

Council adopts new rules on investment funds

The Council today¹ adopted a directive amending EU rules on investment funds as concerns depository functions, remuneration policies and sanctions ([PE-CONS 75/14](#) + [11728/14](#) + [ADD 1](#)).

The text amends directive 2009/65/EC on undertakings for collective investment in transferable securities (UCITS), introducing specific provisions on the depository's safekeeping and oversight duties, and defining the conditions in which safekeeping duties can be delegated to a sub-custodian.

Rules on depositories 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 depository. The depository 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 consequence of which came to the fore following the Lehman bankruptcy and the Madoff fraud case.

The new directive therefore sets out a list of entities that are eligible to act as UCITS depositories, and clarifies the depository'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 do apply. Sanctions will generally be published, but 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.

Administrative sanctions for legal persons are set to 10 % of total annual turnover or up to at least €5 million, for natural persons up to at least €5 million, or in both cases up to at least twice the amount of the benefit derived from the infringement, if this benefit can be determined.

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

¹ At a meeting of the General Affairs Council, without discussion.

Adoption of the directive follows and agreement with the European Parliament on 25 February. The Parliament adopted its position at first reading on 15 April, in accordance with the agreement reached.

Member states will have 18 months to transpose the directive into national law, and depositories will be given an additional 24-month transition period after the transposition deadline.
