desirable to permit a UCITS to invest its assets in units of UCITS and/or other collective investment undertakings of the open-ended type which also invest in liquid financial assets mentioned in this Directive and which operate on the principle of risk spreading. It is necessary that UCITS or other collective investment undertakings in which a UCITS invests be subject to effective supervision.
- (7) The development of opportunities for a UCITS to invest in UCITS and in other collective investment undertakings should be facilitated. It is therefore essential to ensure that such investment activity does not diminish investor protection. Owing to the enhanced possibilities for UCITS to invest in the units of other UCITS and/or collective investment undertakings, it is necessary to lay down certain rules on quantitative limits, the disclosure of information and prevention of the cascade phenomenon.
- (8) To take market developments into account and in consideration of the completion of economic and monetary union it is desirable to permit UCITS to invest in bank deposits. To ensure adequate liquidity of investments in deposits, these deposits are to be repayable on demand or have the right to be withdrawn. If the deposits are made with a credit institution the registered office of which is located in a non-Member State, the credit institution should be subject to prudential rules equivalent to those laid down in Community legislation.
- (9) In addition to the case in which a UCITS invests in bank deposits according to its fund rules or instruments of incorporation, it may be necessary to allow all UCITS to hold ancillary liquid assets, such as bank deposits at sight. The holding of such ancillary liquid assets may be justified, for example, in the following cases: in order to cover current or exceptional payments; in the case of sales, for the time necessary to reinvest in transferable

⁽¹⁾ OJ C 280, 9.9.1998, p. 6 and OJ C 311 E, 31.10.2000, p. 302.

⁽²⁾ OJ C 116, 28.4.1999, p. 44.

⁽³⁾ Opinion of the European Parliament of 17 February 2000 (OJ C 339, 29.11.2000, p. 220), Council Common Position of 5 June 2001 (OJ C 297, 23.10.2001, p. 35) 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 of the Council (OJ L 290, 17.11.2000, p. 27).

⁽⁵⁾ OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2000/64/EC.

securities, money market instruments and/or in other financial assets provided for in this Directive; for a period of time strictly necessary when, because of unfavourable market conditions, the investment in transferable securities, money market instruments and in other financial assets must be suspended.

- (10) For prudential reasons it is necessary to avoid excessive concentration by a UCITS in investments which expose them to counterparty risk to the same entity or to entities belonging to the same group.
- (11) UCITS should be explicitly permitted, as part of their general investment policy and/or for hedging purposes in order to reach a set financial target or the risk profile indicated in the prospectus, to invest in financial derivative instruments. In order to ensure investor protection, it is necessary to limit the maximum potential exposure relating to derivative instruments so that it does not exceed the total net value of the UCITS's portfolio. In order to ensure constant awareness of the risks and commitments arising from derivative transactions and to check compliance with investment limits, these risks and commitments will have to be measured and monitored on an ongoing basis. Finally, in order to ensure investor protection through disclosure, UCITS should describe their strategies, techniques and investment limits governing their derivative operations.
- (12) With regard to over-the-counter (OTC) derivatives, additional requirements should be set in terms of the eligibility of counterparties and instruments, liquidity and ongoing assessment of the position. The purpose of such additional requirements is to ensure an adequate level of investor protection, close to that which they obtain when they acquire derivatives dealt in on regulated markets.
- (13) Operations in derivatives may never be used to circumvent the principles and rules set out in this Directive. With regard to OTC derivatives, additional risk-spreading rules should apply to exposures to a single counterparty or group of counterparties.
- (14) Some portfolio management techniques for collective investment undertakings investing primarily in shares and/or debt securities are based on the replication of stock indices and/or debt-security indices. It is desirable to permit UCITS to replicate well-known and recognised stock indices and/or debt-security indices. It may therefore be necessary to introduce more flexible risk-spreading rules for UCITS investing in shares and/or debt securities to this end.
- (15) Collective investment undertakings falling within the scope of this Directive should not be used for purposes other than the collective investment of the money raised from the public according to the rules laid down in this

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

- (16) There is a need to ensure the free cross-border marketing of the units of a wider range of collective investment undertakings, while providing a uniform minimum level of investor protection. Therefore, only a binding Community Directive laying down agreed minimum standards 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 measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (18) The Commission may consider proposing codification in due course after the adoption of the proposals,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

1. in Article 1(2), the first indent shall be replaced by the following:
 - the sole object of which is the collective investment in transferable securities and/or in other liquid financial assets referred to in Article 19(1) of capital raised from the public and which operates on the principle of risk-spreading and;
2. in Article 1 the following paragraphs shall be added:
 - '8. For the purposes of this Directive, "transferable securities" shall mean:
 - shares in companies and other securities equivalent to shares in companies ("shares"),
 - bonds and other forms of securitised debt ("debt securities"),

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

- any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange,

excluding the techniques and instruments referred to in Article 21.

9. For the purposes of this Directive “money market instruments” shall mean instruments normally dealt in on the money market which are liquid, and have a value which can be accurately determined at any time.;

3. Article 19(1)(a) shall be replaced by the following:

‘(a) transferable securities and money market instruments admitted to or dealt in on a regulated market within the meaning of Article 1(13) of the ISD, and/or’;

4. in Article 19(1)(b) and (c), the words ‘and money market instruments’ shall be added after the words ‘transferable securities’;

5. in Article 19(1):

- the terms ‘and/or’ shall be added to the end of point (d),
- the following points shall be added:

‘(e) units of UCITS authorised according to this Directive and/or other collective investment undertakings within the meaning of the first and second indent of Article 1(2), should they be situated in a Member State or not, provided that:

- such other collective investment undertakings are authorised under laws which provide that they are subject to supervision considered by the UCITS' competent authorities to be equivalent to that laid down in Community law, and that cooperation between authorities is sufficiently ensured,
- the level of protection for unit-holders in the other collective investment undertakings is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on assets segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of this Directive,
- the business of the other collective investment undertakings is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period,
- no more than 10 % of the UCITS' or the other collective investment undertakings' assets, whose acquisition is contemplated, can, according to their fund rules or instruments of

incorporation, be invested in aggregate in units of other UCITS or other collective investment undertakings, and/or

(f) deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that the credit institution has its registered office in a Member State or, if the registered office of the credit institution is situated in a non-Member State, provided that it is subject to prudential rules considered by the UCITS' competent authorities as equivalent to those laid down in Community law, and/or

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

- the underlying consists of instruments covered by this paragraph, financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in the UCITS' fund rules or instruments of incorporation,
- the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the UCITS' competent authorities, and
- the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS' initiative, and/or

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

- issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank, a non-Member State or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong, or
- issued by an undertaking any securities of which are dealt in on regulated markets referred to in subparagraphs (a), (b) or (c), or

- issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by Community law, or by an establishment which is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down by Community law; or
- issued by other bodies belonging to the categories approved by the UCITS' competent authorities provided that investments in such instruments are subject to investor protection equivalent to that laid down in the first, the second or the third indent and provided that the issuer is a company whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with Directive 78/660/EEC (*), is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

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

6. in Article 19(2)(a), the words 'and money market instruments' shall be added after the words 'transferable securities';
7. Article 19(2)(b) and (3) shall be deleted;
8. Article 20 shall be deleted;
9. Article 21 shall be replaced by the following:

'Article 21

1. The management or investment company must employ a risk-management process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio; it must employ a process for accurate and independent assessment of the value of OTC derivative instruments. It must communicate to the competent authorities regularly and in accordance with the detailed rules they shall define, the types of derivative instruments, the underlying risks, the quantitative limits and the methods which are chosen in order to estimate the risks associated with transactions in derivative instruments regarding each managed UCITS.

2. The Member States may authorise UCITS to employ techniques and instruments relating to transferable securities and money market instruments under the conditions and within the limits which they lay down

provided that such techniques and instruments are used for the purpose of efficient portfolio management. When these operations concern the use of derivative instruments, these conditions and limits shall conform to the provisions laid down in this Directive.

Under no circumstances shall these operations cause the UCITS to diverge from its investment objectives as laid down in the UCITS' fund rules, instruments of incorporation or prospectus.

3. A UCITS shall ensure that its global exposure relating to derivative instruments does not exceed the total net value of its portfolio.

The exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions. This shall also apply to the following subparagraphs.

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

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

4. The Member States shall send the Commission full information and any subsequent changes in their regulation concerning the methods used to calculate the risk exposures mentioned in paragraph 3, including the risk exposure to a counterparty in OTC derivative transactions, no later than 13 February 2004. The Commission shall forward that information to the other Member States. Such information will be the subject of exchanges of views within the Contact Committee in accordance with the procedure laid down in Article 53(4).;

10. Article 22 shall be replaced by the following:

'Article 22

1. A UCITS may invest no more than 5 % of its assets in transferable securities or money market instruments issued by the same body. A UCITS may not invest more than 20 % of its assets in deposits made with the same body.

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

- 10 % of its assets when the counterpart is a credit institution referred to in Article 19(1)(f), or
- 5 % of its assets, in other cases.

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

Notwithstanding the individual limits laid down in paragraph 1, a UCITS may not combine:

- investments in transferable securities or money market instruments issued by,
- deposits made with, and/or
- exposures arising from OTC derivative transactions undertaken with

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

3. The Member States may raise the 5 % limit laid down in the first sentence of paragraph 1 to a maximum of 35 % if the transferable securities or money market instruments are issued or guaranteed by a Member State, by its local authorities, by a non-member State or by public international bodies to which one or more Member States belong.

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

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

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

communications may be the subject of exchanges of views within the Contact Committee in accordance with the procedure laid down in Article 53(4).

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

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

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

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

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

11. the following Article shall be inserted:

'Article 22a

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

- its composition is sufficiently diversified,
- the index represents an adequate benchmark for the market to which it refers,
- it is published in an appropriate manner.

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

12. in Article 23(1), the words 'and money market instruments' shall be added after the words 'transferable securities';

13. Article 24 shall be replaced by the following:

'Article 24

1. A UCITS may acquire the units of UCITS and/or other collective investment undertakings referred to in Article 19(1)(e), provided that no more than 10 % of its assets are invested in units of a single UCITS or other collective investment undertaking. The Member States may raise the limit to a maximum of 20 %.

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

The Member States may allow that, when a UCITS has acquired units of UCITS and/or other collective investment undertakings, the assets of the respective UCITS or other collective investment undertakings do not have to be combined for the purposes of the limits laid down in Article 22.

3. When a UCITS invests in the units of other UCITS and/or other collective investment undertakings that are managed, directly or by delegation, by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding, that management company or other company may not charge subscription or redemption fees on account of the UCITS's investment in the units of such other UCITS and/or collective investment undertakings.

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

14. the following Article shall be inserted:

'Article 24a

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

2. When a UCITS invests principally in any category of assets defined in Article 19 other than transferable securities and money market instruments or replicates a stock or debt securities index in accordance with Article 22a, its prospectus and, where necessary, any other promotional literature must include a prominent statement drawing attention to the investment policy.

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

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

15. in Article 25(2):

1. the third indent shall be replaced by the following:

— 25 % of the units of any single UCITS and/or other collective investment undertaking within the meaning of the first and second indent of Article 1(2).;

2. the following indent shall be added:

— 10 % of the money market instruments of any single issuing body.;

16. in Article 25(2), the second sentence shall be replaced by the following:

'The limits laid down in the second, third and fourth indents may be disregarded at the time of acquisition if at that time the gross amount of the debt securities or of the money market instruments, or the net amount of the securities in issue, cannot be calculated.;

17. in Article 25(3)(a), (b) and (c) the words 'and money market instruments' shall be added after the words 'transferable securities';

18. Article 25(3)(e) shall be replaced by the following:

(e) shares held by an investment company or investment companies in the capital of subsidiary companies carrying on only the business of management, advice or marketing in the country where the subsidiary is located, in regard to the repurchase of units at unit-holders' request exclusively on its or their behalf.;

19. Article 26(1) shall be replaced by the following:

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

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

20. Article 41(2) shall be replaced by the following:

'2. Paragraph 1 shall not prevent such undertakings from acquiring transferable securities, money market instruments or other financial instruments referred to in Article 19(1)(e), (g) and (h) which are not fully paid.;

21. Article 42 shall be replaced by the following:

'Article 42

Neither:

- an investment company, nor
- a management company or depositary acting on behalf of a unit trust

may carry out uncovered sales of transferable securities, money market instruments or other financial instruments referred to in Article 19(1)(e), (g) and (h).;

22. after Article 53 the following Article shall be inserted:

'Article 53a

1. In addition to its functions provided for in Article 53(1), the Contact Committee may also meet as a Regulatory Committee within the meaning of Article 5 of Decision 1999/468/EC (*) to assist the Commission in regard to the technical modifications to be made to this Directive in the following areas:

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

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

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

3. The Committee shall adopt its rules of procedure.

(*) OJ L 184, 17.7.1999, p. 23.'

Article 2

1. No later than 13 February 2005, the Commission shall forward to the European Parliament and the Council a report on the application of Directive 85/611/EEC as

amended and proposals for amendments, where appropriate. The report shall in particular:

- (a) analyse how to deepen and broaden the single market for UCITS, in particular with regard to cross-border marketing of UCITS (including third-party funds), the functioning of the passport for management companies, the functioning of the simplified prospectus as an information and marketing tool, the review of the scope of ancillary activities and the possibilities for improved collaboration of supervisory authorities with respect to common interpretation and application of the Directive;
- (b) review the scope of the Directive in terms of how it applies to different types of products (e.g. institutional funds, real-estate funds, master-feeder funds and hedge funds); the study should in particular focus on the size of the market for such funds, the regulation, where applicable, of these funds in the Member States and an evaluation of the need for further harmonisation of these funds;
- (c) evaluate the organisation of funds, including the delegation rules and practices and the relationship between fund manager and depositary;
- (d) review the investment rules for UCITS, for example the use of derivatives and other instruments and techniques relating to securities, the regulation of index funds, the regulation of money market instruments, deposits, the regulation of 'fund of fund' investments, as well as the various investment limits;
- (e) analyse the competitive situation between funds managed by management companies and 'self-managed' investment companies.

In preparing its report, the Commission shall consult as widely as possible with the various industries concerned and with consumer groups and supervisory bodies.

2. Member States may grant UCITS existing on the date of entry into force of this Directive a period of not more than 60 months from that date in order to comply with the new national legislation.

Article 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

The President

P. COX

For the Council

The President

M. ARIAS CAÑETE
