European venture capital funds

2011/0417(COD) - 13/09/2012 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted **amendments** to the proposal for a Regulation of the European Parliament and of the Council on European Venture Capital Funds.

The matter was referred back to the committee responsible and the vote was postponed until a subsequent plenary session.

The main amendments adopted by Parliament are as follows:

Purpose, scope and definitions: according to Parliament, the Regulation lays down uniform requirements and conditions for those managers of collective investment undertakings who wish to use the designation ' **EuVECA'** in relation to the marketing of qualifying venture capital funds in the Union, and thereby contributing to the smooth functioning of the internal market.

The amendments adopted clarify the following points:

- the Regulation applies to managers of collective investment undertakings whose assets under management in total do not exceed the threshold referred to in Directive 2011/61/EU, who are established in the Union and who are subject to registration with the competent authorities of their home Member State;
- venture capital fund managers registered under this Regulation **whose assets in total subsequently grow to exceed the threshold referred to in Directive 2011/61/EU**, and who therefore become subject to authorisation with the competent authorities of their home Member State in accordance with that Directive, may continue to use the designation 'EuVECA' in relation to the marketing of qualifying venture capital funds in the Union, provided that they comply with the requirements laid down in that Directive and that they continue to comply with this Regulation at all times in relation to the qualifying venture capital funds;
- venture capital fund managers that are registered in accordance with this Regulation may additionally manage UCITS subject to authorisation under Directive 2009/65/EC provided that they are external managers.

Definition of "qualifying venture capital fund": a collective investment undertaking that intends to invest at least 70 percent of its aggregate capital contributions and uncalled committed capital in assets. Parliament seeks to clarify the following points:

- the qualifying venture capital fund **never uses more than 30 percent of the fund's aggregate capital contributions and uncalled committed capital for the acquisition of assets other than qualifying investments**. This means that whereas the 30% should be the maximum limit for non-qualifying investments at all times, the 70 percent should be reserved for qualifying investments during the life time of the qualifying venture capital fund.
- The qualifying venture capital fund may not be established **in a tax haven or in a Non-Cooperative Country**, such as third countries characterised in particular by i) no or nominal taxes, ii) a lack of appropriate cooperation arrangements between the competent authorities of the home Member State of the venture capital fund manager and the supervisory authorities of the third country where the qualifying venture capital fund is established, or iii) a lack of effective exchange of information in tax matters.

Qualifying investments: these should be **in the form of equity or quasi equity instruments.**

- Qualifying venture capital funds should be permitted to acquire existing shares of a qualified portfolio undertaking from existing shareholders of that undertaking.
- For the purposes of ensuring the widest possible opportunities for fundraising, Members suggest that investments into other qualifying venture capital funds should be permitted, provided that those qualifying venture capital funds have not themselves invested more than 10 percent of their aggregate capital contributions and uncalled committed capital in other qualifying venture capital funds.

Conditions for the use of the designation "European Venture Capital Fund": Members consider that a venture capital funds manager may not employ at the level of the qualifying venture capital fund **any method by which the exposure of the fund will be increased beyond the level of its committed capital** , whether through borrowing of cash or securities, the engagement into derivative positions or by any other means.

Furthermore, the venture capital fund manager may only borrow, issue debt obligations or provide guarantees, at the level of the qualifying venture capital fund, where such borrowings, debt obligations or guarantees are covered by uncalled commitments.

In relation to the qualifying venture capital funds they manage, venture capital fund managers shall, among other things:

- act honestly, with due skill, care and diligence and fairly in conducting their activities;
- treat their investors fairly; and
- ensure that no investor obtains preferential treatment, unless such preferential treatment is disclosed in the rules or instruments of incorporation of the qualifying venture capital fund.

Delegation of functions to third parties: where a venture capital fund manager intends to delegate functions to third parties, **the manager's liability towards the qualifying venture capital fund and its investors shall not be affected by the fact that the manager has delegated functions to a third party**, nor shall the manager delegate to the extent that, in essence, it can no longer be considered to be the manager of the qualifying venture capital fund and to the extent that it becomes a letter-box entity.

It shall be incumbent upon the venture capital fund managers, at all times, to ensure that they are able to justify the sufficiency of their own funds to maintain operational continuity and disclose their reasoning as to why these funds are sufficient.

Annual report for each risk capital fund under management: this report shall also include a disclosure of the profits of the qualifying venture capital funds by the end of its life time and, where applicable, a disclosure of the profits distributed during its lifetime.

Audit: the audit shall confirm that money and assets are held in the name of the fund and that the venture capital fund manager has established and maintained adequate records and controls in respect of the use of any mandate or control over the money and assets of the qualifying venture capital fund and its investors, and shall be conducted at least once a year.

Investor information: venture capital fund managers shall, in relation to the qualifying venture capital funds they manage, inform their investors, **in a clear and understandable manner**, about the following elements prior to their investment decision

Registration: the competent authority of the home Member State shall only register the venture capital fund manager if it is satisfied that the persons who effectively conduct the business of managing the qualifying venture capital fund are of **sufficiently good repute** and are sufficiently experienced also in relation to the investment strategies pursued by the manager of the qualifying venture capital fund;

Supervision and administrative cooperation: the amended text stipulates that where the competent authority of the host Member State has clear and demonstrable grounds for believing that the venture capital fund manager is in breach of this Regulation within its territory, it shall promptly inform the competent authority of the home Member State accordingly, which shall take appropriate measures.

If, despite the measures taken by the competent authority of the home Member State or because the competent authority of the home Member State fails to act within a reasonable timeframe, or the venture capital fund manager persists in acting in a manner that is clearly in conflict with this Regulation, **the competent authority of the host Member State, may, as a consequence and after informing the competent authority of the home Member State, take all the appropriate measures needed in order to protect investors**, including the possibility of preventing the manager concerned from carrying out any further marketing of its venture capital funds within the territory of the host Member State.

Dispute settlement: in case of disagreement between competent authorities of home and host Member States, competent authorities may refer the matter to the European Securities and Markets Authority (ESMA), which may act in accordance with the powers conferred on it under Regulation (EU) No 1095 /2010.

Review: Members want that at the latest four years after the date of application of this Regulation, the Commission shall review this Regulation. The review shall include a general survey of the functioning of the rules in this Regulation and the experience acquired in applying them, including:

- the extent to which the designation 'EuVECA' has been used;
- the geographical location of qualifying venture capital funds and whether additional measures are necessary to ensure that qualifying venture capital funds are established in accordance with the Regulation;
- the geographical and sectoral distribution of investments undertaken by European venture capital funds;
- whether there is a need to adjust the qualifying investments in this Regulation;
- the possibility of extending the marketing of European venture capital funds to retail investors ;
- an evaluation of any barriers that may have impeded the uptake of the funds by investors.

By 22 July 2017, the Commission shall start **a review of the interaction between this Regulation and other rules on collective investment undertakings and their managers**, especially those of Directive 2011/61/EU. Following the review and after consulting ESMA the Commission shall submit a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal.