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#### **'I/A' ITEM NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee (Part 2)/Council  
Subject: Review of the Alternative Investment Fund Managers Directive (AIFMD)  
- General approach

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#### **I. INTRODUCTION**

1. On 25 November 2021, the Commission transmitted to the Council a Directive Proposal<sup>1</sup> amending Directives 2011/61/EU (Alternative Investment Fund Managers) and 2009/65/EC (UCITS). This targeted review, which is part of a legislative package of measures supporting the deepening of the Capital Markets Union, broadly aims at further integrating asset management markets in Europe, whilst furthering the harmonisation and the modernisation of the current regulatory framework.

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<sup>1</sup> Doc. 14365/21 + ADD 1 to ADD 3

2. The key issues covered in the Proposal include in particular: reporting obligations related to the delegation of certain functions to third parties by fund managers; the upgrading of the rules concerning liquidity management tools; conditions for the provision of cross-border depositary services; and, the rules for loan-originating alternative investment funds.
3. On 2 December 2021, the Proposal and its impact study were also considered by the Council Working Party on financial services and the Banking Union.

## II. STATE OF PLAY

4. The Proposal was discussed by the Working Party on Financial Services and the Banking Union at seven further meetings under the current Presidency. Following the last Working Party meeting, which was held on 13 May, the Presidency further explored through bilateral contacts the finalisation of a balanced compromise, with a view to accommodating Member States' positions to the largest extent possible. As a result, the Presidency submitted to Coreper (2<sup>nd</sup> part) on 8 June 2022<sup>2</sup> a final Presidency compromise<sup>3</sup>.
5. At that Coreper meeting, the Presidency took note that its compromise proposal was indeed supported by the required majority, with a view to transmitting it to Council and reaching on that basis a general approach as a non-discussion item.

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<sup>2</sup> Doc. 7931/22.

<sup>3</sup> Doc. 7968/22.

6. This notwithstanding, as one Member State had put forward two amendment requests (below), several Member States indicated they were willing to further assess these two requests with a view to possible inclusion in a revised compromise. The Presidency accordingly undertook that assessment, in order to ascertain that their possible inclusion was not such as to weaken the support met by the compromise.
7. Both requested amendments to the compromise text (7968/22) concerned competences entrusted to the European Securities and Markets Authority (ESMA), in two separate areas. The first one focused on the preparation of regulatory technical standards regarding the information that investment fund managers, within the framework of their reporting obligations, would have to submit to their Home Member State supervisory authorities in respect of delegation arrangements with third parties. After consulting with all the Member States, the Presidency is presenting to the Committee of Permanent Representatives an alternative wording that seems acceptable to the Member States and clarifies that the ESMA mandate should be limited to setting out an appropriate level of standardisation of the data reporting fields on delegation listed in point (d) of Article 24(2). That wording also clarifies that ESMA's work should not lead to introducing additional reporting obligations or adding any new elements that are not foreseen by the text of that Directive.

8. The second amendment request aimed to further frame and narrow down the scope for ESMA's intervention in matters of cooperation between national supervisory authorities and assistance to dispute resolution – more specifically, down to those cases that raise a serious threat to investor protection, threaten the orderly functioning and integrity of financial markets or pose risks to the stability of the whole or part of the financial system in the Union. In light of its final exchanges with the Member States, the Presidency reckoned that it could grant this second amendment request without jeopardising the political balance and the overall ambition of the text.
9. The Presidency considers that, with the inclusion of both amendments (Article 24(6) (a) and Article 50(5g) of the amended AIFMD as well as the corresponding provisions for the UCITS Directive), its revised final compromise proposal, as set out in doc. 9768/1/22 REV1, is supported by the required majority.
10. The European Parliament's position at first reading is pending.

### III. CONCLUSION

11. In light of the above, it is suggested that the Committee of Permanent Representatives recommend to the Council:

- to reach a general approach on the Directive Proposal, as set out in doc. 9768/1/22 REV1, as it was already agreed that the Committee of Permanent Representatives should recommend to the Council to proceed accordingly as a non-discussion item;
  - invite the Presidency to start, when practicable, negotiations with the European Parliament on the basis of that mandate with a view to reaching an agreement in first reading.
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