Basic information

2007/2200(INI) INI - Own-initiative procedure	Procedure completed
Asset management II **Subject** 2.40 Free movement of services, freedom to provide 2.50 Free movement of capital 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	KLINZ Wolf (ALDE)	12/12/2006

Committee for opinion	Rapporteur for opinion	Appointed
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
JURI Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	2822	2007-10-09

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	MCCREEVY Charlie

Key events

Date	Event	Reference	Summary
15/11/2006	Non-legislative basic document published	COM(2006)0686	Summary
27/09/2007	Committee referral announced in Parliament		
09/10/2007	Resolution/conclusions adopted by Council		
21/11/2007	Vote in committee		Summary

23/11/2007	Committee report tabled for plenary	A6-0460/2007	
12/12/2007	Debate in Parliament		
13/12/2007	Decision by Parliament	T6-0627/2007	Summary
13/12/2007	Results of vote in Parliament		
13/12/2007	End of procedure in Parliament		

Technical information	
Procedure reference	2007/2200(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Strategic initiative
Legal basis	Rules of Procedure EP 55
Stage reached in procedure	Procedure completed
Committee dossier	ECON/6/49080

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE392.184	17/07/2007	
Amendments tabled in committee		PE396.532	18/10/2007	
Committee report tabled for plenary, single reading		A6-0460/2007	23/11/2007	
Text adopted by Parliament, single reading		T6-0627/2007	13/12/2007	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2006)0686	15/11/2006	Summary
Document attached to the procedure	SEC(2006)1451	15/11/2006	
Document attached to the procedure	SEC(2006)1452	15/11/2006	

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.

Depositary: MEPs regret that not all Member States allow the branches of EU credit institutions to act as depositary 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 depositary 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 depositary 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.

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.