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## People & Markets - News

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### AIFM wrangles continue, but is the EC softening its stance?

Hedge fund industry insiders have welcomed an increasingly conciliatory tone emanating from the European Commission, with commissioners conceding more work is needed to make the existing draft of the Alternative Investment Fund Manager directive workable.

To accommodate extra consultation, a new timetable has been put in place, with discussions beginning next month, and regulation set to be implemented next summer.

On the face of it, that seems good news for the industry, **but** it might not be that simple. Christopher Miller, CEO at Allenbridge HedgeInfo, a London-based hedge fund research company, said the new timetable might be a delaying tactic: the current Swedish presidency is thought to be sympathetic to industry concerns, **but** the new timetable means implementation will now come under the watch of Spain, thought to be against diluting the proposals.

Ugo Bassi, head of the asset management unit within the Commission's internal market directorate, was quoted in the UK press last week as admitting the **AIFM** directive needed amending to ensure it dovetailed with existing practices and legislation.

The hedge fund industry has been vocal in **its** criticism that proposals are not workable, and amount to protectionism masquerading as regulation, for example in forcing prime brokers to be EU credit institutions (see "European prime brokerage under attack", IFR 1783).

Bassi also conceded the directive needed to make better distinction between the numerous different types of funds covered by the directive – another key criticism of the proposals.

Yet the debate remains as divided as ever. Poul Nyrup Rasmussen, the leader of the European Socialist Party and some say chief architect of the **AIFM** directive, has said he remains unconvinced about any arguments that have been made against the directive.

Miller remains cautiously optimistic that European policymakers seem more willing to engage in dialogue about fund regulation. **But** he warned that the flip side of the coin – further delays to the resolution of the matter – would further damage to the industry.

This will see fund management business potentially moving key, highly paid personnel out of Europe, while new businesses opt to set up in Switzerland, the US or Singapore.

This damage is already being felt, with London hemorrhaging staff to lower cost centres.

"It's hard to tell if hedge fund managers are leaving London because of the EU directive, because of the UK tax rate, or both. **But** they know when they are not wanted and they are spending their bonuses elsewhere," said Miller.

Although the Alternative Investment Management Association and many fund managers publicly concede some kind of regulation is a good idea, not everyone is convinced of the case for any buy-side regulation. Law firm Dechert argued regulation should apply to all market participants.

"If certain behaviour – be it directional shorting, 'excessive' leverage or opacity – is thought to present, for example, a systemic risk [an argument which is far from conclusively made out by the directive's explanatory notes], there seems to us to be no logical basis to single out only one specific group of market participants that could engage in such behaviour," Dechert wrote to the UK's House of Lords in **its** consultation over the **AIFM** directive.

The Commission itself acknowledges the systemic risk posed by hedge funds through leverage is minimal, **its** own figures putting average leverage levels between 1.4 to 1.7 times capital.

"It would seem more logical for the focus of the regulatory attention to be the debt markets or banking institutions rather than investment structures that are primarily equity-driven," Dechert said.

Even the passporting system, which it said "is, in theory, to be welcomed" – and which AIMA has backed – will in practice "help neither the interests of the UK nor EU market if it effectively serves to deprive the market of access to third country managers and funds", Dechert concluded.

**Solomon Teague**

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