



**COUNCIL OF
THE EUROPEAN UNION**

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REPORT

From: Presidency

To: Permanent Representatives Committee (Part 1)

Subject: Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions(UCITS V)

- Approval of the final compromise text (Declarations for the minutes)

DECLARATION BY PORTUGAL AND SPAIN

Portugal and Spain welcome the agreement on the Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions, in particular the ambitious sanctions regime foreseen therein. Portugal and Spain also commend the efforts of the Hellenic Presidency in trying to achieve a balanced solution to address concerns in this regard.

Portugal and Spain note that the sanctions regime is highly sensitive. Member States operate under very different legal and institutional frameworks and these national frameworks need to remain coherent as harmonisation of the sanctions regime is pursued at European level. The difficulties of these discussions are well known and most Member States specificities have been addressed, in particular when they are grounded on constitutional concerns.

Portugal and Spain will strive to implement the permanent ban on the exercise of management functions in investment firms in conformity with national law.

DECLARATION BY SWEDEN

Access to data traffic records held by providers of public electronic communications networks by public authorities amounts to a serious interference with the right to respect of private and family life and the right to protection of personal data. Issues of privacy and surveillance are highly sensitive topics that need to be dealt with in a consistent manner across all EU policy areas. Such powers should be restricted to investigations of crimes. Sweden is worried that this power is spreading to financial market files which do not deal with such matters.

Sweden assumes that the access does not cover data retained for the purposes of Directive 2006/24/EC (the Data Retention Directive), as this would circumvent the requirement in the Data Retention Directive of retention only for the purposes of investigating, detecting and prosecuting serious crimes.

It should be noted that there are cases pending in the ECJ where the validity of the Data Retention Directive has been questioned (cases C-293/12 and C-594/12). The outcome of those cases may necessitate, in the near future, a reassessment of the powers of competent authorities to require data traffic records held by operators.