

Christopher Miller, 29 April 2009

The daft draft EU directive on Alternative Investment Fund Managers

The problem

If you have any interest in investment, free markets, hedge funds or private equity, then the draft EU directive on Alternative Investment Fund Managers is a problem that could even get worse. This is due to a very vocal minority, primarily the European Socialist Party, led by Poul Nyrup Rasmussen. While the debate may simply make them look like fringe lunatics, unless we speak up, there is a very real danger that the Directive will come into force as it is or worse. We have been liaising with AIMA and intend to leave them to comment on the specific implications, as a unified response is very important.

Gold plating?

What we have seen of the Directive at the pre-draft and draft level is far in excess of what seems to have been suggested by authoritative reports on the financial crisis, such as the Turner report, the de Larosière report and the G30 framework for financial stability. And Mr Rasmussen's arguments to strengthen it further seem to come from a parallel universe in which the EU's global competitiveness is less important than short-term interests.

Minimal consultation

He said: "There has been a consultation in which industry had every opportunity to give their views..." Why then are the proposals such a surprise to everyone in the industry, and indeed to many politicians?

Hedge funds are not the problem

All the formal analyses of the recent crisis including the aforementioned reports clearly state that hedge funds and private equity are not the problem to be solved, so it is surprising that Poul Nyrup Rasmussen has said that the proposed directive is "unacceptably weak".

Naked short selling is a US, not EU issue

He writes to José Manuel Barroso, saying that "...the regulation of naked short selling remains an item of utmost important (sic) and needs to be addressed within the new regulatory framework." But naked short selling is a US, not EU issue.

Political promises

He also demanded "...appropriate regulation that really does cover hedge funds and private equity as you promised." Politicians rarely promise specific things, and in this case the promise seems carefully defined. Hopefully the appropriate outcome will be driven by an appropriate debate, with appropriate reference to expert and independent research, not by inappropriate rhetoric.

Systemically important

The authoritative reports suggest that there is an argument for more oversight only of systemically important alternative investment funds, but Poul Nyrup Rasmussen has driven the threshold to €100m because "We think all funds, of any size should be subject to the provisions of the directive as a matter of principle." It is not clear what that principle is, but perhaps the fact that it is unelaborated gives us a clue that this is not about encouraging free enterprise.

Regulate everything?

It is also a worry that Poul Nyrup Rasmussen thinks that statements by individuals, such as that by President Sarkozy in the European Parliament on October 21 last year are binding in law. President Sarkozy said that "No financial institution, private or public, should escape regulation." But Poul Nyrup Rasmussen seems to be redefining "institution" to mean "alternative investment fund".

Less fiscal revenue for the "good works"

We believe strongly that socialism has a place in society, alongside free enterprise, and the welfare state is of benefit if it does not create excessive anti-darwinist tendencies. However it is the private sector, and especially financial services, that have been financing the welfare state. So if the short-termist electioneering socialists get their way, there will ultimately be less fiscal revenue for the "good works".

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