EUROPEAN COMMISSION

Internal Market and Services DG

WORKING DOCUMENT DG MARKT SERVICES

INITIAL ORIENTATIONS OF POSSIBLE ADJUSTMENTS TO UCITS DIRECTIVE (85/611/EEC)

OVERVIEW OF KEY FEATURES

Important note: ***This document is a working document of DG MARKT services which is published for discussion purposes only. It presents DG MARKT services preliminary reflections on possible future adjustments to the UCITS Directive. It does not necessarily reflect the views of the European Commission. The Commission retains full autonomy and discretion as regards the content of any subsequent legislative proposal.***

CONTENTS

1. GUIDE TO CONSULTATION PROCESS AND MATERIAL

Initial orientations of possible adjustments to UCITS Directive (85/611/EEC)

The following extensive body of material has been prepared as the basis for public consultation on the form of future possible adjustments to the UCITS Directive. The basic case for introducing these changes was analysed in the Commission White Paper on investment funds and the supporting impact assessment. The White Paper set out the Commission's view that changes to the UCITS Directive were urgently needed:

(1) To remove administrative obstacles and delays to the cross-border marketing of funds through overhaul of the current **UCITS notification procedure**;

(2) To allow fund managers to manage funds which are domiciled in other Member States **(management company passport);**

(3) To facilitate consolidation through **fund mergers**;

(4) To provide for centralised management of assets gathered through local funds by allowing master-feeder **structures**;

(5) To refocus and improve the quality and usefulness of product disclosures provided to retail investors when considering investment in UCITS **(reworking of Simplified Prospectus)**;

(6) To strengthen supervisory powers and **supervisory cooperation to** ensure effective oversight of the increasingly integrated European fund market.

The purpose of the present consultation is to gather feedback on preliminary thinking of DG MARKT services on how to give effect to these objectives. This material is preliminary in nature and without prejudice to any decision that the Commission as a whole may subsequently adopt in respect of these issues. The Commission retains full autonomy and initiative in determining the form and content of its ultimate proposal. The consultation exercise should provide technical and hands-on insight as regards the usefulness and practicability of the envisaged possible adjustments which DG MARKT services and Commission as a whole can take into account when preparing its formal legislative proposal.

The following documents are published as the basis for the consultation:

– The **present overview document** which provides a brief statement of the desired outcome from the changes, a summary presentation of the guiding principles and content of the envisaged adjustments.

– For each of the **envisaged changes**, a detailed presentation of the envisaged possible adjustments is published. This presents the main options considered for realising the stated objective. It undertakes a preliminary analysis of these options from a cost-effectiveness and investor protection perspective. It sets out the working assumptions which inform the envisaged adjustments. It also includes a more detailed presentation of the shape of possible provisions supported by free-format commentary.

In publishing this material, the services of DG MARKT hope to receive considered feedback and views from interested parties in respect of the following

– the design and scope of the preliminary approach: do the envisaged adjustments represent an effective way of achieving the desired result?

– the coherence of the envisaged adjustments with the overall UCITS framework and related legislation;

– the appropriate borderline between high level principles which should be enshrined in the modified UCITS Directive and more detailed measures which should be adopted through implementing legislation;

– any unintended consequences for stakeholders – particularly investors;

– the cost-effectiveness of the envisaged adjustments.

Each working document includes a number of specific questions on which views would be welcome. The basic case for proceeding with the envisaged adjustments has been established in the White Paper and supporting impact assessment. However, respondents may also wish to comment on the case for/against continuing with the envisaged adjustments having had an opportunity to consider the possible concrete measures for giving effect to them.

The **deadline for responses to the initial orientations is 15 June 2007**. Feedback should be sent to:

– e-mail: markt-ucits-exposure-draft@ec.europa.eu.

– post: MARKT G4, Directorate-General for the Internal Market and Services, European Commission, B-1049 Brussels, Belgium.

A public hearing on these initial orientations will be held in Brussels on 26 April 2007.

In the light of reactions to the initial orientations and views expressed at the open hearing, DG MARKT will review its impact assessment and cost-effectiveness analysis, and prepare its draft Commission proposal for legislation. The Commission proposal will be finalised towards the end of 2007/early 2008.

2. INTRODUCTION:

The White Paper on investment funds concluded that there were no grounds, at this stage, to revise the scope of UCITS Directive or overhaul rules on investment policy. Any decision on the need for a wider reshaping of the Directive is deferred pending the results of systematic analysis and preparation. Instead, the short-term focus should be on boosting efficiency and facilitating market-driven restructuring of the investment fund market through targeted amendments to the Directive.

In the White Paper, the Commission undertook to prepare a set of targeted modifications to the UCITS Directive to: (1). Remove delays and administrative obstacles to placing funds on other EU markets; (2). Permit fund mergers; (3). Allow pooled management of assets gathered by different funds; (4). Enable fund managers to manage funds in other Member States; (5). Simplify and improve product disclosures and (6). Strengthen supervisory cooperation mechanisms.

The first 4 sets of adjustment should enable fund managers and other actors to better exploit business opportunities across the single market. Fund managers will be able to restructure their fund complexes (via mergers and pooling), and export their funds and their services more easily. In the case of the Simplified Prospectus, the objective is to refocus and scale back product disclosures so that they are more relevant and meaningful for investors.

DG MARKT services' preparatory work is based on extensive preparation and lengthy consultation of all stakeholders. This includes responses to the Green and White Papers (2005, 2006), the work of the expert group on market efficiency (2006); two open hearings (2005, 2006), workshops, studies, ad hoc meetings with industry, regulators and investors, as well as ad hoc fact finding missions.

DG MARKT services believe that this work can provide the basis for extensive use of relevant new single market freedoms. However, strong investor protection safeguards are foreseen to ensure continued smooth functioning and sustained investor confidence in UCITS funds. DG MARKT services also contemplate stronger provisions on cross-border enforcement and cooperation among regulators to limit the risk that cross-border operations or structures operate to the detriment of investor or markets.

3. THE FUND PASSPORT (NOTIFICATION PROCEDURE):

Strategic objective: Ensure the smooth functioning of the product passport by eliminating administrative obstacles, delays and uncertainty to the marketing of UCITS in host Member States.

3.1. Why should the cross-border pass-porting procedure be reviewed?

Procedures for cross-border marketing are cumbersome, costly and subject to undue supervisory interference. Directive deadlines for completing review of fund notifications have frequently been exceeded. Difficulties have also taken the form of intrusive checks of the UCITS during the notification procedure, additional information requirements or requests to modify documentation or certain fund features (e.g. name/denomination of fund). These difficulties undermine the effectiveness and credibility of the fund passport.

The types of control currently undertaken by host competent authorities do not materially add to the protection of investors or the achievement of other policy objectives. The soundness of the product stems from the compliance of the fund and its manager with the requirements of the Directive, as already certified by the home country authorities. Protracted delays and administrative impediments associated with the current notification procedure destroy value and impose significant opportunity costs.

DG MARKT services envisage a complete overhaul of the notification procedure. This should significantly reduce delays and transform the procedure into a straightforward regulator-to-regulator filing. Under the modified procedure, a host Member State would have no ex ante grounds on which to prevent a UCITS authorised in another Member State from being marketed on its territory. The new procedure would rely heavily on a regulator-to-regulator approach, as in the Prospectus Directive. The UCITS would submit a defined set of documents to its home authority. The latter would be responsible for verifying completeness of this information, certifying that the UCITS is duly authorised and transmitting the specified information to relevant host Member State counterparts. Information covered by the previous 'marketing arrangements' document would now be subsumed in a notification letter. The content and form of local marketing information would be subject to harmonisation at level 2. The right to place UCITS on the market of a host Member State would become effective 3 days after transmission of required documents by the authorities of the UCITS home Member State to those of the host Member State.

3.2. Initial orientations for work on cross-border fund notifications:

1. In the event that a fund manager wishes to market units of its UCITS in another Member State, it should be required to submit a set of relevant information and documents to its home competent authorities. This set of information should include the notification letter with the description of arrangements for marketing (cf. section 3 below).

2. The documentation to be filed should include a translation of key investor information (cf. section on envisaged new approach on simplified prospectus/

product disclosure) into the local language of the target host Member States. These translations should be prepared under the responsibility of the UCITS. Other documents which should be filed for the purposes of notification (prospectus, rules of the fund or instruments of incorporation, annual report) could be provided in the local language of the target host Member States or a language whose use is customary in the sphere of international finance. This language regime for UCITS notification is modelled on the approach laid down in the Prospectus Directive.

3. The notification letter should provide, inter alia, details relating to local subscription and redemption facilities for local unit-holders, paying agent facilities, facilities for distribution of obligatory disclosures to investors, general information about proposed distribution channels and a contact point where list of distributors can be obtained. This letter should be produced in the language common in the sphere of international finance. Envisaged adjustments would provide for the adoption of detailed implementing legislation to harmonise its scope and form.

4. The authorities of a home Member State should verify that no document is missing before transmitting it to the host authorities. They should enclose in the information package to be sent to the host Member State the attestation that the fund is duly authorised as a UCITS and obligatory disclosure documents (documents already filed with authorities of UCITS home Member State according to its national procedures including prospectus, fund rules or instruments of incorporation, key investor information on product, financial reports).

5. The fund manager could begin the marketing of the UCITS in the host Member State three days after the transmission of the notification by the home authorities.

6. The authorities of a host Member State would have no grounds to ex ante oppose the marketing of duly authorised UCITS in the host Member State. They could check and enforce compliance with applicable national rules on an ongoing basis. The Directive would be modified to confer on host authorities the power to intervene and suspend marketing of a UCITS under certain circumstances. In particular the host Member State competent authorities would be able to invoke emergency powers in the event of clear and demonstrable ground that a UCITS domiciled in another Member State and marketing its units within its territory is in breach of the Directive, and a potential source of investor detriment. The use of these emergency powers would be subject to necessary checks and balances and review by the European Commission (see Section 8 on supervisory powers/cooperation).

7. Any concerns on the part of host country authorities relating to compliance of proposed organisation of advertising or distribution methods with non-harmonised provisions of national law should not constitute a reason to refuse ex ante the right to place the UCITS on the host country market.

4. FUND MERGERS:

Strategic objective: Lay down clear and common requirements and procedures for funds wishing to merge, so as to ensure effective protection of the rights of unit-holders in the merging/dissolving fund(s) and remove any regulatory grounds for competent authorities to object to the proposed merger besides the fulfilment of such requirements and procedures.

4.1. Why should the UCITS Directive provide for mergers of UCITS funds?

54% of European funds manage less than € 50 million of assets. The average European fund size is less than one fifth of that of an American fund. The cost of running and selling these micro-funds is significantly higher than for larger funds. Recent research found that, in a leading European fund domicile, the average TER of a fund with assets under US $ 5 million was more than double that of a fund with over US $ 250 million. Annual scale savings of up to 6 billion€ have identified by other studies in this area.

In order to facilitate the rationalisation of the fund landscape and to foster economies of scale the exposure draft includes provisions to create a framework for fund mergers.

4.2. Initial orientations for work on fund mergers:

1. Scope: The new regime would require Member States to provide for the possibility to merge/amalgamate two UCITS funds (or investment compartments thereof) through three typical methods of merger/amalgamation ((i) merger by way absorption or (ii) by creation of a new fund, which are techniques mainly used in civil law countries; or (iii) merger by way of a scheme of amalgamation, which is widely used in common law jurisdictions). Other national techniques used for mergers between funds remain untouched by the proposal and would remain valid in a domestic context.

2. Coverage of cross-border and domestic mergers: it is considered preferable not to limit the scope of the envisaged mergers provisions to mergers of UCITS established in different Member States. Given the increasingly cross-border investor base of many UCITS, a merger between two widely pass-ported funds domiciled in a single Member State may have implications for a large population of investors outside that country. Consequently, DG MARKT foresees applying the envisaged measures and related investor safeguards to both cross-border and domestic mergers.

3. Both the merging/dissolving and receiving fund should be authorised as UCITS before the merger can proceed. In addition, the receiving fund must be notified for marketing in each Member State where the merging/dissolving fund was notified.

4. There would be no requirement/restriction as regards comparability or similarity of the investment policies of the merging/dissolving and receiving fund.

5. Regulatory approval: The envisaged provisions foresee that the competent authorities of the merging/dissolving fund(s) would have to give their approval before the merger could be presented to unit-holders (including for a vote where this is required under national law). The competent authorities could only refuse this approval in the case of non-compliance with the envisaged measures. They

should grant authorisation within 15 working days of submission of a complete file by the merging/dissolving fund(s).

6. The competent authorities of the receiving fund would not be required to approve the merger and could not veto the operation. Fund mergers are expected to have less significant consequences for the unit-holders of the receiving fund (principal risk would be dilution of fund performance through increased transaction costs associated with portfolio rebalancing: this economic impact can be managed and monitored in other ways, in particular through adequate disclosure to unit-holders by the receiving fund and the latter's right to exit the fund free of charge).

7. The competent authorities of the merging/dissolving fund(s) would receive the common draft terms of the merger, the envisaged disclosure to unit-holders of the merging/dissolving fund, the written approval of the depositary of the merging/dissolving fund and a draft report of an independent auditor, as a basis on which to grant their approval. The depositary should ensure that the terms of the merger are in conformity with the law; the independent auditor should draw up a valuation report.

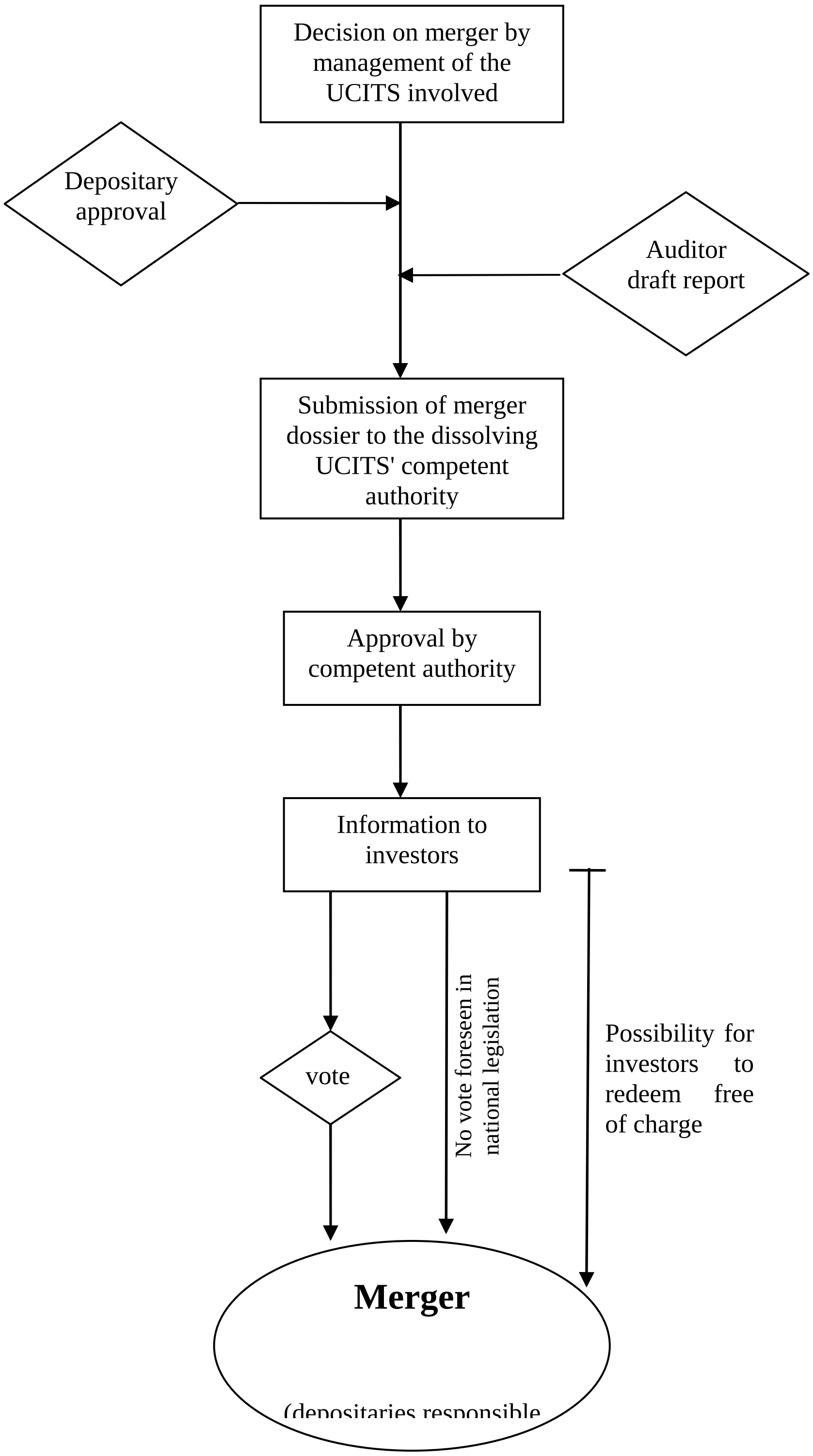
8. Investor information: Investors of the merging/dissolving fund would have the right to receive all relevant information regarding the proposed merger in order to allow them to take an informed decision on the impact of the proposed merger on their individual situation. In certain cases, investors of the receiving fund would also be entitled to receive information about the merger.

9. Investor voting rights: Whether or not investors have the right to vote on the proposed merger would be determined by reference to national law. Where such a vote is provided, it is envisaged to impose a maximum limit on the percentage of votes in favour required (i.e. maximum 75% of the votes cast) in order to prevent excessively demanding voting thresholds from impeding merger completion.

10. Investors would have the possibility to exit the merging/dissolving fund without having to bear redemption or any other type of charges prior to merger completion/within a fixed period of merger completion. In certain cases, investors of the receiving fund would have the same right.

11. Legal, advisory or administrative costs related to the preparation and completion of the merger should not be borne, directly or indirectly by unit-holders.

Diagram: Main steps of the possible merger procedure



5. ASSET POOLING/MASTER-FEEDER STRUCTURES:

Strategic objective: Allow several funds (feeder funds) to pool their assets in a single fund (master fund).

5.1. Why should the UCITS Directive provide for asset pooling?

Proliferation of funds of a small size creates a heavy burden on the fund industry and ultimately investors. Economies of scale are not realised and inefficiencies are passed on to investors. Increasing fund size through mergers is not the only route to achieve economies of scale. Nor is it necessarily the preferred route for fund managers who wish to adapt fund features to local investor preferences (e.g. charging structure). Asset pooling may provide a more appropriate solution. However, fund pooling is currently ruled out by the Directive's diversification rules. Master-feeder structures should allow the following benefits to be realised:

- Economies of scale (especially for small funds with high charges);
- Reduction of charges or better performance for the investor as a result of scale savings;
- Centralisation of core investment management in a single high-performing team (either within the same financial group or among different financial groups ("white labelling"));
- Allowing a financial group to commingle similar funds designed for different types of investors (institutional or retail) and with different fee structures in one entity
- Local presence of the feeder funds providing advantages in terms of servicing client needs, and greater tax-efficiency for the end-investor;
- Two merging financial groups may pool similar funds of both groups in one master fund (and thereby reduce management costs) while preserving the different fund labels;
- Complementary economies of scale alternative to fund mergers.

DG MARKT services have focussed on traditional master-feeder structures. The possibility for a feeder to invest into several masters has been examined but rejected for the following reasons. There is limited practical experience with and demand for that approach. Supervision would become more complex and the prevention of operational risks or possible investment policy breaches more difficult. Such a regime would also be hard to distinguish for legal and supervisory purposes from the existing UCITS 'fund of funds' regime. DG MARKT services have also decided not to pursue further the technique of virtual pooling at this stage. Further research has highlighted potentially important cross-liability and other investor protection concerns. This technique is not widely used – and there are supervisory concerns about its application in cross-border contexts.

5.2. Initial orientations for work on master-feeder structures:

1. While the general UCITS prohibition on funds investing solely in another fund would remain, a special regime should be created for master-feeder structures complying with a new set of requirements. The competent authorities should not refuse authorisation to any proposed master-feeder structure meeting these requirements – including situations where the master or one or more feeders is located in another Member State.
2. The feeder fund should invest almost all (at least 85%) of its assets into a single master fund. The investment of a feeder fund in more than one master is prohibited. Both funds should consequently have the same/near-identical investment policies.
3. The feeder fund would have no/limited investment policy role of its own. It would have some limited possibility to use derivatives to modify fund performance with respect to the master fund or to hedge currency risks. It has some power to use cash to satisfy redemptions or meet other requirements.
4. Both master and feeder are UCITS. Both master and feeder must be fully compliant with all provisions of the UCITS Directive – as regards the provisions governing risk management controls, governance structures, appointment of depositaries etc. It would be possible for master and feeder UCITS to appoint the same management board/trustees, and employ the same management company (including on the basis of the management company passport), depositary (where domiciled in same jurisdiction) and auditor.
5. Provided the envisaged provisions are complied with, the investment of a feeder into a master would have to be permitted by competent authorities.
6. The competent authorities should allow existing UCITS to be converted into a feeder UCITS – subject to requirements to inform investors of the pending change in investment policy and offering them the right to redeem free of charge.
7. The investment of a feeder into a master would not affect the obligations, responsibility and liability of the feeder, or its management company/depositary. In particular, the feeder would need to comply with its obligations vis-à-vis its investors.
8. Information to the feeder's investors should clearly explain the implications of investing into the master from both an investment policy and a fees point of view. Disclosures about feeder investment policy and costs should be harmonised as part of the work on key information disclosures (see section 7 on simplified prospectus/investor disclosures).
9. The master fund would only need to be authorised as a normal UCITS: no specific authorisation is required to enable it to assume the role of master fund.
10. The master can receive assets from non-UCITS asset gathering vehicles, institutional or individual investors: these non-UCITS investors in the master fund would not be subject to any harmonised requirements under the UCITS Directive.
11. Regulatory co-operation: The competent authorities of the master should communicate without delay any decision or measure taken with regard to the master to each of the feeders' competent authorities (as that may have an impact on the feeder).

6. THE MANAGEMENT COMPANY PASSPORT:

Strategic objective: to allow fund managers to manage funds (of either contractual or corporate type) domiciled in another Member State, without generating fiscal or supervisory uncertainty which might undermine the effective oversight or tax-efficiency of the management company/fund chain.

6.1. Why should the UCITS Directive provide for an effective management company passport?

Currently, management groups must establish a fully functional management company in each country where they domicile their funds. This considerably adds cost and hinders specialisation gains. The White Paper impact assessment estimated savings of € 381 to €762 million/year if each asset management group would be allowed to operate from only one location.

The White Paper and supporting impact assessment concluded that the management company passport was a worthwhile objective, and that the Directive should be amended to that end. The White Paper and impact assessment highlighted the need to give further consideration to definition of the scope of the management company passport. In particular, should the management company be allowed to provide the full range of collective portfolio management services on a remote basis or should some functions be considered as an integral part of the fund administration/operation? Advocates of the first approach argue that only the right to passport the full range of collective portfolio management activities would allow full exploitation of the benefits of the single market. However, it has also been observed that such an approach could empty the fund domicile of all substance. This could have detrimental consequences on two counts: 1). It could undermine the capacity of the fund supervisor and depositary to assume certain responsibilities with respect to the administration and operation of the fund; 2). It could lead to the tax authorities of the management company domiciles claiming jurisdiction over the income and revenues of the fund, in addition to taxation in the fund domicile itself.

In the exposure draft, DG MARKT services seek to provide clear and operational tests to identify the respective domiciles of the management company and of the fund in cases where the management company passport is employed. Without that clarity, the jurisdictional uncertainty which has sabotaged previous attempts to introduce a management company passport would persist.

DG MARKT services believe that the envisaged approach would also limit the danger of overlapping tax jurisdictions, i.e. of the fund and its management being both taxed in their respective domiciles. This risk arises only in respect of non-fiscally transparent funds (some contractual funds, trusts and partnerships): funds of a corporate type and many contractual funds from a wide range of jurisdictions would not be subject to the risk of competing tax claims. Where a residual risk remains, it would be for the different national tax authorities to align their taxation policy with the regulatory approach presented below. Should they fail to do so, fund managers in their jurisdiction would not be able to manage some types (of fiscally non-transparent) structure in other Member States. It then falls to each Member State to ensure that its tax policy does not deprive its fund management industry of the opportunities offered by the management company passport. Experience from related sectors (e.g. investment manager exemption in UK for overseas non-transparent structures) demonstrates that tax authorities can be responsive to these considerations.

6.2. Initial orientations for management company passport:

1. The right for the fund manager to manage funds of corporate and contractual type which are domiciled in other Member States would be clearly enshrined. The Directive would also provide for the corresponding right for a UCITS to appoint/designate a management company in another Member State.
2. Clear tests would be introduced to determine the domicile of the management company and of the fund. Clear tests to determine jurisdiction would be necessary to avoid uncertainty over the relevant tax or regulatory jurisdictions. For the same reasons, the tests should also ensure that there is 'substance' in the fund domicile. Fund domicile would be determined by reference to the country under whose laws the fund is constituted. It would also be stipulated that the shareholder register must be kept in this country, and that the reporting of valuations should be completed and filed in this country.
3. UCITS management companies would be allowed to undertake the full range of collective portfolio management services in respect of funds domiciled in other Member States. No changes are envisaged to the list of functions that are covered by collective portfolio management (apart from decision to clarify that this list is exhaustive).
4. However, where a management company manages a fund domiciled in another Member State via the freedom to provide services, it should ensure that performance of activities related to maintenance of shareholder register and/or completion/filing of fund valuation reports actually/physically take place in the Member State of the fund, and subject to direct reporting to the local competent authorities. It could not perform these functions on a remote basis. However, it could undertake these activities through branching (i.e. through the exercise of the freedom of establishment under the management company passport) or delegation arrangements.
5. The depositary would be domiciled in the Member State where the UCITS is located, as is currently the case.
6. Management companies would be subject to a notification procedure when wishing to managing funds in another Member State (on a remote basis or via branches). The management company home competent authorities should remain exclusively responsible for those services provided on a remote basis[1]. This procedure would be distinct from and not cumulated with the separate procedure for marketing UCITS in another Member State.
7. The provisions governing co-operation between regulators would be reinforced to underpin the effective and seamless oversight of situations where the fund and its manager are located in different Member States. The envisaged adjustments would provide for mechanism for competent authorities to carry out on-the-spot

[1]With the exception of the rules of conduct applicable to individual portfolio management, investment advice and custody when performed by the management company via a branch, where the Directive confers certain powers to the host Member State (article 6b(3) and 6c(3)).

verifications in the other Member State; to enumerate strictly any grounds to refuse cooperation; and to stipulate conditions for competent authorities to take emergency measures in the event of demonstrable concerns.

7. SIMPLIFIED PROSPECTUS/PRODUCT DISCLOSURES:

Strategic objective: Ensure that product disclosures made by fund managers provide relevant and meaningful information to potential investors; reconfigure these disclosures so that they can be used in the different sales channels through which investors buy funds; remove unnecessary legal or regulatory information which create information overload and excess compliance cost.

7.1. Why does the Simplified Prospectus need to be reviewed?

The Simplified Prospectus was meant to provide investors with concise and understandable information about the investment policy, risks and associated charges of a fund. However, it has suffered from national gold-plating and divergent implementation. The result is a lengthy user-unfriendly document that is a source of costs to the industry and of limited utility to investors.

The exposure draft introduces a completely new approach. The Simplified Prospectus is now referred to as "key investor information" - not necessarily to be embodied in a specific document. Level 1 provides for principles only. Further details on content and format are to be decided at Level 2, hence Schedule C of the current Directive (contents of the SP) is deleted.

The approach seeks to adapt product disclosures to take account of the different means through which UCITS are sold to end investors – direct sales (which accounts for only a small fraction of sales), intermediated sales, wrapping or structuring of products in other wrappers. The envisaged measures would require fund managers to make available information concerning their product. However, a joined-up approach is needed whereby this information would be used in a timely and effective way by the intermediaries which sell the bulk of UCITS or other institutions which integrate UCITS into hybrid products (unit-linked life insurance). This would require complementary work on 'point of sale' disclosures outside the framework of the UCITS Directive to ensure that these disclosures are effectively used by banks/investment advisors which sell UCITS; and to extend comparable disclosure obligations to intermediaries selling UCITS wrapped in other products (insurance contracts, tax wrappers, individual savings accounts).

7.2. Initial orientations for work on Simplified Prospectus/key investor disclosures:

1. The envisaged adjustments should distinguish clearly between prospectus, annual/semi-annual reports (these would continue to be produced and made available on request as at present), and “key investor information” disclosures which should be provided to potential retail investors prior to purchasing units in a fund.
2. The key investor information disclosures should be fair, clear and not misleading. Key investor information should be consistent with the relevant parts of the (full) prospectus. Liability issues should be made clear.
3. The key investor information should define the product information which fund managers must make available, free of charge. This would include information about

costs relating to the purchase of units, risks and other essential characteristics which would have an important bearing on the investment. The information to be provided would be confined to those disclosures which are meaningful and useful to the potential investor. Fund would not be held responsible for disclosure of advisory or sales related fees which are charged separately from the product. It should be for intermediaries to disclose costs or fees arising from their role in the sales/advisory process.

4. The key investor information should also define the practical information that should be conveyed to investors to enable them to adequately exercise their rights. Some information points could differ according to the domicile of the investor in certain well-defined cases (subscription/redemption facilities, tax treatment).

5. The envisaged adjustments would not prescribe the detailed content and form of investor disclosures. Instead, they foresee the adoption of detailed implementing legislation (at level 2) to flesh out the guiding principles. The proposed approach envisages particular attention at level 2 to the disclosures that should be provided where the fund manager is issuing units of UCITS with different sub-funds or share classes, funds of funds, master or feeder units.

6. Product information should not be altered when UCITS are marketed in another Member State (under the notification mechanism provided for in Article 46 of the UCITS Directive). Only translations into the local language of the home Member State should be allowed.

7. The envisaged adjustments would seek to clarify the obligations of the fund manager (for the product) when funds are sold through independent advisors or intermediaries. However, the envisaged adjustments to the UCITS Directive should not be the means through which direct obligations are imposed on investment firms, insurance brokers or other non-UCITS entities to make effective use of mandatory fund disclosures. While attention must be given to how authorised entities use this information, the UCITS Directive does not regulate these actors. Regulation of how this information is used at the point of sale is better addressed in the relevant intermediary regulation (e.g. MiFID, Insurance Mediation Directive).

8. The envisaged adjustments would impose a clear obligation on fund managers to make the relevant disclosures available in appropriate form to other parties/intermediaries who may execute orders (i.e. sell UCITS) or issue recommendations on UCITS (i.e. advice on UCITS), or integrate UCITS into another product/wrapper (e.g. insurance contract).

9. The envisaged adjustments should consider the different nature of investors and provide for a possible waiver of the required key investor information disclosures for UCITS taking account of the professional nature of investors.

8. SUPERVISORY COOPERATION:

The envisaged possible adjustments to the UCITS Directive accentuate the need for enhanced cooperation framework between authorities. These adjustments could facilitate growth in cross-border fund sales and the organisation of fund complexes on a cross-border basis. These transactions and operations should be undertaken in a way that supports high levels of investor protection, supervisory confidence and the smooth functioning of the UCITS market. To this end, the current UCITS provisions on supervisory powers and supervisory cooperation should be strengthened. This could be done largely by aligning the relevant UCITS provisions on comparable provisions in the MiFID Directive and other recent securities legislation.

Accordingly, the existing provisions of the UCITS Directive dealing with these issues should be strengthened to:

1. ensure equivalence of powers for competent authorities;
2. develop existing mechanisms relating to exchange of information;
3. create arrangements which allow competent authorities of a Member State to, in the exercise of their responsibilities under the Directive, carry out on the spot verification of information and investigation on the territory of another Member State, or have them carried out by the competent authorities of another Member State/ third parties.

In addition, the envisaged adjustments recognise the possibility for host competent authorities to intervene in the event of demonstrable and material detriment to local investors or market conditions resulting from a breach of provisions of the Directive by UCITS or management companies from another Member State. The right of the host authority should be a 'last resort' in the event of failure of the home authority of the UCITS or management company to take effective and timely corrective action. The exercise of such right would be subject to notification to and review by relevant committee structures and/or the European Commission.