Asset management II

2007/2200(INI) - 15/11/2006 - Non-legislative basic document

PURPOSE: to present a package of measures to enhance the single market framework for investment funds.

BACKGROUND: investment funds provide retail investors with access to professionally managed and diversified investments on affordable terms. European investors will need a capable and well-regulated asset management business as the ageing of society requires them to take more responsibility for their long-term financing needs. The cornerstone of the EU framework for investment funds is the 1985 UCITS Directive which provided the focal point for the growth of a vibrant European fund industry. This market is increasingly organised on a pan-European basis.

The challenge for EU policymakers is to ensure that this regulatory framework remains effective in the face of changing market dynamics and investor needs. Profound structural changes in European financial markets are putting new strains on the UCITS regulatory system.

CONTENT: this White Paper sets out a package of measures designed to **simplify the operating environment for investment funds** – notably by overhauling cumbersome notification procedures and slimming down the simplified Prospectus. These steps will create new opportunities for cross-border operators without imposing significant additional costs for other industry participants. It also identifies the need to give investors better tools to make informed decisions, and to ensure that they receive objective and impartial assistance from fund distributors. This package of actions represents a carefully prepared agenda of immediate relevance to European fund industry and its investors.

The growing importance of this business means that there will be a need for continued attention to modernisation and development of the EU legislative framework. The envisaged amendments to the UCITS Directive may not be the final word. Recent innovation in investment techniques and products means that EU and national authorities will continue to face hard questions about the scope and design of the European legislative framework for investment funds. Rather than leap to hasty conclusions, this White Paper proposes to examine these issues more carefully, in order to allow a more informed policy debate as these new products and asset classes mature.

This White Paper foresees a progressive development of the existing framework. It proposes to modernise and complement it in a number of specific and targeted areas – notably by eliminating procedures and costs that do not materially enhance investor protection. It recognises uncertainty about the appropriateness of the scope and design of the present Directive. It concludes that, on balance, there are insufficient grounds to undertake a fundamental revision of the Directive at this stage. Instead, it envisages a structured review of the need for changes to the scope and regulatory approach of the Directive as the contours of the fund market evolve.

The White Paper foresees actions to:

1) Strengthen single market freedoms, thereby enabling the fund industry to serve European and global investors more efficiently;

2) Ensure that investors are in a position to make informed investment decisions and rely on qualified intermediaries for objective expert assistance;

3) Assess whether a single market framework should be created to allow the cross-border sale of some types of non-UCITS to retail investors and how this could most effectively be done;

4) Launch work on a European 'private placement' regime to facilitate the sale of non harmonised funds and financial instruments to institutional and sophisticated investors in other Member States.

This White Paper has been developed on the basis of extensive consultation and debate with consumers, industry practitioners and policymakers over a period of two years. It builds on responses to the Commission Green Paper of July 2005; three reports from specially constituted industry expert groups and stakeholder responses; series of ad hoc initiatives including two workshops on simplified prospectus. It also responds directly to the important concerns raised in the report of the European Parliament. The steps proposed in this White Paper have also been the object of rigorous impact assessment.

The main issues are as follows:

Removing administrative barriers to cross-border marketing: the existing administrative procedures that must be satisfied before a fund can be marketed in another Member State – notably detailed ex-ante verification of fund documentation by the host authority and the current 2 month maximum waiting period - will be scaled back.

Facilitating cross-border fund mergers: the Commission will propose additions to the UCITS Directive to create the appropriate legal and regulatory conditions for the merger of funds;

Asset pooling: the Commission will propose amendments to the diversification rules and other provisions of the Directive in order to allow an expansive approach to 'entity pooling'. In preparing legislation, the Commission will also further explore the soundness of virtual pooling techniques and the need for Directive amendments Directive to provide legal certainty and underpin effective management and supervision of such structures.

Management company passport: the Commission will propose amendments to the Directive to allow an authorised management company to manage corporate and contractual funds in other Member States. The scope of passport-able services will need to be carefully tested and validated during the preparatory phase;

Strengthening supervisory cooperation: the Commission will table proposals to strengthen the provisions of the UCITS Directive relating to competent authorities and supervisory cooperation;

Simplified Prospectus: a two-level approach is required. The Directive itself must be amended to clarify the fundamental objectives and guiding principles of the simplified Prospectus;

Distribution systems: putting investor interests first: the Commission will carefully monitor the implementation of MiFID rules on "conduct of business" and inducements in respect of intermediated fund sales. The Commission services will publish a 'vade-mecum' to consolidate the effective implementation of these provisions in order to ensure that investors can count on objective and professional fund intermediation.

The Commission will study the likely costs, benefits and risks of providing an enabling single market framework for non-harmonised retail products and whether such products are suitable in the first place for marketing to investors on a cross border basis. The Commission will report to Council and Parliament on the conclusions of this assessment in 2008. The Commission will report to Council and Parliament on steps that need to be taken to give full effect to a common private placement regime in autumn 2007.