

Procedure file

Basic information		
INL - Legislative initiative procedure	2007/2239(INL)	Procedure completed
Transparency of institutional investors		
Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs		19/11/2007
		PPE-DE LEHNE Klaus-Heiner	
	Committee for opinion	Rapporteur for opinion	Appointed
	ECON Economic and Monetary Affairs (Associated committee)		11/12/2007
		ALDE BOWLES Sharon	
European Commission	Commission DG	Commissioner	
	Secretariat-General	KALLAS Siim	

Key events			
15/11/2007	Committee referral announced in Parliament		
15/11/2007	Referral to associated committees announced in Parliament		
26/06/2008	Vote in committee		Summary
09/07/2008	Committee report tabled for plenary	A6-0296/2008	
22/09/2008	Debate in Parliament		
23/09/2008	Results of vote in Parliament		
23/09/2008	Decision by Parliament	T6-0426/2008	Summary
23/09/2008	End of procedure in Parliament		

Technical information	
Procedure reference	2007/2239(INL)
Procedure type	INL - Legislative initiative procedure
Procedure subtype	Request for legislative proposal

Legal basis	Rules of Procedure EP 47
Stage reached in procedure	Procedure completed
Committee dossier	JURI/6/55879

Documentation gateway

Committee draft report		PE404.615	01/04/2008	EP	
Amendments tabled in committee		PE405.821	08/05/2008	EP	
Committee opinion	ECON	PE402.527	28/05/2008	EP	
Committee report tabled for plenary, single reading		A6-0296/2008	09/07/2008	EP	
Text adopted by Parliament, single reading		T6-0426/2008	23/09/2008	EP	Summary
Commission response to text adopted in plenary		SP(2008)6073	17/10/2008	EC	
Commission response to text adopted in plenary		SP(2008)6487/3	29/01/2009	EC	

Transparency of institutional investors

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.

Transparency of institutional investors

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 *vis-à-vis* 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 *vis-à-vis* 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.