

VENTURE CAPITAL FUNDS AND SOCIAL ENTREPRENEURSHIP FUNDS

Reference documents: Regulation 345/2013 on European Venture Capital Funds and Regulation 346/2013 on European Social Entrepreneurship Funds.

Links: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0018:0038:EN:PDF>
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0018:0038:EN:PDF>

Date of entry into application: 22 July 2013

Introduction

On 7 December 2011, the European Commission (EC) published two proposals for regulations, aimed at establishing a common framework for European venture capital funds and European social entrepreneurship funds in order to help SMEs obtain financing via such funds.

Common rules applicable to venture capital funds and social entrepreneurship funds:

- Creation of a European label for European venture capital funds and European social entrepreneurship funds with 3 essential definition criteria: (1) the fund must invest at least 70% of the capital contributed by its clients in SMEs; (2) it must provide funding to these SMEs in the form of equity or quasi-equity; and (3) it must not use leverage for the fund (i.e. the capital it invests must not exceed the capital committed by investors).
- The two documents only apply to managers of collective investment undertakings other than UCITS in accordance with Directive 2009/65/EC (UCITS IV) established and registered in the European Union.
- Threshold for assets under management: the document only applies to fund managers whose assets under management do not exceed €500 million.
- Eligible investors: professional investors within the meaning of MiFID and certain other traditional venture capital investors (such as high net worth individuals or *business angels*) if they undertake to invest at least 100,000 Euros in the fund, and if the fund managers comply with certain procedures giving them reasonable assurance that these investors are capable of making their own investment decisions and understanding the risks involved.
- European Passport: making it possible to market such funds with eligible investors throughout the EU.
- No obligation to use a depositary: the initiative makes no mention of a depositary, which seems to be a regression on the current French model and on the AIFM Directive concerning investor protection.
- No organisational rules, risk management rules or precise valuation rules. Only five major principles have been laid down for fund managers: (1) they must be competent and diligent in their activities, (2) implement policies and procedures to avoid bad practices, (3) act in the interest of the fund and clients while respecting market integrity, (4), exercise due diligence in the selection of companies and their management within the portfolio, (5) have an appropriate level of knowledge.

Current situation:

- 31/05/2012: Vote by ECON Committee
- 12/09/2012: Partial vote in plenary without legislative resolution (after successfully concluding the trilogues, the Council has reneged in its agreement in order to prevent the EU Parliament fighting too effectively against tax havens)
- 15/03/2013 : Formal Approval by EU Council
- 25/04/2013: Publication in Official Journal of the EU (L 115/1 and L 115/18)

Level 2 measures

- Since December 2013: ESMA website hosts a Central Databases of registered EuVECA/EuSEF managers
<http://www.esma.europa.eu/page/Venture-Capital-and-Social-Entrepreneurship-Funds>
- 13/2/2014 : ESMA submitted to the EC the draft ITS determining the format of the notification envisaged in Article 16.1 EuVECA and 17 EuSEF – To be endorsed by EC
- 4/6/2014: Publication in the OJEU (L. 165/41 and 44) of the Implementing Regulations Nr 593/2014 and Nr 594/2014 (endorsement of ITS) laying down ITS with regard to the format of the notification according to Article 16.1 of EuVECA Regulation and Article 17 EuSEF
- 11/11/2014: ESMA published a Q&A on the application of the EuVECA/EuSEF Regulations
- 3/2/2015: Publication of ESMA Final technical advice to the EC on the delegated acts.