

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>

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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.

Previous steps :

- 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)
- **22/07/2013 : The EuVECA and the EuSEF Regulations came into force**

- Since December 2013: ESMA website hosts a Central Databases of registered EuVECA/EuSEF managers
- 13/02/2014 : ESMA submitted to the European Commission the draft ITS (Implementation Technical Standards) determining the format of the notification envisaged in Article 16.1 EuVECA and 17 EuSEF
- 04/06/2014: 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 Regulation
- 03/02/2015: Publication by ESMA of its Final Technical Advice to the European Commission on delegated acts of EuVECA and EuSEF Regulations
- 30/09/2015: The Commission has launched a consultation on the review of the Regulations EuVECA and EuSEF with the aim of increasing the uptake of these funds. These specialist venture capital investment funds have been available since 2013 but only a small number of funds set up as EuVECA and EuSEF have so far been launched.
- 14/07/2016: Following the consultation, the Commission has published propositions of amendments to EuVECA/EuSEF regulations, with the aim of facilitating greater adoption of these fund designations by managers.

The Proposal will amend the regulations in **three main ways**:

- * extending the range of managers eligible to market and manage EuVECA and EuSEF funds
 - * increasing the range of companies that can be invested in by EuVECA funds
 - * and making the registration and cross border marketing of these funds easier and cheaper.
- 24/10/2016 : The Council of the EU has published a compromise proposal relating to the proposed Regulation amending the EuVECA and EuSEF Regulations.
 - 26/10/2016 : The European Parliament has published a note related to the legislation procedure of amendment to EuVECA and EuSEF Regulations.

Next steps:

The European Parliament will analyse the Commission proposals.

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