

Transparency of institutional investors

2007/2239(INL) - 23/09/2008 - Text adopted by Parliament, single reading

The European Parliament adopted by 513 votes to 43, with 117 abstentions, a resolution with recommendations to the Commission on transparency of institutional investors.

The own initiative report had been tabled for consideration in plenary by Klaus-Heiner **LEHNE** (EPP-ED, DE) on behalf of the Committee on Legal Affairs.

The Parliament calls on the European Commission to submit, 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, it calls 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 on the basis of interinstitutional discussions and following the following main recommendations:

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. Furthermore, the resolution calls on the Commission to explore ways of enhancing the visibility and understanding of risk, as distinct from creditworthiness.

According to MEPs, hedge funds and private equity should be obliged 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 and recommendations for hedge funds and – as the case may be – private equity to register and identify shareholders beyond a certain proportion, as well as to disclose 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.

Private equity: the European Parliament asks the Commission 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. Moreover, the Commission should explore 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.