

18. Alternative Investment Fund Managers (Hedge Funds and Private Equity)

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ABI Lead Committee: Investment Committee

Other interested committee: European Committee

Issue: As part of its response to the financial crisis, the European Commission proposed a draft Directive in April to regulate Alternative Investment Fund managers (including hedge funds, private equity, property funds, commodity funds and any other collective investment schemes).

Status: Despite numerous council working groups, the Swedish Presidency has been unable to secure a “general approach”. On 17th December COREPER adopted the Presidency’s “progress report” which outlined four areas that are still open for discussion: third countries, depositaries, valuation and remuneration. The Spanish Presidency will seek to get an agreement early in its Presidency.

The European Parliament has appointed Jean-Paul Gauzès (EPP, FR) as the Rapporteur, Robert Goebbels (LUX) is the S&D shadow, Wolf Klinz for ALDE, and Syed Kamall for ECR. The ECON Committee has already had two exchanges of views on AIFM, and held a hearing with experts on 10th November. Unsurprisingly, there was a wide range of opinion from MEPs, all of which revolved around the controversial issues of third country AIFM/AIFs, leverage, depositaries, shortselling, transparency of private equity firms, thresholds.

On 1st December, ECON discussed Gauzès draft report (180 amendments) His amendments overall improve the original proposal. However, further amendment is necessary. He has also introduced clauses on remuneration. However, unlike the Council drafts it is far more high-level principles and therefore

At the request of ECON MEPs, the Parliament conducted an impact assessment on the proposal. The conclusions included a one-off compliance cost of €110m and €2.2bn in total for hedge funds, private equity and venture capital (€1.1bn to €22bn for the non-UCITS sector as a whole), and a fall of 0.1-0.2%; in the annual growth rate of EU GDP;

The Parliamentary timetable going forward is:

- Deadline for tabling amendments: 21 January 2010
- Discussion on the amendments: 22-23 February 2010
- 2nd discussion on the amendments: 16-17 March 2010
- Vote in the ECON Committee: 12 April 2010
- Trilogues with the Council and Commission: May 2010
- Vote in plenary: July 2010

ABI Action: The ABI has and will continue to meet with representatives from HMT and FSA, officials at the European Commission and MEPs.

The ABI and EUMedion (from the Netherlands) co-signed a letter to Commissioner McCreevy outlining the concerns of institutional investors about reducing choice of investment opportunities, for example through limiting access to third country funds, and the costs of compliance, due to the complexity and duplication of requirements in other legislation being borne by the investor.

A series of position papers has also been drafted and circulated, and the ABI has drafted and circulated amendments to the text for the Parliament.

ABI representatives had a successful visit to Paris to visit the Tresor and AMF and a further visit is planned to Berlin to put across our views as investors in alternative investment funds.

Background: The proposed Directive seeks to regulate all alternative investment fund managers that are not regulated under UCITS and who market funds to professional investors. It proposes the registration and authorisation of AIFM in the EU, outlines certain information requirements to regulators and investors, and sets out certain risk management and other requirements (such as a limitation of leverage).

We understand the need for regulators, and indeed the market, to have access to information that enables them to anticipate and address systemic risk. We are supportive of this objective. We also strongly support the concept of passporting because this will add to investors' choice across the EU and be a further step forward in the creation of a single financial market.

However, there is considerable work to be done to ensure a workable and beneficial Directive. Many of the requirements risk stifling the market, reducing choice for investors and raising costs with no added value to investors. We will be working closely with policymakers and stakeholders to overcome these problems. Some of our primary concerns include: the strict limitations placed on the freedom of third country AIFM to offer/market funds to EU investors, the unlimited liability being placed on the depositary and the need for it to be an EU based credit institution, the possibility of limits on leverage, the overlap with existing legislations such as MiFID and UCITS, and the discriminate disclosure requirements for private equity companies (vis-à-vis other privately owned companies).

Useful documents:

[Commission's AIFM proposal](#)

[Gauzès draft report](#)

[ECON Working document](#)

[Swedish Presidency's progress report](#)

[Swedish Presidency's last compromise text](#)

[ABI's response to the Commission's consultation on hedge funds](#)

[European Parliament Impact Assessment - report](#)