

## **P6\_TA(2006)0181**

### **Asset management**

#### **European Parliament resolution on asset management (2006/2037(INI))**

*The European Parliament,*

- having regard to the Green Paper on the enhancement of the EU framework for investment funds (COM(2005)0314) and the European Economic and Social Committee Opinion of 15 March 2006,
- having regard to Directives 2001/107/EC<sup>1</sup> and 2001/108/EC<sup>2</sup> of the European Parliament and of the Council of 21 January 2002 on undertakings for collective investment in transferable securities (UCITS), respectively, with a view to regulating management companies and simplified prospectuses, and with regard to investments of UCITS,
- having regard to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>3</sup> (MiFID),
- having regard to Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 establishing a new organisational structure for financial services committees<sup>4</sup>,
- having regard to Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision<sup>5</sup> (pension fund directive),
- having regard to Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation<sup>6</sup> and Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance<sup>7</sup>,
- having regard to its resolution of 15 January 2004 on the future of hedge funds and derivatives<sup>8</sup>,
- having regard to the Asset Management Expert Group report of 7 May 2004,
- having regard to the hearing organised by the committee responsible on 21 November 2005,

---

<sup>1</sup> OJ L 41, 13.2.2002, p. 20.

<sup>2</sup> OJ L 41, 13.2.2002, p. 35.

<sup>3</sup> OJ L 145, 30.4.2004, p. 1.

<sup>4</sup> OJ L 79, 24.3.2005, p. 9.

<sup>5</sup> OJ L 235, 23.9.2003, p. 10.

<sup>6</sup> OJ L 9, 15.1.2003, p. 3.

<sup>7</sup> OJ L 345, 19.12.2002, p. 1.

<sup>8</sup> OJ C 92 E, 16.4.2004, p. 407.

- having regard to the Committee of European Securities Regulators (CESR)' advice to the Commission of 26 January 2006 on clarification of definitions concerning eligible assets for investments of UCITS,
  - having regard to Rule 45 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A6-0106/2006),
- A. whereas the primary objectives of asset management regulations are to protect investors, to diversify the financing of the economy, and to create a level playing field within the internal market,
  - B. whereas a regulatory framework should promote European industrial competitiveness, both within the internal market and *vis-à-vis* non-European competitors at European and global level, and not inhibit new entrants to an open, competitive and customer-oriented asset management industry,
  - C. whereas MiFID is the appropriate legislative instrument to address the transparency of distribution costs and the charges imposed by distributors for third-party funds, while it does not apply to in-house distribution,
  - D. whereas cooperation among supervisory authorities is of the highest importance in ensuring the stability and development of the European financial market for the benefit of investors and European industry,
  - E. whereas asset management is an appropriate instrument for enhancing sustainably funded retirement provisions and an effective and sufficient supply of capital to a dynamic economy,
  - F. whereas it should be stressed that the European asset management industry is still fragmented in size in comparison with that of the US and that, therefore, action at European level is needed to boost economic efficiency,
  - G. whereas the Commission is being invited to look into the possibility of how to advance the convergence of regulatory practices and conditions in various Member States,

### ***General framework***

#### *Interaction with other directives*

1. Believes that the interaction between the Directive 85/611/EEC<sup>1</sup> on UCITS, MiFID and its Level 2 measures, and the Directive 2000/31/EC<sup>2</sup> on electronic commerce, leave undesirable scope for interpretation and require clarification and consolidation;
2. Draws attention to differences between the regulation of UCITS and other investment products and calls on the Commission, CESR and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) to ensure a high standard of

---

<sup>1</sup> OJ L 375, 31.12.1985, p. 3.

<sup>2</sup> OJ L 178, 17.7.2000, p. 1.

transparency, management of conflicts of interests, notification requirements, and thus of equal treatment between UCITS and competing products;

#### *Objectives and implementation of the UCITS directives*

3. Notes that the objectives of investor protection and product diversity, ensuring fair conditions of competition and improving performance and competitiveness at global level have not yet all been achieved to a satisfactory degree despite existing EC regulations;
4. States that the changes introduced by Directives 2001/107/EC and 2001/108/EC (UCITS III) have not yet been exhausted; considers that the transposition and interpretation of these Directives should be closely monitored and invites the Commission to act immediately and vigorously in order to rectify failings identified in the different Member States; believes however that there is a need to go further and to modify in some areas the Directive 85/611/EEC as amended by UCITS III in order to achieve the objectives set out in paragraph 3; these modifications concern the following: a simplified prospectus, a modification of the notification procedure, the abolition of tax barriers for cross-border mergers and pooling and, if appropriate, the adaptation of eligible assets to market developments;

#### *Investor information and protection*

5. Notes that, within the current legislative framework, Member States have implemented the simplified prospectus in different ways and have, in some instances, established additional stringent national requirements in spite of Commission Recommendation 2004/384/EC<sup>1</sup> on some contents of the simplified prospectus;
6. Proposes that the simplified prospectus - in the spirit of the European Federation of Investment Funds and Companies (FEFSI) proposal of October 2003 - should take the form of a fact sheet to give investors transparency and provide them with a harmonised pan-European document setting out brief, standardised, understandable, and comparable information, on two to three pages, in their own language, including information on the nature and risk of the financial instruments used and a quotation of the total expense ratio based on a standardised calculation and of load fees, an understandable description of the asset management (investment) strategy and references to the relevant sections of the full prospectus from which detailed information can be obtained; believes that this document should be offered to the investor before conclusion of the contract;
7. Hopes that the forthcoming CESR recommendations will be in line with these criteria and calls on the Commission to take them into account in evaluating the implementation of UCITS III and to propose amendments to Directive 85/611/EEC on the content of the simplified prospectus for the purpose of establishing binding EC legislation on a fully harmonised simplified prospectus; suggests that the simplified prospectus should be designed after consulting all relevant parties, including industry and consumer associations, after direct consumer testing, and with the help of marketing experts, otherwise it will remain unlikely to be read and understood by consumers;
8. Refers to the principle of appropriate and suitable advice regarding the financial situation

---

<sup>1</sup> OJ L 144, 30.4.2004, p. 44.

of the investor laid down in MiFID, which is including an assessment of the operational risks; notices that small investors, in particular first-time investors, shall be informed about their rights and responsibilities concerning complaints procedures and, if provided for in national law, about their right of recourse to an ombudsman;

9. Draws attention to the importance of improving investor knowledge about existing investment products and more particularly about new products, and urges the competent authorities at national, regional and local level to ensure that basic knowledge about financial services and investment matters is taught at school;
10. Welcomes the industry's efforts to develop changes aimed at building long-term client relations, including those related to the transparency of fees;
11. Notices that those employed in the financial services sector have an important role to play when it comes to identifying consumer requirements; therefore stresses that the financial services industry should aim at an appropriate and continuing training of their employees in order to ensure professional advice and to meet current and future developments;

### ***Risk management***

12. Urges the Commission to bear risk management in mind and to undertake further studies on effective risk control;
13. Considers that, in the long term, the following matters, among others, should be examined more closely: the differing risks of the individual components of the value chain, and the risk profiles of individual products;

### ***European passports***

#### ***Product passport***

14. Points out that a harmonised simplified prospectus as requested by the Commission is a precondition for an effective product passport;
15. Draws attention to the different interpretations by national regulators of eligible assets falling within the scope of the Directive 85/611/EEC and, in the absence of coherence in national transposition of the directive, the differing requirements for the actual notification procedure and for the subsequent reporting of changes in fund composition and the fact that in practice the notification procedure has unintentionally become a licensing procedure;
16. Calls on the Commission to bring forward, as part of a more ambitious approach, a new and simplified notification procedure based on recognition of the authorisation by the competent authority of the Member State of origin, mutual recognition of the product passport, and regulator-to-regulator notification;
17. Points out that provisions on advertising and consumer protection are not harmonised; therefore asks the Member States and the supervisory authorities to step up their efforts to find practical solutions to these problems; stresses that advertising should not be misleading, encourages the industry and distribution companies to develop and implement a voluntary code of conduct, corresponding to MiFID, upon their own

initiative;

#### *Management company and depositary passports*

18. Regrets the unclear legal situation created by Directive 2001/107/EC and calls on the Commission to develop its work for achieving a real management company passport for this purpose, for which purpose enhancing the harmonised rules for management companies is a prerequisite;
19. Points out that it is already legally possible to use management company passports in Italy and the United Kingdom;
20. Believes that, in practise, it would be appropriate to adopt either a lead supervision or a clearly defined split supervision approach, this requires the development of coordination between supervisors and a precise and incontestable definition of the powers and responsibilities of the supervisory authorities concerned;
21. Does not consider that a depositary passport is feasible in the short term as long as the precondition for its creation, namely the harmonisation of the role and responsibilities of the depositor, is not yet met and, therefore, close cooperation between supervisory authorities to facilitate convergence and European harmonisation is necessary; but would, on the other hand, welcome the use of the possibility of cross-border delegation of pure custody function, this delegation remaining a decision of the depositary to guarantee a high level of investor protection;

#### *Fund processing standardisation*

22. Points out that the inefficiency of fund processing is an obstacle to further growth;
23. Emphasises that order processing and settlement of funds are different from the clearing and settlement of securities, order execution and settlement often being an integrated process;
24. Calls on the industry to step up its own initiatives, in coordination with the Commission and regulators if called on by the industry, to develop an operational, standardised and consistent European model for fund processing in a secure environment, thereby making it possible to reduce costs; suggests that this would lead to the development of uniform common standards;
25. Supports the greater use of electronic fund processing through the creation of common standards;

#### *Cross-border consolidation*

26. Notes that the size and number of European funds is sub-optimal and that greater consolidation would bring lower costs and/or higher net returns for investors; notes also that greater flexibility and higher product quality, especially aiming at more cross-border competition in accordance with European competition law would be beneficial;

27. Does not consider that delegation is the optimum solution in all cases because of the additional costs of local employees and the fact that certain functions cannot be delegated;
28. Calls on the Commission to continue to identify and eliminate obstacles to a real internal market in particular as regards the treatment of cross-border mergers and different kinds of cross-border pooling; draws attention to the importance of tax barriers, the limited scope for applying tax concessions to external funds, the *de facto* double taxation of foreign funds and the interpretation of cross-border and domestic mergers and pooling as a taxable event; believes that a new legal basis is required and suggests that the Commission should be guided by the principles set out in Directives 2005/56/EC on cross-border mergers of limited liability companies<sup>1</sup> and 90/434/EEC<sup>2</sup> on taxation of mergers;
29. Notes that the industry would like to develop cross-border pooling starting from existing national experiences, such as, for instance, domestic master-feeder structures in France, Spain and Luxembourg, but anticipates that the total costs (including load fees) of such arrangements must be made clear to the investor;
30. Calls on the CESR and the CEIOPS to work towards greater regulatory convergence in pooling and considers that in the field of pensions, cooperation between the Committees is necessary;
31. Points out that an amendment to Directive 85/611/EEC is necessary to allow master-feeder structures;
32. Stresses that both kinds of pooling (entity pooling and virtual pooling) must be possible and that a dialogue of supervisory authorities is necessary to enable pooling to function effectively;
33. Points out, however, that, alongside tax harmonisation, the focus should be on ensuring the convergence of the general legislative and regulatory conditions and that measures for cross-border consolidation should not be allowed to result in a small number of large management companies in a dominant position distorting competition;

### ***Distribution structure***

34. Welcomes, in principle, the creation of an open architecture through competing channels of distribution;
35. Encourages the industry to develop further direct distribution via the Internet but with appropriate investor safeguards;
36. Regrets, however, that in a number of Member States, distribution and sales often remain locally based, with very limited competition;
37. Has reservations concerning the fixing of prices, their transparency in terms of distribution costs and the charges imposed by distributors for third-party funds, and calls

---

<sup>1</sup> OJ L 310, 25.11.2005, p. 1.

<sup>2</sup> OJ L 225, 20.8.1990, p. 1.

on the Commission to investigate this from a competition law perspective; considers that this requirement should be extended to all financial products which are sold to retail investors in order to prevent distributors from applying unfair prices;

38. Advocates uniform rules on distribution and advice on each product sold to small investors; in particular the distributor should disclose value chain costs to the client; points out, once again, that all disclosure requirements should apply not only to UCITS but equally to all competing products; suggests that the functions of asset management, pooling and distribution, as well as all related costs and fees, must be clearly defined and disclosed to the client;

### ***Investment policy***

39. Considers it to be essential that the investments eligible for UCITS should be extended and adapted in line with changes and innovations in the market and should be subject to a uniform pan-European definition;
40. Believes that investors should be informed if there is a change in investment structure, that does not respect the strategic allocation of the fund assets previously defined; considers that inducements received from third parties need to be disclosed to the client;
41. Points out that information given to investors should also cover any changes in the risks to which the investor is exposed as the result of restructuring;
42. Welcomes the CESR advice on eligible assets for investments of UCITS and supports the inclusion of listed real estate investment trusts, private equity funds and certificates among the eligible assets for investment and calls on the Commission to examine with all stakeholders whether a provision on the basis thereof can be achieved without primary legislation; regrets, however, that funds of hedge funds have remained outside the CESR mandate; calls on the Commission to examine whether a provision to this effect should be incorporated into the scheme of Directive 85/611/EEC; stresses that UCITS must continue to fulfil the risk-management requirements set out in the directive as well as Commission Recommendation 2004/383/EC<sup>1</sup> on the use of financial derivative instruments for UCITS while leading to common risk management practices;

### ***Excursus: Non-UCITS investments***

43. Notes that although real estate investment funds, hedge funds, funds of hedge funds, private equity funds, certificates, and pension funds do not fall within the scope of the Directive 85/611/EEC, they are becoming increasingly popular types of investment;
44. Calls on the Commission to continue to monitor the situation with regard to non-UCITS investments and to inform the Parliament in the very near future of the advantages and other effects of regulation for suitable investors in such investments, including consideration of the following measures: on the one hand, the creation of a pan-European private placement regime and a study concerning the mechanism for making such products eligible for retail investment when this becomes desirable, and, on the other, the establishment of a pan-European framework for indirect investments in real estate;

---

<sup>1</sup> OJ L 144, 30.4.2004, p. 34.

45. Calls on the Member States, in accordance with the pension fund directive, to permit the full or partial transfer of the asset management function of pension funds to other undertakings;

### ***Supervision***

46. Draws attention to the importance of the coherent transposition and implementation of EC legislation, of the Level-3 committees, and of cooperation between them;
47. Asks the national supervisory authorities to cooperate more closely, in particular to ensure access to information for supervisory authorities from other Member States and draws attention to the importance of regulatory arbitrage; notes that this is of considerable importance, particularly because of the anticipated growth in cross-border sales of fund products to non-professional investors, the expansion of electronic marketing and advisory channels and the interest expressed by the fund industry and its financial partners in the banking and insurance sectors in a pan-EU management company passport;
48. Calls on the Commission to foster contacts with third-country supervisory authorities in order, *inter alia*, to update them about changes to EC legislation and to reassure them about the quality of UCITS products;

### ***Lamfalussy***

49. Recognises that, based on the successful experience of directives already transposed, such as Directives 2003/6/EC<sup>1</sup> relating to market abuse and 2003/71/EC<sup>2</sup> on the prospectus, the Lamfalussy approach has, in many areas, been playing an important role in improving and ensuring an effective and consistent implementation of measures throughout the EU;
50. Points out that it would be beneficial if the Level 3 committees adhered more closely to the principles of simplicity, clarity and practicability and developed more common methods among themselves;
51. Notes that the Lamfalussy process did not exist when Directive 85/611/EEC was adopted, and that, because of the detailed legislation currently in force, Directive 85/611/EEC cannot be transformed into a Lamfalussy-style directive without being completely revised and restructured; does not consider this to be appropriate at present but believes that it would be worth considering if measures taken in the near future are not effective;
52. Welcomes the fact that some Lamfalussy-style mechanisms are already being applied, for instance the consultation and cooperation of all stakeholders and the convergence of best practices, and recommends, as a practical solution, that legislative amendments to Directive 85/611/EEC, as amended by UCITS III, should be compliant with Lamfalussy;
53. Encourages the Council and the Commission to conclude, in a satisfactory manner for all parties, the current negotiations on comitology so as to give the Parliament full call-back rights in all comitology procedures related to codecision procedures; considers that the

---

<sup>1</sup> OJ L 96, 12.4.2003, p. 16.

<sup>2</sup> OJ L 345, 31. 12. 2003, p. 64.



conclusion of such an agreement is a precondition for the continuance of the Lamfalussy process;. recalls that sunset clauses as regards key financial services directives such as MiFID and the forthcoming recast directives on credit institutions and capital adequacy of investment firms and credit institutions will become effective on 1 April 2008 if no full call-back right is given to the Parliament before that date;

o

o o

54. Instructs its President to forward this resolution to the Council and the Commission.