



**COUNCIL OF
THE EUROPEAN UNION**



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PRESSE 168

Council confirms agreement with EP on investment funds

The Permanent Representatives Committee today approved, on behalf of the Council, an agreement reached with the European Parliament on a proposal to amend EU rules on investment funds ([7411/14](#)).

The proposal amends directive 2009/65/EC on undertakings for collective investment in transferable securities (UCITS) as concerns depositary functions, remuneration policies and sanctions. It introduces specific provisions on the depositary's safekeeping and oversight duties, and defines the conditions in which safekeeping duties can be delegated to a sub-custodian.

Today's agreement will enable the amending directive to be adopted at first reading, before the Parliament adjourns for elections at the end of May. Agreement with the Parliament was reached on 25 February. The negotiations were led by the presidency on the basis of a Council position established on 4 December.

Rules on depositaries have remained unchanged in substance since the original UCITS directive was adopted in 1985. Under the current rules, all assets of a UCITS fund must be entrusted to a depositary. The depositary is liable for losses suffered as a result of a failure to perform its duties, though the precise contours of those duties are currently defined by the laws of the member states. As a result, different approaches have developed across the EU, the consequences of which came to the fore following the Lehman bankruptcy and the Madoff fraud case.

P R E S S

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The draft directive therefore sets out a list of entities that are eligible to act as UCITS depositaries, and clarifies the depositary's liability in the event of the loss of a financial instrument held in custody. It also includes provisions on redress.

On sanctions, the text lists the main breaches that have been encountered in implementing directive 2009/65/EC and lays down the administrative sanctions and measures that the authorities should be empowered to apply. Sanctions will generally be published, except in the case of natural persons, where they can either be published anonymously or not at all, depending on a case-by-case assessment that will take into account proportionality and the effect on financial stability.

Under the text agreed with the Parliament, administrative sanctions for legal persons will be set to at least 10 % of total annual turnover or €5m, for natural person to at least €5m, or in both cases to at least twice the amount of the benefit derived from the infringement, if this benefit can be determined.

As concerns remuneration, the draft directive introduces a requirement for the UCITS management company to implement policy that is consistent with sound risk management and complies with minimum principles.

Under the agreed text, member states will have 18 months to transpose the directive into national law, and depositaries will be given an additional 24-month transition period after the transposition deadline.
