

Asset management II

2007/2200(INI) - 13/12/2007 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution based on the own-initiative report by Wolf **KLINZ** (ALDE, DE) on asset management in response to the European Commission's White Paper on enhancing the single market framework for investment funds. It states that the resolution is not intended to address the five legislative measures foreseen in the UCITS III revision package, but that Parliament intends to play a full role in designing a more integrated European market for investment funds going beyond the forthcoming limited revision of UCITS III. Open-ended real estate funds (OREF) and funds of hedge funds (FoHF) as well as other non-harmonised retail funds currently remain outside the UCITS framework and hence do not benefit from a European passport. Diverging disclosure requirements for UCITS and other competing investment products, different national taxation rules on cross-border fund mergers, barriers to fund processing and diverging responsibilities of depositaries present an obstacle to a level playing field, enhanced competitiveness and consolidation of the European fund market.

Non-harmonised retail funds: the resolution invites the Commission to examine future extension of the UCITS III Directive on eligible assets to open-ended real estate funds (OREF) and funds of hedge funds (FoHF) bearing in mind that hedge fund indices (HFI) are already considered as eligible assets. The report states that consideration should be given to the establishment of a single market framework for OREF, FoHF and other non-harmonised retail funds as regulated products at EU-level underpinned by an impact assessment and taking full account of diversification, liquidity and valuation issues. Parliament underlines that this consideration must not interrupt the revision of UCITS III.

Private Placement Regime (PPR): Parliament calls for a harmonised framework for private placement at EU-level in order to enhance the single market integration. National gold plating should not be possible. MEPs believe that a PPR should apply to all open-ended investment funds, including EU-regulated funds, nationally regulated funds as well as funds regulated in third countries. Nevertheless, progress on the question of reciprocal market access where appropriate is essential. The Commission is called upon to negotiate such agreements with third countries, in particular with the United States, and Parliament asks the Commission to address this issue within the Transatlantic Economic Council. As a first step, a waiver from the notification process for UCITS should be introduced in the revised UCITS III, that waiver being restricted to a small number of highly sophisticated investors such as the MiFID professional client. As a second step, the PPR should be extended to other products, to a more broadly defined type of sophisticated investor, and should contain a general waiver from local marketing provisions. European PPR framework should only apply to cross-border private placement and in this case override the existing national rules. It should, however, not replace national rules that apply to domestic private placement.

Distribution and fees: the use of commission payments is an acceptable means of remuneration. Parliament points out, at the same time, that investor information including fee and spread disclosure is crucial to empowering investors to take more informed decisions and to increase competition. It welcomes the MiFID provisions on fee disclosure, but recalls that MiFID does not apply to all competing investment products.

Competing products: Parliament believes that cost and fee disclosure requirements at the point of sale as well as information requirements on risk and performance on an ongoing basis should apply not only to UCITS but equally to all competing products (i.e. certificates, notes, unit-linked life insurance). It recognises, however, that it is not possible to provide for complete comparability between different types of investment products. Accordingly it requests a review of the legislative framework on marketing, advice and the sale of all retail investment products by the end of 2008 at the latest, in particular the impending Solvency II directive, the Insurance Mediation Directive and UCITS III, in order to achieve a

level playing field and a coherent approach to investor protection. The Commission is asked to examine whether an industry-driven code of conduct might be helpful to increase fee transparency, taking into account the positive and negative impact linked to the code of conduct in the post-trading sector. It is also asked to examine the practical impact of Article 26 of the MiFID Implementing Directive on the distribution of competing products and hence on open architecture. Parliament calls on CESR to report on the impact of Article 26 on current softing and bundling arrangements in 2008 and to examine, taking into account already existing as well as possible future self-regulatory initiatives by the industry, whether a common supervisory approach across the EU would benefit investors.

Taxation of cross-border fund mergers: Parliament calls on the Commission to propose a directive relating to the taxation of fund mergers in 2008, following the principle of tax neutrality set out in Directives 90/434/EEC and 2005/56/EC. The objective is not to harmonise tax but to determine that domestic and cross-border mergers should be tax-neutral if the investor keeps its investment in the fund before and after the merger or withdraws its investment as a result of the intended merger, before the merger takes place.

Depository: MEPs regret that not all Member States allow the branches of EU credit institutions to act as depository even though they are regulated at the EU level in accordance with EU financial services legislation. Therefore, they call on the Commission to take the necessary legislative steps in the 2008 UCITS III revision to allow such credit institution branches to act as depository and to clarify ways for an effective supervisory cooperation. Parliament also calls for further analysis of the legal barriers that would have to be removed in order to achieve harmonisation of depository functions, taking into account existing research on the different roles and responsibilities of depositaries across Member States.

Lamfalussy: Parliament highlights the importance of ensuring the choice of implementing instruments on the basis of the content and objectives of the underlying Level 1 legislation. It calls on the Commission to propose a legal basis at Level 1 for the use of both implementing directives and implementing regulations at Level 2, and points out that the new regulatory procedure with scrutiny must be applied to all Level 2 measures.

Hedge Funds: the resolution considers transparency and disclosure for investors and supervisors of utmost importance and expects the forthcoming IOSCO proposals to bring more clarity in this respect. The industry is urged to agree on a code of conduct on portfolio valuation, risk management systems, transparency of fee structures and enhanced insight in investment strategies and the Commission is urged to play a more active role in this discussion (e.g. within G8). MEPs believe that hedge funds could help strengthening corporate governance practices by increasing the number of investors that make active and informed use of their shareholder rights. They are concerned, however, that some hedge funds might boost their voting power at low costs through a variety of different mechanisms such as stock lending and borrowing.

Private Equity: MEPs are convinced that a more in-depth analysis is needed to better understand the impact of alternative investments such as hedge funds and private equity on the other on financial stability, corporate governance, consumer choice and protection as well as employment. They look forward to examining these in the forthcoming parliamentary reports, which should include among others an examination of:

- whether an industry-driven code of conduct is sufficient to enhance financial stability and investor protection or is there a need for more action by the legislator and supervisory authorities in terms of disclosure requirements through minimum reporting standards and regulation of relevant players;

- whether there is an interest in or even a need for a European label for alternative investment instruments and if so, what could be the criteria to distinguish different asset classes that would be covered by such an EU framework;

- under which conditions retail access to these asset classes could be permitted.