



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 8 March 2010**

---

---

**Interinstitutional File:  
2009/0064 (COD)**

---

**6800/1/10  
REV 1**

**EF 18  
ECOFIN 121  
CODEC 146**

**REPORT**

---

from : General Secretariat  
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  
2009/65/EC

---

**I. STATE OF PLAY**

1. Following the discussion at Coreper on 4 March 2010 and at the meeting of Working Party on Financial Services (Attachés) on 8 March 2010, there is an increasing convergence behind the Presidency compromise text for the above-mentioned Directive<sup>1</sup>.
2. The Presidency has indicated that the Council should confirm an agreement on the general approach with regard to the Directive at the Council on 16 March in order to allow the negotiations with the European Parliament to start once the EP ECON Committee has adopted its report, which is envisaged to take place on 12 April 2010.

---

<sup>1</sup> The latest Presidency compromise proposal will be issued in doc. 6795/3/10 REV 3 EF 17 ECOFIN 120 CODEC 144 before the meeting of Coreper on 11 March 2010.

3. Since the latest discussions, the key outstanding issue relates to third country issues. A vast majority of delegations can accept the text as proposed by the Presidency, but there are nevertheless remaining concerns among some delegations, which relate in particular to:
- the purpose and negotiations of cooperation arrangements with third country authorities to ensure an efficient exchange of information between competent authorities, and to allow competent authorities to carry out their duties (Articles 34a-35);
  - the need to ensure transparency for those investors investing in the investment funds that are managed by non-EU managers (recital 19b and Article 50).
4. Furthermore, at the meeting of the Working Party on Financial Services (Attachés) on 8 March, delegations still had somewhat divergent views on certain other issues, such as the possibility for the depositary to discharge its liability in case of delegation of tasks, and to the possibility to be given to Member States to allow the use of a credit institution in another Member State as a depositary. However, as the views of delegations go in opposite directions in these issues, the Presidency finds that the current compromise text - with possibly some minor redrafting before Coreper - provides the best way forward for an overall compromise.

## II. CONCLUSION

5. Against this background the Permanent Representatives Committee is invited to:
- resolve the outstanding issues and agree on the general approach with regard to the proposed Directive;
  - recommend to the Council to confirm the agreement;
  - recommend to the Council to invite the Presidency to start negotiations with the European Parliament on the basis of this general approach with a view to reaching an agreement at first reading.