



EUROPEAN COMMISSION

Brussels, 11.7.2013
C(2013) 4302 final

Mr Pietro GRASSO
President of the
Senato della Repubblica
Piazza Madama, 1
IT – 00186 ROMA

Dear President,

The Commission would like to thank the Senato della Repubblica for its Opinion on the 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 {COM (2012) 350 final} and apologises for the long delay in replying.

The Senato della Repubblica suggests to extend the legal base of the Proposal in question so as to include also article 62 of the Treaty on the Functioning of the European Union (TFEU). The Commission does not consider it appropriate to extend the legal basis of the Proposal to Article 62 TFEU, as the Proposal is predominantly about the right of establishment. In addition, in the field of asset management, the Commission strives to ensure consistency with the Alternative Investment Fund Managers Directive¹ ('AIFMD'), the legal basis of which is Article 53 TFEU.

The Commission would like to clarify that the Proposal is limited to matters concerning depositary functions, remuneration policies and sanctions only. Furthermore, the Proposal is an amending directive and should be considered and assessed within the context of Directive 2009/65 which it seeks to amend. As the Senato della Repubblica correctly points out, the legal basis of the Proposal is expressly mentioned in the preamble of the Proposal as well as in the Impact Assessment. Given that the Proposal is an amending directive, the legal basis of the Proposal should correspond to that already enshrined within Directive 2009/65.

The issues raised by the Senato della Repubblica on the disclosure to investors and on the methodologies for calculating risk, do not fall within the scope of this Proposal. The Commission will, however, give due consideration to the Opinion of the Senato della Repubblica on these issues when preparing its proposal for the next iteration of amendments to the UCITS Directive.

¹ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and Amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010.

With regard to the proposed delegation of powers to the European Commission pursuant to Article 290 TFEU, the Commission has sought to align the Proposal with the provisions on delegated powers in the AIFMD. The Commission is of the opinion that consistency between the two directives must be maintained.

The Commission, finally, takes good note of the fact that parts of the accompanying documents to the Proposal were not fully translated into the Italian language. The Commission endeavours to ensure that documents are translated in a proper and complete manner and has informed its services about the issue raised by the Senato della Repubblica.

The Commission hopes that these clarifications address the observations made by the Senato della Repubblica and it looks forward to continuing our constructive political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*