

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:2013:115:0001:0017: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

Presentation

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 database 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 of EuVECA Regulation and 17 of EuSEF Regulation
- 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 of 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 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 EuVECA eligible assets;
 - * 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.
 - 30/05/2017: Publication by the European Commission of a press release on the agreement by the Council and the European Parliament on the review of EuVECA et EuSEF Regulations.
 - 27/06/2017: The Council published the final text of the review of the EuVECA and EuSEF regulations in which the following key changes have been agreed:
 - * managers authorised as AIF managers will from now be able to market and manage these vehicles;
 - * the range of companies in which EuVECAs can invest is expanded to include unlisted companies with up to 499 employees (small mid-caps) and SMEs listed on SME growth markets;
 - * the text explicitly prohibits fees imposed by competent authorities of host Member States where no supervisory activity is performed. It simplifies the registration processes and also determine the minimum capital necessary to become a manager of EuVECAs and EuSEFs, i.e. EUR 50.000.
 - 14/09/2017: The Parliament gave its approval to the amendments proposed for EuVECA and EuSEF regulations.
 - 09/10/2017: The Council also adopted the amendments.

The text adopted (dated 20 september 2017) is here :

<http://data.consilium.europa.eu/doc/document/PE-37-2017-INIT/en/pdf>

- 10/11/2017: Publication in the Official Journal of the European Union of Regulation (EU) 2017/1991 amending regulations on EuVECA and EuSEF

http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=uriserv:OJ.L_.2017.293.01.0001.01.FRA&toc=OJ:L:2017:293:TOC

This regulation enters into force on the twentieth day following its publication on the Official Journal of the EU. It applies from 01/03/2018.

INITIATIVE ON CROSS-BORDER FUND DISTRIBUTION amending rules for EuVECA and EuSEF:

- 12/03/2018: As part of the implementation of the Capital Market Union (CMU), the European Commission has published a proposal of Regulation to amend EuVECA and EuSEF Regulations

<http://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-110-F1-EN-MAIN-PART-1.PDF>

This proposal of Regulation would amend the EuVECA and EuSEF Regulations to add the concept of pre-marketing to allow managers of such funds to engage in pre-marketing in the EU.

- 15/06/2018: the Council published a revised version of the legislations focused mainly in the definition of pre-marketing
- 18/09/2018 and 02/10/2018: ECON (the European Parliament's Economic and Monetary Affairs Committee) published draft reports in which the rapporteur comments that he supports the European Commission's legislative proposals
- 03/12/2018: ECON has voted to adopt ECON draft reports and supports the EC proposals
- 01/02/2019: the Commission adopted Delegated Regulations supplementing EuVECA and EuSEF Regulations with regards to conflicts of interest
- 05/02/2019: After trilogues, between the 3 bodies (EC, Council and Parliament), a political agreement was reached on this legislative initiative
- 16/04/2019: the Parliament published the following text it has adopted on the reform to the cross-border distribution of collective investment funds which includes the concept of pre-marketing for EuVECA and EuSEF funds:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2019-0368+0+DOC+PDF+V0//EN>

14/06/2019 :Council adopted the proposal

Next steps:

- Publication expected by summer 2019
- The amended Regulation will enter into application 24 months after its publication