Transparency of institutional investors

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The Committee on Legal Affairs adopted an own initiative report by Klaus-Heiner **LEHNE** (EPP-ED, DE) with recommendations to the Commission on transparency of institutional investors.

MEPs call on the European Commission to submit to Parliament, on the basis of Articles 44, 47(2) or 95 of the EC Treaty, depending on the subject matter, **a legislative proposal or proposals** on the transparency of hedge funds and private equity. At the same time, they call on the Commission to encourage improvements in transparency by supporting and monitoring the evolution of self-regulation already introduced by managers of hedge funds and private equity and their counterparties, and to encourage Member States to support these efforts through dialogue and exchange of best practice.

MEPs call for such proposal(s) to be drawn up in the light of interinstitutional discussions and following the detailed recommendations below:

Hedge funds and private equity: the Commission is called upon to submit the appropriate legislative proposals by way of review of the existing acquis communautaire affecting the various types of investors and counterparties. MEPs also call on the Commission to explore the possibility of differentiating between hedge funds, private equity and other investors and to adapt or establish rules providing for the clear disclosure and timely communication of relevant and material information so as to facilitate high-quality decision-making and transparent communication between investors and the company management as well as between investors and other counterparties.

The new legislation should require shareholders to notify issuers of the proportion of their voting rights resulting from an acquisition or disposal of shares where that proportion reaches, exceeds or falls below the specific thresholds starting with 3% instead of 5%, as mentioned in Directive 2004/109/EC. It should also oblige hedge funds and private equity, as far as those categories of investors can be differentiated from others, to disclose and explain – vis-à-vis the companies whose shares they acquire or own, retail and institutional investors, prime brokers and supervisors – their investment policy and associated risks.

With a view to the above-mentioned legislative proposals, the Commission should in particular:

- explore the possibility of contract terms, to be applied to alternative investments, that provide for an unambiguous disclosure and management of risk, for measures to be taken in the event of thresholds being exceeded, for a clear description of lock-up periods and for explicit conditions governing cancellation and termination of the contract;
- investigate the issue of money laundering;
- explore possibilities of harmonising rules for registering and identifying shareholders beyond a certain proportion, as well as for disclosing their strategies and intentions;
- establish, together with the industry, a code of best practice on how to rebalance the current structure of corporate governance;
- establish rules providing for full transparency of managers' remuneration systems, including stock options, through formal approval by the general meeting of the company's shareholders.

Hedge funds: the Commission is called upon to establish rules that enhance the transparency of voting policies of hedge funds, on the basis that the addressees of Community rules should be the managers of such funds. Such rules could also include a system of EU-wide shareholder identification. Where proposals already exist, they should be implemented accordingly.

Private equity: the Commission is called upon to propose rules that forbid investors to “plunder” companies (so called “asset stripping”) and thus misuse their financial power in a way that merely disadvantages the company acquired in the long term, without having any positive impact on the company’ s future and the interest of its employees, creditors and business partners. MEPs also propose common rules to guarantee the capital maintenance of companies.

Furthermore, the Commission should examine ways of addressing the issues arising when banks lend huge amounts of money to acquirers, including private equity, and then disclaim any responsibility whatsoever as to the purpose for which that money is used or the provenance of the money used to repay the loan.