

THE CONTINUING DEBATE AROUND THE EU FUNDS DIRECTIVE - SJ BERWIN

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The proposed Alternative Investment Fund Manager's Directive continues to prompt controversy despite an acceptance that a certain level of EU regulation will be imposed on the hedge and investment fund industry, says Isabel Rodríguez, partner with SJ Berwin

'Legislation was to be debated at the Ecofin meeting in March but was removed from the agenda at the last minute. Things continue to change but the perception is that Spain, which currently holds

the EU presidency, wants to build a consensus rather than push the Directive through – and for it to be adopted before the end of its term in June.'

The concern of the Spanish funds sector is of over-regulation, she says. Few domestic funds exceed €500m, which the Directive specifically targets, and are already subject to Spanish Securities and Exchange Commission regulation. There are concerns among smaller players that international investors may end up focusing only on those funds regulated by the Directive and so funds will be forced to adapt to it even if below the threshold. 'There is an issue of proportionality. The industry believes that the Directive should target only the largest funds, over \$1bn. But issues in any event surround fund valuation, which is only really known when holdings are divested.'

Closed funds with no periodic redemptions are difficult to value and the proposal of an independent third-party valuer will not make this any easier. The EVCA guidelines are already the industry standard, she says. 'Third party valuation or depositary requirements would, in many occasions, imply no more than an increase of costs with no real benefit.' Other issues perceived as presenting potential discrimination against the sector, include disclosure information obligations, maximum debt ratios, leverage caps at fund levels or lock-in period for investments made by the funds.

'Companies would be placed in a different competitive position just because they are participated by a PE fund. On the other hand, some of these amendments may damage the contribution of PE to the financing of the real economy and its capacity to bring solutions to companies.'

The regulatory and administrative burden of the AIFM will also have a direct impact on management costs and smaller funds cost-effectiveness and attraction, while concerns also surround the position of funds domiciled outside the EU.

'A consensus is emerging around the need for an equivalence system, particularly to ensure that non EU funds – because of their scale and investor importance – are not disadvantaged. The industry is prepared to work on regulatory proposals that address real concerns but the belief remains that the Directive should not be used as a tool to break up the sector at the same time.'