

Official Journal

of the European Communities

ISSN 0378-6978

L 41

Volume 45

13 February 2002

English edition

Legislation

Contents

I Acts whose publication is obligatory

- ★ **Council Regulation (EC) No 254/2002 of 12 February 2002 establishing measures to be applicable in 2002 for the recovery of the stock of cod in the Irish Sea (ICES division VIIa) 1**
- Commission Regulation (EC) No 255/2002 of 12 February 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables 4
- ★ **Commission Regulation (EC) No 256/2002 of 12 February 2002 concerning the provisional authorisation of new additives, the prolongation of provisional authorisation of an additive and the permanent authorisation of an additive in feedingstuffs ⁽¹⁾ 6**
- ★ **Commission Regulation (EC) No 257/2002 of 12 February 2002 amending Regulation (EC) No 194/97 setting maximum levels for certain contaminants in foodstuffs and Regulation (EC) No 466/2001 setting maximum levels for certain contaminants in foodstuffs ⁽¹⁾ 12**
- ★ **Commission Regulation (EC) No 258/2002 of 12 February 2002 determining the loss of income and the premiums applicable per ewe and per female goat in the Member States and the payment of the specific aid for sheep and goat farming in certain less-favoured areas of the Community for the 2001 marketing year 16**
- Commission Regulation (EC) No 259/2002 of 12 February 2002 amending representative prices and additional duties for the import of certain products in the sugar sector 18
- ★ **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 20**
- ★ **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 35**

⁽¹⁾ Text with EEA relevance

(Continued overleaf)

Commission

2002/111/EC:

- ★ **Commission Decision of 11 February 2002 amending Directive 92/33/EEC to extend the derogation relating to import conditions for vegetable propagating and planting material from third countries ⁽¹⁾ (notified under document number C(2002) 427)** 43

2002/112/EC:

- ★ **Commission Decision of 11 February 2002 amending Directive 92/34/EEC to extend the derogation relating to import conditions for fruit plant propagating material and fruit plants intended for fruit production from third countries ⁽¹⁾ (notified under document number C(2002) 428)** 44

⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 254/2002
of 12 February 2002
establishing measures to be applicable in 2002 for the recovery of the stock of cod in the Irish Sea
(ICES division VIIa)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) In November 1999, the International Council for the Exploration of the Sea (ICES) indicated that the stock of cod in the Irish Sea (ICES division VIIa) is at serious risk of collapse.
- (2) Further advice from ICES indicates that quantities of mature cod in the Irish Sea have remained at a very low level during 2000 and 2001 and will continue to be low during 2002.
- (3) Commission Regulation (EC) No 304/2000 of 9 February 2000 establishing measures for the recovery of the stock of cod in the Irish Sea (ICES division VIIa) ⁽²⁾ put in place measures to protect adult cod during the spawning season of 2000.
- (4) Council Regulation (EC) No 300/2001 of 14 February 2001 establishing measures to be applied in 2001 for the recovery of the stock of cod in the Irish Sea (ICES division VIIa) ⁽³⁾ put in place measures to protect adult cod during the spawning season of 2001.
- (5) During the period of application of previous measures, further scientific work was completed and practical experience has been gained which imply that the conditions applied in 2001 should be modified for 2002.
- (6) In particular, the use of semi-pelagic trawls within the closed area should no longer be permitted and the use of separator trawls should be extended to a larger part of the closed area. As a consequence, it is no longer neces-

sary to provide for observers to be present on the vessels using such gear.

- (7) Measures laid down in Council Regulation (EC) No 2549/2000 of 17 November 2000 establishing additional technical measures for the recovery of the stock of cod in the Irish Sea (ICES division VIIa) ⁽⁴⁾ regarding the insertion into beam trawls of panels of diamond-mesh netting material of large mesh size and insertion into otter trawls deployed for the capture of queen scallops of large mesh and square-mesh panels require to be amended to circumvent practical difficulties previously encountered.
- (8) Given the urgency of the measures to be taken, this Regulation should enter into force without delay,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down measures to protect mature cod during their spawning season of 2002 in the Irish Sea (ICES division VIIa as defined in Council Regulation (EEC) No 3880/91 of 17 December 1991 on the submission of nominal catch statistics by Member States fishing in the North-East Atlantic ⁽⁵⁾).

Article 2

1. In the period from 14 February to 30 April 2002 it shall be prohibited to use any demersal trawl, seine or similar towed net, any gill net, trammel net, tangle net or similar static net or any fishing gear incorporating hooks within that part of ICES division VIIa enclosed by:

— the east coast of Ireland and the east coast of Northern Ireland and

⁽¹⁾ Opinion delivered on 5 February 2002 (not yet published in the Official Journal).

⁽²⁾ OJ L 35, 10.2.2000, p. 10. Regulation as amended by Regulation (EC) No 660/2000 (OJ L 80, 31.3.2000, p. 14).

⁽³⁾ OJ L 44, 15.2.2001, p. 12.

⁽⁴⁾ OJ L 292, 21.11.2000, p. 5. Regulation as amended by Regulation (EC) No 1456/2001 (OJ L 194, 18.7.2001, p. 1).

⁽⁵⁾ OJ L 365, 31.12.1991, p. 1. Regulation as amended by Commission Regulation (EC) No 1637/2001 (OJ L 222, 17.8.2001, p. 20).

— straight lines sequentially joining the following geographical coordinates:

a point on the east coast of the Ards peninsula in Northern Ireland at 54° 30' N,

54° 30' N, 04° 50' W,

54° 15' N, 04° 50' W,

a point on the east coast of Ireland at 53° 15' N.

53° 45' N, 06° 00' W

53° 45' N, 05° 30' W

53° 30' N, 05° 30' W

53° 30' N, 06° 00' W

53° 45' N, 06° 00' W.

2. By way of derogation from paragraph 1, within the area and time period referred to therein:

Article 3

(a) the use of demersal otter trawls shall be permitted provided that no other type of fishing gear is retained on board and that such nets:

(i) are of mesh size either 70 mm to 79 mm or 80 mm to 99 mm, and

(ii) are of only one of the permitted mesh size ranges, and

(iii) incorporate no individual mesh, irrespective of its position within the net, of mesh size greater than 300 mm, and

(iv) are deployed only within an area enclosed by sequentially joining with straight lines the following geographical coordinates:

53° 30' N, 05° 30' W

53° 30' N, 05° 20' W

54° 20' N, 04° 50' W

54° 30' N, 05° 10' W

54° 30' N, 05° 20' W

54° 00' N, 05° 50' W

54° 00' N, 06° 10' W

53° 45' N, 06° 10' W

53° 45' N, 05° 30' W

53° 30' N, 05° 30' W;

(b) the use of separator trawls shall be permitted provided that no other type of fishing gear is retained on board and that such nets:

(i) comply with the conditions laid down in subparagraph (a)(i) to (iv), and

(ii) are constructed in conformity with the technical details provided in the Annex.

Furthermore, separator trawls may also be used within an area enclosed by straight lines sequentially joining the following geographical coordinates:

1. It shall be permitted to use demersal otter trawls of mesh size range 80 mm to 99 mm in which no diamond-mesh panel as specified in Article 2(5) of Regulation (EC) No 2549/2000 or square-mesh panel as specified in Article 2(7) of the said Regulation is included, provided that the catch taken with such nets and retained on board consists of at least 85 % of queen scallops and no more than 5 % of cod.

2. By way of derogation from Article 2(6) of Regulation (EC) No 2549/2000, it shall be prohibited to carry on board or deploy any beam trawl of mesh size equal to, or greater than, 80 mm unless the entire upper half of the anterior part of such a net consists of a panel of diamond-meshed netting material of which no individual mesh is of mesh size less than 180 mm attached directly to the headline or to no more than three rows of netting material of any mesh size attached directly to the headline.

The panel of netting shall extend towards the posterior of the net for at least the number of meshes determined by:

(a) dividing the length in metres of the beam of the net by 12;

(b) multiplying the result obtained in (a) by 5 400;

(c) dividing the result obtained in (b) by the mesh size in millimetres of the smallest mesh in the panel, and

(d) ignoring any decimals or other fractions in the result obtained in (c).

Article 4

Catches retained on board and taken by demersal otter trawls or separator trawls under the conditions laid down in Article 2(2) shall not be landed unless their percentage composition complies with conditions laid down in Annex I to Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms⁽¹⁾ with respect to towed gears of mesh size range 70 mm to 79 mm.

⁽¹⁾ OJ L 125, 27.4.1998, p. 1. Regulation as last amended by Regulation (EC) No 973/2001 (OJ L 137, 19.5.2001, p. 1).

Article 5

This Regulation shall enter into force on the day of its publication in the Official Journal.
It shall apply as from 14 February 2002.

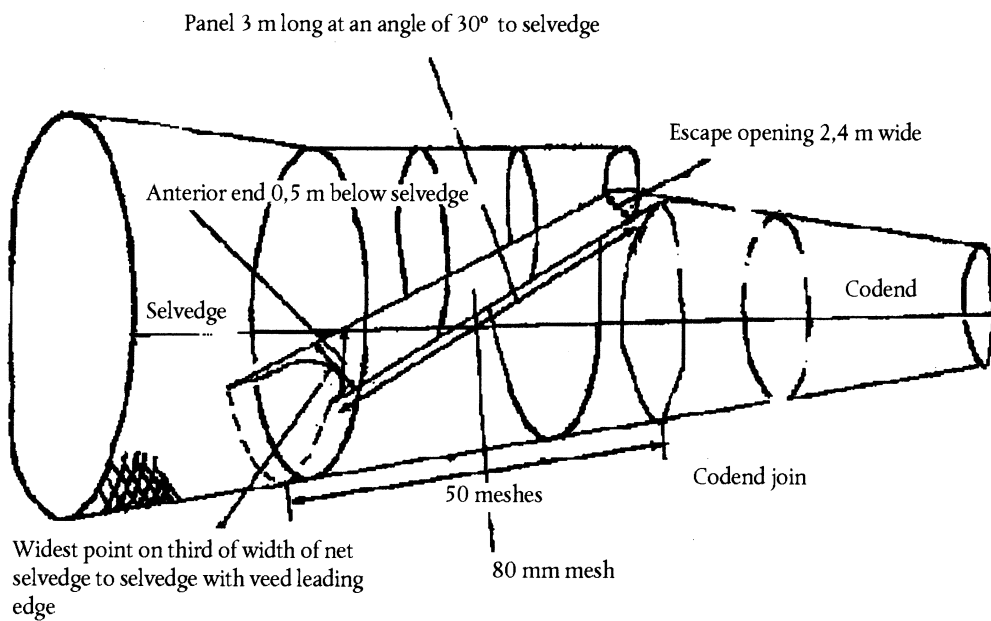
This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 February 2002.

For the Council

The President

R. DE RATO Y FIGAREDO

*ANNEX***TECHNICAL DETAILS OF SEPARATOR TRAWL**

COMMISSION REGULATION (EC) No 255/2002
of 12 February 2002
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 13 February 2002.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 February 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 12 February 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	92,5
	204	71,6
	212	144,5
	608	21,1
	999	82,4
0707 00 05	052	116,8
	628	223,4
	999	170,1
0709 90 70	052	132,7
	204	119,7
	999	126,2
0805 10 10, 0805 10 30, 0805 10 50	052	55,4
	204	55,4
	212	44,2
	220	45,9
	508	23,9
	624	58,2
	999	47,2
0805 20 10	052	92,6
	204	81,1
	999	86,8
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	64,6
	204	78,8
	220	59,3
	464	138,7
	600	105,6
	624	76,0
	999	87,2
0805 50 10	052	52,3
	220	43,3
	600	45,7
	999	47,1
0808 10 20, 0808 10 50, 0808 10 90	060	33,1
	400	118,8
	404	91,2
	720	113,9
	728	116,6
	999	94,7
0808 20 50	388	119,4
	400	111,6
	528	96,3
	999	109,1

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 256/2002

of 12 February 2002

concerning the provisional authorisation of new additives, the prolongation of provisional authorisation of an additive and the permanent authorisation of an additive in feedingstuffs

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs ⁽¹⁾, as last amended by Commission Regulation (EC) No 2205/2001 ⁽²⁾, and in particular Articles 3, 9d and 9e thereof,

Whereas:

- (1) Directive 70/524/EEC provides that new additives may be authorised following the review of an application made in accordance with Article 4 of the Directive.
- (2) Article 9e(1) of Directive 70/524/EEC provides that provisional authorisation of a new additive may be given if the conditions of Article 3a(b) to (e) of that Directive are satisfied and if it is reasonable to assume, in view of the available results, that when used in animal nutrition it has one of the effects referred to in Article 2(a). Such provisional authorisation may be given for a period of up to four years in the case of additives referred to in Part II of Annex C to that Directive.
- (3) The assessment of the dossiers submitted in respect of the anti-caking agents 'sodium ferrocyanide' and 'potassium ferrocyanide' described in Annex I shows that these additives satisfy the abovementioned conditions. The Scientific Committee for Animal Nutrition (SCAN) delivered a favourable opinion with regard to the safety of these anti-caking agents on 3 December 2001. They should therefore be authorised on a provisional basis for a four-year period.
- (4) Commission Regulation (EC) No 937/2001 ⁽³⁾ renewed the provisional authorisation of the micro-organism preparation *Bacillus cereus* var. *toyoi* (NCIMB 40 112; Toyocerin®) for the animal categories chickens for fattening, laying hens, calves, cattle for fattening, breeding does and rabbits for fattening. Authorisation was granted only until 1 March 2002, in order to provide sufficient time for the safety reassessment of the strain with regard to the resistance to tetracycline, as requested by SCAN in the light of evidence which had become available since the substance was first provisionally authorised.

- (5) The required data were received by the Commission on 17 September 2001. On the basis of this, SCAN concluded, in its report on product Toyocerin® adopted on 5 December 2001, that the assessment of the dossiers submitted showed that the product may be considered safe as regards toxin production and as regards resistance to antibiotics.
- (6) The new data having satisfied the Commission that the conditions of Article 3a(b) to (e) of Directive 70/524/EEC are satisfied, provisional authorisation for the preparation *Bacillus cereus* var. *toyoi* (NCIMB 40 112) for the animal categories chickens for fattening, laying hens, calves, cattle for fattening, breeding does and rabbits for fattening should therefore be granted for the remainder of the maximum permitted five-year period. Taking into account the interruption of the provisional authorisation between 21 February 2001 and 31 May 2001, the end of the provisional authorisation should be 7 October 2004.
- (7) The provisional authorisation of the micro-organism preparation *Bacillus cereus* var. *toyoi* (NCIMB 40 112) for the animal categories piglets, pigs and sows expired on 21 April 1999 at the end of the maximum permitted five-year period.
- (8) SCAN, in its report on product Toyocerin® adopted on 5 December 2001, confirmed that the product, when used in the animal categories piglets, pigs for fattening and sows, satisfies the conditions of Article 3a(b) to (e) of Directive 70/524/EEC. The SCAN report also concluded favourably on the efficacy of the product Toyocerin® when used in the animal categories piglets to 2 months and sows.
- (9) As all conditions of Article 3a of Directive 70/524/EEC are satisfied, a permanent authorisation should therefore be granted for the micro-organism preparation *Bacillus cereus* var. *toyoi* (NCIMB 40 112) for use in the animal categories piglets and sows under the conditions described in Annex III.
- (10) The assessment of the dossier shows that certain procedures may be required to protect workers from exposure to the additives. Such protection should however be assured by the application of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ⁽⁴⁾.

⁽¹⁾ OJ L 270, 14.12.1970, p. 1.

⁽²⁾ OJ L 297, 15.11.2001, p. 3.

⁽³⁾ OJ L 130, 12.5.2001, p. 25.

⁽⁴⁾ OJ L 183, 29.6.1989, p. 1.

- (11) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee for Feedingstuffs,

Article 2

The provisional authorisation of the preparation belonging to the group 'micro-organisms' listed in Annex II is extended under the conditions laid down in that Annex.

Article 3

The preparation belonging to the group 'micro-organisms' listed in Annex III is authorised without a time limit for use as additive in animal nutrition under the conditions laid down in that Annex.

Article 4

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

HAS ADOPTED THIS REGULATION:

Article 1

The additives belonging to the group 'binders, anti-caking agents and coagulants' listed in Annex I are authorised for use as additives in animal nutrition under the conditions laid down in that Annex.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 February 2002.

For the Commission

David BYRNE

Member of the Commission

ANNEX I

Binders, anti-caking agents and coagulants

Number (or EC number)	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
					mg/kg of complete feedingstuff			
E 535	Sodium ferrocyanide	Na ₄ [Fe(CN) ₆]. 10H ₂ O	All species or categories of animals	—	—	—	Maximum content: 80 mg/kg NaCl (calculated as ferrocyanide anion)	1.3.2006
E 536	Potassium ferrocyanide	K ₄ [Fe(CN) ₆]. 3H ₂ O	All species or categories of animals	—	—	—	Maximum content: 80 mg/kg NaCl (calculated as ferrocyanide anion)	1.3.2006

ANNEX II

Micro-organisms

Number (or EC number)	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
					CFU/kg of complete feedingstuff			
1	<i>Bacillus cereus</i> var. <i>toyoi</i> NCIMB 40112/ CNCM I-1012	Preparation of <i>Bacillus cereus</i> var. <i>toyoi</i> containing a minimum of 1×10^{10} CFU/g additive	Chickens for fattening	—	$0,2 \times 10^9$	1×10^9	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting May be used in compound feed containing the permitted coccidiostats: monensin sodium, lasalocid sodium, salinomycin sodium, decoquinate, robenidine, narasin, halofuginone	7.10.2004
			Laying hens	—	$0,2 \times 10^9$	1×10^9	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting	7.10.2004
			Calves	6 months	$0,5 \times 10^9$	1×10^9	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting	7.10.2004
			Cattle for fattening	—	$0,2 \times 10^9$	$0,2 \times 10^9$	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting The quantity of <i>Bacillus cereus</i> var. <i>toyoi</i> in the daily ration must not exceed $1,0 \times 10^9$ CFU for 100 kg body weight. Add $0,2 \times 10^9$ CFU for each additional 100 kg body weight	7.10.2004

Number (or EC number)	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
					CFU/kg of complete feedingstuff			
			Breeding does	—	0,1 × 10 ⁹	5 × 10 ⁹	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting May be used in compound feed containing the permitted coccidiostat: robenidine	7.10.2004
			Rabbits for fattening	—	0,1 × 10 ⁹	5 × 10 ⁹	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting May be used in compound feed containing the permitted coccidiostats: robenidine, salinomycin sodium	7.10.2004

ANNEX III

Micro-organisms

Number (or EC number)	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
					CFU/kg of complete feedingstuff			
E 1701	<i>Bacillus cereus</i> var. <i>toyoi</i> NCIMB 40112/ CNCM I-1012	Preparation of <i>Bacillus cereus</i> var. <i>toyoi</i> containing a minimum of 1×10^{10} CFU/g additive	Piglets	2 months	1×10^9	1×10^9	In the directions for use of the additive and premixture indicate the storage temperature, storage life and stability to pelleting	Without a time limit
			Sows	From 1 week prior to farrowing until weaning	$0,5 \times 10^9$	2×10^9	In the directions for use of the additive and premixture indicate the storage temperature, storage life and stability to pelleting	Without a time limit

**COMMISSION REGULATION (EC) No 257/2002
of 12 February 2002**

amending Regulation (EC) No 194/97 setting maximum levels for certain contaminants in foodstuffs and Regulation (EC) No 466/2001 setting maximum levels for certain contaminants in foodstuffs

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food ⁽¹⁾, and in particular Article 2 thereof,

Whereas:

- (1) Commission Regulation (EC) No 194/97 of 31 January 1997 setting maximum levels for certain contaminants in foodstuffs ⁽²⁾, as last amended by Regulation (EC) No 1566/1999 ⁽³⁾, establishes maximum levels for aflatoxin B1 and aflatoxin total in certain foodstuffs. Commission Regulation (EC) No 466/2001 of 8 March 2001 setting maximum levels for certain contaminants in foodstuffs ⁽⁴⁾, as amended by Council Regulation (EC) No 2375/2001 ⁽⁵⁾, will repeal and replace Regulation (EC) No 194/97 with effect from 5 April 2002.
- (2) Regulation (EC) No 194/97 provided that the maximum levels for nuts and dried fruit to be subjected to sorting or other physical treatment before human consumption or use as an ingredient in foodstuffs were to be reconsidered before 1 July 2001 in the light of advances in scientific and technological knowledge, in particular regarding the effectiveness of sorting or other treatments in reducing the aflatoxin content.
- (3) In that connection, only data with regard to almonds have been submitted. The data demonstrated that through the various sorting and physical treatments the aflatoxin content of unprocessed almonds was significantly reduced in the final consumer product. However, given the variability of the data, it is difficult to assess to what extent the reduction takes place. It is appropriate therefore to maintain the current maximum levels, it being understood that they are subject to review.
- (4) With regard to cereals to be subjected to sorting or other physical treatment before human consumption or use as an ingredient in foodstuffs, Regulation (EC) No 194/97 provided that in so far as no specific level were fixed before 1 July 2001, the levels established for

cereals intended for direct consumption would apply thereafter. The reason for this was that, in the case of cereals, it cannot be excluded that sorting methods or other physical treatments can reduce the level of contamination of aflatoxins but the real effectiveness of these methods remains to be demonstrated. It was also provided that, in the absence of data justifying the fixing of a specific maximum level for unprocessed cereals, the levels of 2 µg/kg aflatoxin B1 and 4 µg/kg aflatoxin total were to apply.

- (5) In that connection, only data with regard to maize have been submitted. Although continuous monitoring was performed for more than two years, only a limited number of lots were found to be contaminated. Consequently, the possibility of demonstrating the effectiveness of sorting, cleaning and other physical treatments was limited. On the basis of these limited data, it is evident that through the various sorting and physical treatments the aflatoxin content of unprocessed maize can be significantly reduced after cleaning in the final consumer product (flaking grits, other grits). The aflatoxin contamination was mainly concentrated in the screenings (waste) and to a lesser extent in maize germ, bran meal and broken maize (products for animal feed). Since the data are limited and variable, it is not possible to assess quantitatively and with certainty to what extent this reduction can be achieved. As more data are needed before drawing final conclusions, it is appropriate to extend for maize, and this for the last time, the period for which no level is set.
- (6) For raw cereals other than maize, no data have been submitted and therefore the maximum levels established for cereals intended for direct human consumption should apply as from 1 July 2001 also to cereals to be subjected to sorting or other physical treatment before human consumption or use as an ingredient in foodstuffs.
- (7) It is important that these maximum levels enter into force as soon as possible, and remain in force after Regulation (EC) No 466/2001 has replaced Regulation (EC) No 194/97. Both these Regulations should therefore be amended accordingly.

⁽¹⁾ OJ L 37, 13.2.1993, p. 1.

⁽²⁾ OJ L 31, 1.2.1997, p. 48.

⁽³⁾ OJ L 184, 17.7.1999, p. 17.

⁽⁴⁾ OJ L 77, 16.3.2001, p. 1.

⁽⁵⁾ OJ L 321, 6.12.2001, p. 1.

- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Foodstuffs,

HAS ADOPTED THIS REGULATION:

Article 1

Point 2.1. Aflatoxins of heading I of the Annex to Regulation (EC) No 194/97 is amended as follows:

1. Points 2.1.1 and 2.1.2 are replaced by:

Products	Aflatoxins: maximum admissible levels ⁽¹⁾ (µg/kg)			Sampling method	Reference analysis method
	B ₁	B ₁ + B ₂ + G ₁ + G ₂	M ₁		
2.1.1. Groundnuts, nuts and dried fruit					
2.1.1.1. Groundnuts, nuts and dried fruit and processed products thereof, intended for direct human consumption or as an ingredient in foodstuffs	2 ⁽⁴⁾	4 ⁽⁴⁾	—	Directive 98/53/EC	Directive 98/53/EC
2.1.1.2. Groundnuts to be subjected to sorting, or other physical treatment, before human consumption or use as an ingredient in foodstuffs	8 ⁽⁴⁾	15 ⁽⁴⁾		Directive 98/53/EC	Directive 98/53/EC
2.1.1.3. Nuts and dried fruit to be subjected to sorting, or other physical treatment, before human consumption or use as an ingredient in foodstuffs	5 ⁽⁴⁾	10 ⁽⁴⁾	—	Directive 98/53/EC	Directive 98/53/EC
2.1.2. Cereals (including buckwheat, <i>Fagopyrum</i> spp.)					
2.1.2.1. Cereals (including buckwheat, <i>Fagopyrum</i> spp.) and processed products thereof intended for direct human consumption or as an ingredient in foodstuffs	2	4	—	Directive 98/53/EC	Directive 98/53/EC
2.1.2.2. Cereals (including buckwheat, <i>Fagopyrum</i> spp.), with the exception of maize, to be subjected to sorting, or other physical treatment, before human consumption or use as an ingredient in foodstuffs	2	4	—	Directive 98/53/EC	Directive 98/53/EC
2.1.2.3. Maize to be subjected to sorting, or other physical treatment, before human consumption or use as an ingredient in foodstuffs	—	—	—	Directive 98/53/EC	Directive 98/53/EC'

2. Footnote 5 is deleted.

3. Footnote 6 is deleted

Article 2

Point 2.1. Aflatoxins of Section 2 of Annex I to Regulation (EC) No 466/2001 is amended as follows:

1. Points 2.1.1 and 2.1.2 are replaced by:

Products	Aflatoxins: maximum admissible levels ⁽¹⁾ (µg/kg)			Sampling method	Reference analysis method
	B ₁	B ₁ + B ₂ + G ₁ + G ₂	M ₁		
2.1.1. Groundnuts, nuts and dried fruit					
2.1.1.1. Groundnuts, nuts and dried fruit and processed products thereof, intended for direct human consumption or as an ingredient in foodstuffs	2 ⁽⁶⁾	4 ⁽⁶⁾	—	Directive 98/53/EC	Directive 98/53/EC
2.1.1.2. Groundnuts to be subjected to sorting, or other physical treatment, before human consumption or use as an ingredient in foodstuffs	8 ⁽⁶⁾	15 ⁽⁶⁾		Directive 98/53/EC	Directive 98/53/EC
2.1.1.3. Nuts and dried fruit to be subjected to sorting, or other physical treatment, before human consumption or use as an ingredient in foodstuffs	5 ⁽⁶⁾	10 ⁽⁶⁾	—	Directive 98/53/EC	Directive 98/53/EC
2.1.2. Cereals (including buckwheat, <i>Fagopyrum</i> spp.)					
2.1.2.1. Cereals (including buckwheat, <i>Fagopyrum</i> spp.) and processed products thereof intended for direct human consumption or as an ingredient in foodstuffs	2	4	—	Directive 98/53/EC	Directive 98/53/EC
2.1.2.2. Cereals (including buckwheat, <i>Fagopyrum</i> spp.), with the exception of maize, to be subjected to sorting, or other physical treatment, before human consumption or use as an ingredient in foodstuffs	2	4	—	Directive 98/53/EC	Directive 98/53/EC
2.1.2.3. Maize to be subjected to sorting, or other physical treatment, before human consumption or use as an ingredient in foodstuffs	— ⁽⁹⁾	— ⁽⁹⁾	—	Directive 98/53/EC	Directive 98/53/EC'

2. Footnote 8 is deleted.

3. Footnote 9 is replaced by:

'⁽⁹⁾ If no specific level is fixed before 1 July 2003, the levels laid down in point 2.1.2.1 of the table will apply thereafter to maize referred to in this point.'

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

Articles 1 and 3 shall apply from the day following such publication. Article 2 shall apply from 5 April 2002.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 February 2002.

For the Commission

David BYRNE

Member of the Commission

COMMISSION REGULATION (EC) No 258/2002**of 12 February 2002****determining the loss of income and the premiums applicable per ewe and per female goat in the Member States and the payment of the specific aid for sheep and goat farming in certain less-favoured areas of the Community for the 2001 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2467/98 of 3 November 1998 on the common organisation of the market in sheepmeat and goatmeat ⁽¹⁾, as amended by Regulation (EC) No 1669/2000 ⁽²⁾, and in particular Article 5(6) thereof,

Having regard to Council Regulation (EC) No 1454/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Canary Islands and repealing Regulation (EEC) No 1601/92 (Poseican) ⁽³⁾, and in particular Article 6 thereof,

Whereas:

- (1) Regulation (EC) No 2467/98 is replaced by Council Regulation (EC) No 2529/2001 of 19 December 2001 on the common organisation of the market in sheepmeat and goatmeat ⁽⁴⁾. However according to Article 31 of Regulation (EC) No 2529/2001, Regulation (EC) No 2467/98 shall continue to apply in relation to the 2001 marketing year.
- (2) Article 5(1) and (5) of Regulation (EC) No 2467/98 provides for the grant of a premium to compensate for any loss of income sustained by producers of sheepmeat and, in certain areas, of goatmeat. Those areas are defined in Annex I to Regulation (EC) No 2467/98 and in Article 1 of Commission Regulation (EC) No 2738/1999 of 21 December 1999 determining the mountain areas in which the premium for goatmeat producers is granted ⁽⁵⁾.
- (3) Pursuant to Article 5(6) of Regulation (EC) No 2467/98, the Member States were authorised by Commission Regulation (EC) No 1066/2001 ⁽⁶⁾ to pay an initial advance of the premium and of the specific aid and by Commission Regulation (EC) No 1992/2001 ⁽⁷⁾ to pay a second advance of the premium to sheepmeat and goatmeat producers. The definitive premiums to be paid in respect of the 2001 marketing year must thus be fixed.
- (4) Pursuant to Article 5(2) of Regulation (EC) No 2467/98, the amount of the premium per ewe for producers of heavy lambs is obtained by multiplying the loss of income referred to in the second subparagraph of para-

graph 1 of that Article by a coefficient expressing the annual average production of heavy lamb meat per ewe producing these lambs expressed per 100 kilograms of carcass weight. Article 5(3) of that Regulation fixes the coefficient for producers of light lambs at 80 % of the coefficient for producers of heavy lambs. Article 5(5) of that Regulation also fixes the amount per female for producers of the caprine species at 80 % of the premium per ewe for producers of heavy lambs.

- (5) Pursuant to Article 13 of Regulation (EC) No 2467/98, the premium must be reduced by the impact on the basic price of the coefficient provided for in paragraph 2 of that Article. That coefficient is fixed by Article 13(4) at 7 %.
- (6) Under Council Regulation (EEC) No 1323/90 ⁽⁸⁾, as last amended by Regulation (EC) No 193/98 ⁽⁹⁾, the Council instituted specific aid for sheep and goat farming in certain less-favoured areas of the Community. It lays down that the aid is to be granted under the same conditions as those for the grant of the premium for producers of sheepmeat and goatmeat.
- (7) Regulation (EC) No 1454/2001 provides for the application of specific measures relating to agricultural production in the Canary Islands. Those measures entail the grant of a supplement to the premium payable to producers of light lambs and she-goats on the same conditions as those governing the grant of the premium referred to in Article 5 of Regulation (EC) No 2467/98. Those conditions provide for Spain to be authorised to pay the supplement to the premium.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sheep and Goats,

HAS ADOPTED THIS REGULATION:

Article 1

It is hereby noted that the difference between the basic price less the impact of the coefficient provided for in Article 13(2) of Regulation (EC) No 2467/98 and the Community market price during the 2001 marketing year was EUR 57,108 per 100 kilograms.

⁽¹⁾ OJ L 312, 20.11.1998, p. 1.

⁽²⁾ OJ L 193, 29.7.2000, p. 8.

⁽³⁾ OJ L 198, 21.7.2001, p. 45.

⁽⁴⁾ OJ L 341, 22.12.2001, p. 3.

⁽⁵⁾ OJ L 328, 22.12.1999, p. 59.

⁽⁶⁾ OJ L 148, 1.6.2001, p. 44.

⁽⁷⁾ OJ L 271, 12.10.2001, p. 13.

⁽⁸⁾ OJ L 132, 23.5.1990, p. 17.

⁽⁹⁾ OJ L 20, 27.1.1998, p. 18.

Article 2

The coefficient provided for in Article 5(2) of Regulation (EC) No 2467/98 is hereby fixed at 15,91 kilograms.

Article 3

The premium payable in respect of the 2001 marketing year shall be as follows:

— per ewe in case of producers of heavy lambs:	EUR 9,086,
— per ewe in case of producers of light lambs:	EUR 7,269,
— per she-goat in the areas designated in Annex I to Regulation (EC) No 2467/98 and in Article 1 of Regulation (EC) No 2738/1999:	EUR 7,269.

Article 4

Pursuant to Article 1(1) of Regulation (EEC) No 1323/90, the Member States are authorised to pay a specific aid to producers of sheepmeat and goatmeat in less-favoured areas within the

meaning of Council Regulation (EEC) No 3493/90 ⁽¹⁾. This aid or, should it be the case, the balance of this aid if advances have been made in case of application of Regulation (EC) No 1066/2001, shall be paid before 15 October 2002.

Article 5

Pursuant to Article 6 of Regulation (EC) No 1454/2001, the supplement to the premium for the 2001 marketing year, to be granted to producers of light lambs and goatmeat located in the Canary Islands, shall be EUR 2,481 per ewe and/or she-goat.

Article 6

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 February 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 330, 29.11.1990, p. 34.

COMMISSION REGULATION (EC) No 259/2002
of 12 February 2002
amending representative prices and additional duties for the import of certain products in the
sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽²⁾, as last amended by Regulation (EC) No 624/98 ⁽³⁾, and in particular the second subparagraph of Article 1(2), and Article 3(1) thereof,

Whereas:

- (1) The amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation

(EC) No 1309/2001 ⁽⁴⁾, as last amended by Regulation (EC) No 218/2002 ⁽⁵⁾.

- (2) It follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 13 February 2002.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 February 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 141, 24.6.1995, p. 16.

⁽³⁾ OJ L 85, 20.3.1998, p. 5.

⁽⁴⁾ OJ L 177, 30.6.2001, p. 21.

⁽⁵⁾ OJ L 35, 6.2.2002, p. 13.

ANNEX

to the Commission Regulation of 12 February 2002 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(EUR)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	18,42	7,09
1701 11 90 ⁽¹⁾	18,42	13,05
1701 12 10 ⁽¹⁾	18,42	6,90
1701 12 90 ⁽¹⁾	18,42	12,53
1701 91 00 ⁽²⁾	27,69	11,39
1701 99 10 ⁽²⁾	27,69	6,87
1701 99 90 ⁽²⁾	27,69	6,87
1702 90 99 ⁽³⁾	0,28	0,37

⁽¹⁾ For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ L 89, 10.4.1968, p. 3).

⁽²⁾ For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ L 94, 21.4.1972, p. 1).

⁽³⁾ By 1 % sucrose content.

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 prejudice 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. "depository" 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 of the 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 re-numbered 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

The President

P. COX

For the Council

The President

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.'
-

**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 issue 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

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 February 2002

amending Directive 92/33/EEC to extend the derogation relating to import conditions for vegetable propagating and planting material from third countries

(notified under document number C(2002) 427)

(Text with EEA relevance)

(2002/111/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/33/EEC of 28 April 1992 on the marketing of vegetable propagating and planting material other than seed ⁽¹⁾, as last amended by Commission Decision 1999/29/EC ⁽²⁾, and in particular Article 16(2), second subparagraph, thereof,

Whereas:

- (1) The Commission is required pursuant to Article 16(1) of Directive 92/33/EEC to decide whether vegetable propagating and planting material, other than seed, produced in a third country and affording the same guarantees as regards obligations on the supplier, identity, characteristics, plant health, growing medium, packaging, inspection arrangements, marking and sealing, is equivalent in all these respects to vegetable propagating and planting material other than seed produced in the Community and complying with the requirements and conditions of that Directive.
- (2) However, the information presently available on the conditions applying in third countries is still not sufficient to enable the Commission to adopt any such decision in respect of any third country at this stage.
- (3) In order to prevent trade patterns from being disrupted, Member States importing vegetable propagating and planting material, other than seed, from third countries should be allowed to continue to apply to such products conditions equivalent to those applicable to similar

Community products in accordance with Article 16(2) of Directive 92/33/EEC.

- (4) The period of application of the derogation provided for to in Article 16(2), first subparagraph, of Directive 92/33/EEC, which was extended until 31 December 2001 by Decision 1999/29/EC, should accordingly be further extended.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Seeds and Propagating Materials for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS DECISION:

Article 1

In the first subparagraph of Article 16(2) of Directive 92/33/EEC, the date '31 December 2001' is replaced by '31 December 2004'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 11 February 2002.

For the Commission

David BYRNE

Member of the Commission

⁽¹⁾ OJ L 157, 10.6.1992, p. 1.

⁽²⁾ OJ L 8, 14.1.1999, p. 29.

COMMISSION DECISION

of 11 February 2002

amending Directive 92/34/EEC to extend the derogation relating to import conditions for fruit plant propagating material and fruit plants intended for fruit production from third countries

(notified under document number C(2002) 428)

(Text with EEA relevance)

(2002/112/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/34/EEC of 28 April 1992 on the marketing of fruit plant propagating material and fruit plants, intended for fruit production ⁽¹⁾, as last amended by Commission Decision 1999/30/EC ⁽²⁾, and in particular Article 16(2), second subparagraph, thereof,

Whereas:

- (1) The Commission is required pursuant to Article 16(1) of Directive 92/34/EEC to decide whether fruit plant propagating material and fruit plants produced in a third country and affording the same guarantees as regards obligations on the supplier, identity, characteristics, plant health, growing medium, packaging, inspection arrangements, marking and sealing, are equivalent in all these respects to fruit plant propagating material and fruit plants produced in the Community and complying with the requirements and conditions of that Directive.
- (2) However, the information presently available on the conditions applying in third countries is still not sufficient to enable the Commission to adopt any such decision in respect of any third country at this stage.
- (3) In order to prevent trade patterns from being disrupted, Member States importing fruit plant propagating material and fruit plants from third countries should be allowed to continue to apply conditions equivalent to

those applicable to similar Community products in accordance with Article 16(2) of Directive 92/34/EEC.

- (4) The period of application of the derogation provided for in Article 16(2), first subparagraph, of Directive 92/34/EEC, which was extended until 31 December 2001 by Decision 1999/30/EC, should accordingly be further extended.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Propagating Material and Plants of Fruit Genera and Species,

HAS ADOPTED THIS DECISION:

Article 1

In the first subparagraph of Article 16(2) of Directive 92/34/EEC, the date '31 December 2001' is replaced by '31 December 2004'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 11 February 2002.

For the Commission

David BYRNE

Member of the Commission

⁽¹⁾ OJ L 157, 10.6.1992, p. 10.

⁽²⁾ OJ L 8, 14.1.1999, p. 30.