



**COUNCIL OF
THE EUROPEAN UNION**

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17329/09

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"I" ITEM NOTE

from : Presidency
to : Permanent Representatives Committee

No. Cion prop.: 9494/09 EF 67 ECOFIN 341 CODEC 682

Subject : Proposal for a Directive of the European Parliament and of the Council on
Alternative Investment Fund Managers and amending Directives 2004/39/EC and
2009/.../EC
- Progress report

I. INTRODUCTION

1. On 30 April 2009 the Commission transmitted to the Council its proposal for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC.
2. The proposal has been examined by the Working Party on Financial Services at 12 meetings during the Czech and Swedish Presidencies.
3. The European Central Bank delivered its opinion on the proposal on 19 October 2009 (doc. 15162/09 EF 158 ECOFIN 681 CODEC 1249). The opinions of the European Parliament and the Economic and Social Committee are still pending. The Presidency has nevertheless pursued informal contacts with the European Parliament with a view to facilitating convergence between the Parliament and the Council on the proposal. The Parliament is expected to adopt its report on the proposal at the first reading in June or July 2010.

4. During the discussions in the Working Party on Financial Services the Presidency has tabled three overall compromise proposals and several other texts in order to make progress on the file. The latest compromise proposal is set out in doc. 17330/09 EF 194 ECOFIN 870 CODEC 1432.

II. STATE OF PLAY

5. Following the latest meeting of the Working Party on 3-4 December 2009, the following issues remain the key outstanding ones:

- a) Depositary

The views of delegations are divided on whether the tasks of depositary could also be given to others than credit institutions and investment firms, although most delegations are in favour of more alternatives so as to not make certain business models impossible in the future. Also the issue of the depositary's liability in case of delegation of its tasks remains unresolved.

- b) Valuation

The open issues relate to the use of different types of valuers to different business models, the frequency of valuation for different types of funds and, in particular, the independence of the valuer, including the liability issues.

- c) Remuneration

The views of delegations diverge in particular on whether one should apply the same kind of detailed remuneration rules as agreed in the context of the latest revision of the Capital Requirements Directive for the banking sector, or should one seek for rules better adapted to alternative investment fund managers, especially as regards carried interest.

- d) Third country issues

There are concerns related to ensuring a level-playing field between marketing of EU and non-EU funds in the EU. These concerns boil down to the possible carve-out of depositary requirements for the non-EU funds which are managed by EU managers.

6. Apart from the above-mentioned issues, there is a high degree of convergence of views on the rest of the text. As to the other remaining open issues, the Presidency is of the view that most of them can be resolved by further technical drafting.

III. CONCLUSION

7. Against this background the Permanent Representatives Committee is invited to:
- take note of the progress achieved with regard to the proposal;
 - take note of the latest Presidency compromise proposal, as set out in doc. 17330/09 EF 194 ECOFIN 870 CODEC 1432;
 - invite the incoming Spanish Presidency to continue work on the basis of this compromise proposal in order to reach an agreement on a general approach in the near future, and
 - invite the incoming Presidency to pursue contacts with the European Parliament with a view to reaching an agreement with the Parliament in the first reading.
