

THE EUROPEAN AIFM DIRECTIVE AND EU PROCEDURE – BVCA UPDATE

DATE: 2 October 2009

The origins of the Directive lie in two reports which made their way through the EU Parliament in 2008 and the pressure which has been applied to the Commission consistently since 2007.

The procedure under which the fate of the Directive will be determined is set out in Article 51 of the EU Treaty, and in this diagram: http://ec.europa.eu/codecision/stepbystep/diagram_en.htm

The essence of the procedure is that both the Council of Ministers and the European Parliament must agree a Directive in identical form for it to become law and there is a multi-stage procedure for this. As the diagram illustrates, it is a process that can last for months and in some circumstances even years.

COUNCIL OF MINISTERS

A small working group of officials (drawn equally from each member state) has been meeting in Brussels to go through the original Commission proposal clause by clause since shortly after the Directive was published. This is overseen by the country which holds the rotating EU presidency (now Sweden, then Spain in the first six months of next year and Belgium for the rest of 2010). Any amendments made to the original draft have to be set out by the chair (individual nations cannot simply demand a vote on their preferred alterations). A set of technical meetings were held before the summer and over August, Sweden produced an options paper setting out potential next ways forward on the key issues of concern within the directive. The BVCA submitted an alternative version of the directive to HMG and this was incorporated in their submission to the Swedish presidency over August. Virtually all our suggestions made it in to the options paper the Swedes tabled at the beginning of September.

Sweden hopes to complete the Council process on the technical side before the end of December meaning, in ideal circumstances, that it would also receive political approval of that package within the Council by the end of 2009 as well. Most observers (and, more significantly, the Parliament) consider this to be an ambitious schedule which is unlikely to be realised. At best, therefore, it is likely that the Swedes will complete work on the technical side in the areas where it proves possible to reach a consensus with officials conducting the ongoing negotiations, but the areas of disagreement which can only be settled at a political level are likely to be passed on to the Spanish presidency.

In Council negotiations so far, France is seen to be far more hostile to hedge funds than private equity. Germany has been virtually immobilized given its focus on the federal elections there. The comfortable victory for Angela Merkel's CDU on 27 September, however, should lead to a coalition with the economically liberal FDP, and it is thought that could well mean a more sympathetic hearing for our issues (compared with the previous administration with the left of centre SPD). A new coalition Government is expected to be formed within a month.

EUROPEAN PARLIAMENT

The EU Parliament is based on its 20 committees rather than, as in the UK, the chamber itself. The principal committee which will oversee the Directive at this end is the ECON, or Economic and Monetary Affairs Committee (although Legal Affairs – JURI - will have a secondary impact too). That committee consists of 48 members under the chairmanship of a British pro-market Liberal Sharon Bowles MEP who as Chairman will be very influential on the process. There are five other British MEPs on the committee (who will hence be very important actors for the BVCA). These are Arlene McCartney (Labour) who is a Vice-Chairman of the Committee, Geoffrey Bloom (UKIP), Vicky Ford (Conservative), Peter Skinner (Labour) and Kay Swinburne (Conservative). BVCA is and will continue to engage actively with these individuals.

The process of managing the passage of a Directive through the committee falls to a Rapporteur, confirmed on 2 September as Jean-Paul Gauzes, a French MEP from the European Peoples' Party. An initial – fairly encouraging - session was held on the directive on the same day but the bulk of the work will begin later this month.

Amendments to the original text need to be approved by a simple majority of the whole committee. That version then needs to be approved by a simple majority of the whole Parliament. In theory, either because the committee chooses to adopt very few amendments to the Directive, or because their thinking on amendments is very similar to that of the Council, the process of seeing through the Directive could occur before the end of this year. In practice, because the number of amendments likely to be considered in this case is sizeable (possibly as many as 1000 will be tabled) and will inevitably differ in detail even if not necessarily in direction from the Council, the process of bargaining between Council and Parliament is likely to stretch (well) into 2010.

The current indicative timetable for the Parliament is as follows:

*	Second EV (with working doc)	6 Oct 2009
*	Hearing	9-10 November 2009
*	Presentation of draft report	1-2 December 2009
*	Deadline for amendments	21 January 2010
*	Consideration of amendments	22-23 February 2010
*	2nd consideration of amendments	16-17 March 2010
*	Vote in ECON	12 April 2010
*	Trialogues with Parliament/ Council /COM	May 2010
*	Vote in plenary (i.e. full session of parliament)	July 2010

WHO DOES WHAT AND WHEN? / BVCA ACTIVITY

- The BVCA has been continually engaged with the process at a UK level since the end of last year. That engagement stepped up considerably since the publication of the directive itself, and we have been in constant contact with the HMT and FSA team leading the UK response to the legislation, including being represented on the government's working groups which looked at the specific issues, as well as making the case at a number of ministerial meetings.
- There is then a specific structure in place at the European level¹ to focus solely on the directive, and the BVCA is a key part of this, coordinating activities across the EU. We have been focusing directly on the UK Treasury and FSA, as well as UK MEPs and of course the EU institutions.
- The Regulatory Committee has produced additional information - requested by HMT - on some key issues in the directive, namely capital requirements, valuation and custody. They are working with the EVCA Technical Committee in considering the 'Options paper' produced by the Swedes and will be providing their comments.
- Members of the BVCA executive will meet with UK MEPs and their key staffers on the Economic and Monetary Affairs Committee in Brussels.
- On the basis that the final and most crucial stage of negotiations on the Directive may well take place after a UK general election next spring, the BVCA is also liaising directly with key figures inside the Conservative Party to inform them of developments with the Directive.

PROGRESS TO DATE

It is clear that progress has been made on the content of the legislation since it was first published. There is support for (at least some) amendments to key areas such as marketing, third country provisions and independent valuers. However, there are areas where progress has not been as encouraging, such as capital requirements, and significantly there is a possibility that the overall threshold (EUR500m, which was raised from EUR250m just before publication) could be lowered. The BVCA is clear that this would be unacceptable and is continuing to make the case for a higher threshold (or to remove it entirely), as well as pressing in all our other key areas.

HOW CAN YOU HELP?

In addition to contacting us direct if you would like to lend support over and above what you are already committing, the most powerful thing would be to contact your investors and ask them to write direct to key decision makers (see attached note on this issue).

¹ The Public Affairs Executive is the new EVCA permanent body which deals with public affairs issues; the European Private Equity Roundtable is the ad hoc body which has been established to focus specifically on the AIFM; the Brussels Taskforce is the precursor to the roundtable (though it is still standing and feeds in to it). The BVCA is represented on all three bodies. A new EU Venture Capital Group has also been established and will work in coordination with these bodies to make the specific case for venture.