

Basic information	
<b>2011/0417(COD)</b>  COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
European venture capital funds	
Amended by <a href="#">2016/0221(COD)</a> Amended by <a href="#">2017/0230(COD)</a> Amended by <a href="#">2018/0045(COD)</a>	
<b>Subject</b>  2.50 Free movement of capital 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.10 Financial supervision	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ECON</b> Economic and Monetary Affairs	LAMBERTS Philippe (Verts /ALE)	25/10/2011
		Shadow rapporteur  HÜBNER Danuta Maria (PPE)  EL KHADRAOUI Saïd (S&D)  DE BACKER Philippe (ALDE)  KAMALL Syed (ECR)  KLUTE Jürgen (GUE/NGL)	
Council of the European Union	Committee for opinion	Rapporteur for opinion	Appointed
	<b>ITRE</b> Industry, Research and Energy	The committee decided not to give an opinion.	
	<b>IMCO</b> Internal Market and Consumer Protection	The committee decided not to give an opinion.	
	<b>JURI</b> Legal Affairs	STOYANOV Dimitar (NI)	25/01/2012
Council of the European Union	Council configuration	Meetings	Date

	General Affairs	3180	2012-06-26
	Competitiveness (Internal Market, Industry, Research and Space)	3147	2012-02-20
	Environment	3233	2013-03-21
European Commission	<b>Commission DG</b>		
	Financial Stability, Financial Services and Capital Markets Union		
European Economic and Social Committee			

Key events			
Date	Event	Reference	Summary
07/12/2011	Legislative proposal published	COM(2011)0860 	Summary
17/01/2012	Committee referral announced in Parliament, 1st reading		
20/02/2012	Debate in Council		Summary
31/05/2012	Vote in committee, 1st reading		
06/06/2012	Committee report tabled for plenary, 1st reading	A7-0193/2012	Summary
12/09/2012	Debate in Parliament		
13/09/2012	Decision by Parliament, 1st reading	T7-0346/2012	Summary
13/09/2012	Results of vote in Parliament		
12/03/2013	Decision by Parliament, 1st reading	T7-0071/2013	Summary
12/03/2013	Results of vote in Parliament		
21/03/2013	Act adopted by Council after Parliament's 1st reading		
17/04/2013	Final act signed		
17/04/2013	End of procedure in Parliament		
25/04/2013	Final act published in Official Journal		

Technical information	
Procedure reference	2011/0417(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amended by <a href="#">2016/0221(COD)</a> Amended by <a href="#">2017/0230(COD)</a> Amended by <a href="#">2018/0045(COD)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 114-p1

Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/08186

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE483.701	29/02/2012	
Amendments tabled in committee		PE486.144	29/03/2012	
Committee opinion	JURI	PE485.839	27/04/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0193/2012	06/06/2012	Summary
Text adopted by Parliament, partial vote at 1st reading /single reading		T7-0346/2012	13/09/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0071/2013	12/03/2013	Summary
Council of the EU				
Document type	Reference		Date	Summary
Draft final act	00073/2012/LEX		17/04/2013	
European Commission				
Document type	Reference		Date	Summary
Legislative proposal	COM(2011)0860 		07/12/2011	Summary
Document attached to the procedure	SEC(2011)1515 		07/12/2011	
Document attached to the procedure	SEC(2011)1516 		07/12/2011	
Commission response to text adopted in plenary	SP(2013)306		30/04/2013	
National parliaments				
Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2011)0860	01/03/2012	
Contribution	IT_SENATE	COM(2011)0860	06/06/2012	
Other institutions and bodies				

Institution/body	Document type	Reference	Date	Summary
ECB	European Central Bank: opinion, guideline, report	CON/2012/0032 OJ C 175 19.06.2012, p. 0011	25/04/2012	<a href="#">Summary</a>
EESC	Economic and Social Committee: opinion, report	<a href="#">CES1036/2012</a>	26/04/2012	
EDPS	Document attached to the procedure	N7-0122/2012 OJ C 335 01.11.2012, p. 0016	14/06/2012	<a href="#">Summary</a>

Additional information		
Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act		
Regulation 2013/0345 OJ L 115 25.04.2013, p. 0001		<a href="#">Summary</a>

Delegated acts		
Reference	Subject	
2019/2556(DEA)	Examination of delegated act	

## European venture capital funds

2011/0417(COD) - 07/12/2011 - Legislative proposal

PURPOSE: to lay down uniform requirements for using the designation "European Venture Capital Fund" in order to contribute to the smooth functioning of the internal market.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: venture capital provides finance to undertakings that are generally very small, in the initial stages of their corporate existence and display a strong potential for growth and expansion. While the United States, in the period from 2003-2010, channelled approximately EUR 131 billion into venture capital funds, European venture capital funds only managed to raise EUR 28 billion in this period. Compared with competing global centres of high-tech and innovation, most notably the United States, **the European venture capital industry is fragmented and dispersed**.

In the reference period 2003-2010, **funds dedicated to venture capital amounted to EUR 64 billion out of a total of EUR 437 billion invested in the wider field of private equity**. As long as this bias in favour of private equity - a sector that invests in mature companies and organises leveraged buy-outs - persists, available funds are not channelled to equity finance to seed and start-up ventures that are **at the make-or-break phase in their corporate development**.

The lack of financial resources that are currently directed towards venture capital is directly responsible for the sub-optimal size of the average European venture capital fund (VCF).

In consequence, **venture capital, at this stage, plays a minor role in the financing of SMEs**. The absence of an efficient venture capital sector leads to European innovators and innovative business ventures punching below their commercial potential. This, in turn, has negative consequences for Europe's global competitiveness.

Tackling these problems and supporting European entrepreneurs is therefore vital:

- a thriving European venture capital market is an objective of the overall **Europe 2020 Strategy**, while the European Council of February 2011 called for the removal of remaining regulatory obstacles to cross border venture capital;
- the European Commission undertook, in the **Single Market Act**, to ensure that by 2012 venture capital funds established in any Member State can raise capital and invest freely throughout the EU;
- a new framework for venture capital funds is also one of the key priorities of the **SME action plan** which aims at fostering the growth of SMEs by improving their access to finance;
- the Commission Communication entitled "**A roadmap to stability and growth**" also identified facilitating the access to venture capital as an important tool to boost growth within the EU.

The proposed Regulation is complementary to the **proposed Regulation on European Social Entrepreneurship Funds (EuSEFs)**. Both proposals aim to achieve different goals and both proposals, if adopted, will coexist as autonomous legal acts in mutual independence.

**IMPACT ASSESSMENT:** the Commission conducted an impact assessment of policy alternatives. These alternatives contain a wide range of possible options:

- introduce a new venture capital passport within Directive 2011/61/EC (AIFMD);
- lower or abolish the thresholds of the AIFMD;
- create special rules for venture capital as part of the implementing provisions of AIFM-D ('level 2');
- create a venture capital passport as a stand-alone legal instrument;
- create an administrative network to enforce mutual recognition of national rules governing venture capital or 'private placements'.

The assessment concluded in favour of the **creation of a venture capital passport as a stand-alone instrument**. The preferred option is expected to benefit venture capital fund managers by improving their operating conditions in the EU, which will then lead to compliance and administrative cost reductions, and opening up new fund-raising opportunities.

**LEGAL BASIS:** Article 114 of the Treaty on the Functioning of the European Union. (TFEU).

**CONTENT :** the proposal aims principally at improving the reliability and legal certainty of marketing activities undertaken by operators using the designation "European Venture Capital Fund", by introducing:

- **uniform requirements for the managers of collective investment undertakings** that operate under the designation "European Venture Capital Fund";
- **requirements as to the investment portfolio**, investment techniques and eligible undertakings that a qualifying venture capital fund may target;
- **uniform rules on which categories of investors** a qualifying venture capital fund may target and on the internal organisation of the managers that market such qualifying funds.

As managers of collective investment undertakings that operate under the designation "European Venture Capital Fund" will be subject to identical substantive rules across the EU, they will benefit from **uniform requirements for registration and an EU-wide passport**, which will help create a level playing field for all participants in the venture capital market.

In respect of the **registration and supervision of the managers of "European Venture Capital Funds"** the proposal aims at striking a balance between the need for effective supervision of European venture capital funds, the interest of the competent national authorities where such funds are either domiciled or offered to the eligible categories of investors and the coordinating role of **ESMA**.

The competent authority in the Member State where the manager of the qualifying "European Venture Capital Fund" is domiciled will verify the registration documents submitted by the applicant manager and, having assessed whether the applicant provides sufficient guarantee of its ability to comply with the requirements of the Regulation, will register the applicant.

In supervising the registered manager, the competent authority that has registered the manager will cooperate with the competent authorities in those Member States where the qualifying fund is marketed. ESMA will maintain a **central database** listing all registered managers that are eligible to use the designation "European Venture Capital Fund."

**BUDGETARY IMPLICATIONS:** there are no budgetary implications.

**DELEGATED ACTS:** the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the EU.

## European venture capital funds

2011/0417(COD) - 20/02/2012

The Council held an orientation debate on draft regulations concerning **European Venture Capital Funds** and **European Social Entrepreneurship Funds**.

The proposals were submitted last December and are part of the [Single Market Act](#) and the [Commission's action plan to improve access to finance for SMEs](#).

Ministers endorsed the overall objective of the proposals and committed to a swift calendar for starting negotiations with the European Parliament, with a view to reaching an **agreement by June 2012**, as requested by the European Council.

All in all, there is a very broad support to, or at least an increasing convergence of views on the overall objectives and main elements of the proposals, such as the scope of the Regulations, definitions, conditions for an EU-wide passport and the supervision of the venture capital and social entrepreneurship fund managers.

Nevertheless, the Presidency considers that - in order to reach an agreement on the Council's approach on the proposals - some technical issues still require further elaboration at the level of the Working Party.

## European venture capital funds

2011/0417(COD) - 06/06/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee of Economic and Monetary Affairs has adopted the report by Philippe LAMBERTS (Greens/EFA, BE) on the proposal for a Regulation of the European Parliament and of the Council on European Venture Capital Funds.

The parliamentary committee recommends that the position of the European Parliament adopted at first reading following the ordinary legislative procedure amends the Commission proposal. The proposed amendments are the result of collaboration between the members of the competent committee and Member State representatives.

**Rapid creation process:** The process of creating a European venture capital fund should be **as quick as possible** in order to ease the costs of establishing new funds in the market. The Commission should put forward, by the end of 2012, a report on the tax barriers confronting venture capital funds in the different Member States and should continue to work towards a fiscal level playing field.

**Subject matter, scope and definitions:** the amendments introduced cover the following points:

- The European Investment Bank and the Commission as main shareholders of the European Investment Fund (EIF) shall ensure, where the EIF invests in venture capital funds, that it gives priority to investments into European venture capital funds.
- Venture capital fund managers that are registered under this Regulation and **the total assets of which subsequently exceed the threshold of EUR 500 million**, and that therefore become subject to authorisation with the competent authorities of their home Member State in accordance with Article 6 of [Directive 2011/61/EU](#), should be able to continue to use the designation "European Venture Capital Fund" and operate under this Regulation in relation to the marketing of qualifying venture capital funds in the Union, provided that they continue to comply with this Regulation at all times in relation to qualifying venture capital funds.
- European venture capital fund managers that are registered in accordance with this Regulation may also manage Undertakings for Collective Investment in Transferable Securities (UCITS) subject to authorisation under [Directive 2009/65/EC](#) provided that they are external managers.

**Definition of «qualifying venture capital fund»:** according to the amended text, it means a collective investment undertaking the committed capital of which is not redeemable before the liquidation of the fund and that invests on average in the two years following its first investment in accordance with this Regulation **at least 55% and at least 70% of its called committed capital in assets** that are qualifying investments, after deduction of all relevant costs, short-term holdings in cash and cash equivalents, thereafter.

**Conditions for the use of the designation "European Venture Capital Fund":** in order to allow venture capital fund managers a certain degree of flexibility in the investment and liquidity management of their qualifying venture capital funds, secondary trading, such as in shares or participations in non-qualifying portfolio undertakings, should be permitted **up to a maximum threshold not exceeding, on average, in the two years following the first investment under this Regulation, 45% and thereafter 30 % of the fund's called committed capital**, after deduction of all relevant costs.

- The venture capital fund manager may only **borrow**, issue debt obligations or provide guarantees, at the level of the qualifying venture capital fund, provided that such borrowings, debt obligations or guarantees are covered by uncalled commitments and thus do not increase the exposure of the fund beyond its commitments.
- The venture capital fund manager shall moreover 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.

**Single depositary:** for each European venture capital fund it manages, the manager shall ensure that a single depositary is appointed in accordance with the rules. The depositary: i) shall be an institution which is subject to prudential regulation and ongoing supervision; ii) shall be responsible for verifying ownership and maintaining a record of the assets of the qualifying European venture capital funds; iii) shall be liable to the European venture capital fund and its investors for any loss suffered as a result of negligence or intentional failure.

**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. The home Member State shall take appropriate measures.

If the venture capital fund manager does not comply with this Regulation, despite the measures taken by the competent authority of the home Member State, or if the competent authority of the home Member State fails to act within a reasonable timeframe, **the competent authority of the host Member**

**State shall take all the necessary measures to protect investors**, after informing the competent authority of the home Member State. In the event of a disagreement between the competent authority of the home Member State and the competent authority of the host Member State regarding the adequacy of the European venture capital fund for investors in the host market, **either or both of the competent authorities concerned may refer the matter to the European Securities and Markets Authority (ESMA)** under Article 19 of Regulation (EU) No 1095/2010.

**Review:** By 22 July 2017, the Commission shall review this Regulation, in particular, including an analysis of the following specific points:

- the scope of this Regulation, including the possibility of extending the marketing of European venture capital funds to retail investors;
- the appropriateness of the information requirements under the regulation, in particular, whether they are sufficient to enable investors to take an informed investment decision;
- the effectiveness, proportionality and application of penalties provided for by Member States in accordance with this Regulation;
- the geographical and sectoral distribution of investments undertaken by European venture capital funds;
- the impact of this Regulation on the venture capital market, and on the contribution to the Union industrial leadership and societal challenges (notably in regard to research and innovation).

The review shall also include a survey on the possible negative or positive impact of other Union financial regulations and of Union financing instruments for SMEs on the functioning of the rules in this Regulation.

## European venture capital funds

2011/0417(COD) - 25/04/2012 - European Central Bank: opinion, guideline, report

**OPINION OF THE EUROPEAN CENTRAL BANK** on a **proposal for a regulation** of the European Parliament and of the Council on European venture capital funds and on a **proposal for a regulation** of the European Parliament and of the Council on European social entrepreneurship funds.

The ECB welcomes the proposed regulations which will introduce uniform requirements for funds operating under a single, European designation and an identical substantive regulatory framework, while ensuring adequate supervision.

In this regard, the ECB notes several features that would contribute to achieving an appropriate and balanced regulatory framework: (i) the voluntary nature of the regime, (ii) the cross-border notification process between the competent authorities, (iii) the rules governing the behaviour of a qualifying manager and disclosure requirements, (iv) as well as the provisions designed to ensure the effective supervision of the use of the passport.

The ECB supports the Commission's objective of ensuring the consistency of the proposed regulations with the existing regime for alternative investment funds managers under Directive 2011/61/EU. In this respect, the ECB welcomes the reference in the proposed regulations to the threshold in Directive 2011/61/EU, which introduces a limit of EUR 500 million of capital funds that would delineate the European venture capital funds and EuSEF regimes from the framework established by Directive 2011/61/EU.

The scope of the proposed regulations is also conditioned by the requirement for all qualifying venture capital and social entrepreneurship funds to be unleveraged, to ensure that qualifying funds do not contribute to the development of systemic risks and that they concentrate on supporting qualifying portfolio companies.

Therefore, whilst the concept of leverage is fundamental to the business model implemented by many alternative investment fund managers, the ECB considers it appropriate to make explicit the **exclusion of any possible leverage** in the case of the proposed European venture capital funds and EuSEF regimes.

## European venture capital funds

2011/0417(COD) - 26/06/2012

The Council agreed on a **general approach** on the draft regulations concerning European Venture Capital Funds and **European Social Entrepreneurship Funds**. The agreement paves the way for the continuation of negotiations with the European Parliament with a view to their swift adoption.

The overall objective of the proposals is to foster the growth of SMEs by improving their access to finance through the establishment of an EU-wide passport for managers of venture capital funds (EuVECA) and social entrepreneurship funds (EuSEF) relating to the marketing of their funds.

The proposals :

- introduce uniform requirements for the managers of collective investment undertakings that want to operate under the EU-wide passport;
- introduce requirements concerning the investment portfolio, investment techniques and eligible undertakings that a qualifying fund may target;
- introduce uniform rules on which categories of investors a qualifying fund may target and on the internal organisation deployed by managers that market such qualifying funds.

Identical substantive rules across the EU will help create a level playing field for all market participants.

# 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 répute** 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.

## European venture capital funds

2011/0417(COD) - 14/06/2012 - Document attached to the procedure

### Executive summary of the EDPS Opinion on the proposals for a regulation on European venture capital funds and for a regulation on European social entrepreneurship funds.

The EDPS welcomes the fact that he is consulted by the Commission and recommends that references to this Opinion are included in the preambles of the proposed regulations.

He notes that the proposed regulations on European venture capital funds and on European social entrepreneurship funds will complement each other. The proposed regulations aim to solve different problems with both types of funds due to the fragmentation and dispersion of the European risk capital sector. Both proposals, if adopted, will coexist as autonomous legal acts in mutual independence.

The implementation and application of the legal framework for venture capital funds and **social entrepreneurship funds** may in certain cases affect the rights of individuals relating to the processing of their personal data. On the basis of this observation, the EDPS considers that - with regard to data protection issues - **the proposed regulations are too general**. It is unclear in some cases whether processing of personal data will take place under certain provisions of the proposed regulations, for example regarding exchanges of information, investigatory powers of the competent authorities and establishment of European Securities and Markets Authority (ESMA) databases.

Accordingly, the EDPS recommends the following:

- inserting provisions in the proposed regulations **emphasising the full applicability of existing data protection legislation**. The EDPS also suggests that the reference to Directive 95/46/EC be clarified by specifying that the provisions will apply in accordance with the national rules which implement Directive 95/46/EC;

- specifying the kind of personal information that can be processed and transferred under the proposed regulations, as well as (i) defining the purposes for which personal data can be processed and transferred by the competent authorities concerned and ESMA and (ii) fixing a proportionate data retention period for the above processing or at least introduce precise criteria for its establishment;
- limiting competent authorities' access to documents and information to **specifically identified and serious violations of the proposed regulations** and in cases where a reasonable suspicion (which should be supported by concrete initial evidence) exists that a breach has been committed;
- introducing a requirement for competent authorities to request documents and information by formal decision, **specifying the legal basis and the purpose of the request** and what information is required, the time limit within which the information is to be provided as well as the right of the addressee to have the decision reviewed by a court of law;
- **clarifying the legal basis of the fund manager databases** by introducing more detailed provisions in the proposed regulations. Such provisions must comply with the requirements of Regulation (EC) No 45/2001. In particular, the provision establishing the database must (i) identify the purpose of the processing operations and establish which are the compatible uses; (ii) identify which entities (ESMA, competent authorities, Commission) will have access to which data stored in the database and will have the possibility to modify the data; (iii) ensure the right of access and appropriate information for all the data subjects whose personal data may be stored and exchanged; (iv) define and limit the retention period for the personal data to the minimum necessary for the performance of such purpose;
- the investigatory powers of the competent authorities and the establishment of ESMA databases of fund managers, essential elements of the processing of personal data, **should not be left to be decided by delegated acts**, but included in the relevant substantive articles of the proposed regulations;
- including references in the proposed regulations to the **need to consult the EDPS in so far as the delegated and implementing acts concern the processing of personal data**.

Lastly, the EDPS notes that there are comparable provisions to the ones referred to in this Opinion in several pending and possible future proposals, such as those discussed in the EDPS Opinions on the legislative package on the revision of the banking legislation, credit rating agencies, markets in financial instruments (MIFID/MIFIR) and market abuse. Therefore, the EDPS recommends reading this Opinion in close conjunction with his Opinions of 10 February 2012 on the abovementioned initiatives.

## European venture capital funds

2011/0417(COD) - 12/03/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 613 votes to 24, with 41 abstentions, a legislative resolution on the proposal for a Regulation of the European Parliament and of the Council on European Venture Capital Funds. The report was referred back to the committee at the 13 September 2012 plenary session.

Parliament adopted its position at first reading, following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise reached between the European Parliament and the Council. They amend the proposal as follows:

**Purpose, scope and definitions:** under the compromise, the new Regulation lays down uniform requirements and **conditions** for managers of collective investment undertakings that wish to use the designation '**EuVECA**' in relation to the marketing of **qualifying venture capital funds** in the Union.

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 % of its aggregate capital contributions** and uncalled committed capital in assets that are qualifying investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents, within a time frame laid down in its rules or instruments of incorporation;
- **does not use more than 30% of its aggregate capital contributions** and uncalled committed capital for the acquisition of assets other than qualifying investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents;
- **is established within the territory of a Member State**.

A 'qualifying portfolio undertaking' shall mean an undertaking that it is established within the territory of a Member State, or in a third country provided that the third country and is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force on Anti-Money Laundering and Terrorist Financing and has signed an agreement with the home Member State of the manager of a qualifying venture capital fund and with each other Member State in which the units or shares of the qualifying venture capital fund are intended to be marketed to ensure that the third country fully complies with the standards laid down in the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters.

**Qualifying investments:** under the new Regulation, these shall mean the following instruments:

- shares of a qualifying portfolio undertaking acquired from existing shareholders of that undertaking;
- units or shares of one or several other qualifying venture capital funds, provided that those qualifying venture capital funds have not themselves invested more than 10% of their aggregate capital contributions and uncalled committed capital in qualifying venture capital funds.

**Conditions for the use of the designation "European Venture Capital Fund":** the amended text states that managers of qualifying venture capital funds shall 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. Managers of qualifying venture capital funds 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.

**Venture capital fund managers** shall, among other things:

- act honestly and fairly, 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 manager of a qualifying venture capital fund delegates functions to third parties, the manager's **liability** towards the qualifying venture capital fund or the investors therein shall remain unaffected. The manager shall not delegate functions to the extent that, in essence, it can no longer be considered to be the manager of a qualifying venture capital fund and to the extent that it becomes a **letter-box entity**.

At all times, managers of qualifying venture capital funds shall ensure that they are able to **justify the sufficiency of their own funds** to maintain operational continuity and disclose their reasoning as to why those funds are sufficient.

**Annual report:** 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. An audit of the qualifying venture capital fund shall be conducted at least annually

**Investor information:** prior to the investment decision, managers of qualifying venture capital funds shall inform their investors in a **clear and understandable manner**, of the amount of own funds available to that manager and a detailed statement as to why that manager considers that amount to be sufficient for maintaining the adequate human and technical resources necessary for the proper management of its qualifying venture capital funds. They should also provide information on **any other qualifying venture capital funds in which it intends to invest**.

**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 qualifying venture capital funds are of sufficiently **good repute and are sufficiently experienced** also in relation to the investment strategies pursued by the manager of a 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 the manager of a qualifying venture capital fund persists in acting in a manner that is clearly in breach of this Regulation despite measures taken by the competent authority of the home Member State or because that competent authority has failed to take measures within reasonable time, the competent authority of the host Member State, may, after informing the competent authority of the home Member State, **take all the appropriate measures in order to protect investors**, including prohibiting the manager of a qualifying venture capital fund from carrying out any further marketing of its qualifying venture capital funds within the territory of the host Member State.

In the event of disagreement between competent authorities of Member States on an assessment, action or omission of one competent authority in areas where this Regulation requires cooperation or coordination between competent authorities from more than one Member State, competent authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

**Review:** the text provides that by 22 July 2015 or 22 July 2017 depending on the case, the Commission shall review this Regulation which 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 and sectoral distribution of investments undertaken by qualifying venture capital funds;
- the use of the different qualifying investments;
- the possibility of extending the marketing of qualifying venture capital funds to retail investors;
- the possibility of allowing venture capital funds established in a third country to use the designation 'EuVECA';
- an evaluation of any barriers that may have impeded investment into funds using the designation 'EuVECA'.

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, in particular those laid down in Directive 2011/61/EU. Following that review, and after consulting ESMA, the Commission shall submit a report to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal.

## European venture capital funds

2011/0417(COD) - 17/04/2013 - Final act

**PURPOSE:** improve access to finance for SMEs through the establishment of a valid EU-wide passport for managers of European venture capital funds relating to the marketing of their funds.

**LEGISLATIVE ACT:** Regulation (EU) No 345/2013 of the European Parliament and of the Council on European venture capital funds.

**CONTENT:** this Regulation lays down **uniform requirements and conditions** for managers of collective investment undertakings that wish to use the designation "**EuVECA**" in relation to the marketing of qualifying venture capital funds in the Union.

It also lays down uniform rules for:

- the **marketing** of qualifying venture capital funds to eligible investors across the Union,
- for the **portfolio composition** of qualifying venture capital funds,
- for the **eligible investment instruments and techniques to be used by qualifying venture capital funds** as well as for the organisation,
- **conduct and transparency** of managers that market qualifying venture capital funds across the Union.

This 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](#) on Alternative Investment Fund Managers.

**Qualifying venture capital fund** shall mean a collective investment undertaking that:

- intends to invest **at least 70%** of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments;
- **does not use more than 30%** of its aggregate capital contributions and uncalled committed capital for the acquisition of assets other than qualifying investments;
- is established within the territory of a Member State.

**Qualifying portfolio undertaking** shall mean an undertaking that is established within the territory of a Member State, or in a third country provided that the third country is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force on Anti-Money Laundering and Terrorist Financing.

Where a manager of a qualifying venture capital fund intends to delegate functions to third parties, the manager's liability towards the venture capital fund and the investors therein should not be affected by such delegation of functions. Moreover, the manager should not delegate functions to the extent that, in essence, it can no longer be considered to be a manager of a qualifying venture capital fund and has become a **letter-box entity**.

**In order to ensure effective supervision** of the uniform requirements contained in this Regulation, the competent authority of the home Member State should supervise compliance of managers of qualifying venture capital funds with the uniform requirements set out in this Regulation. To that end, the managers that intend to market their qualifying funds under the designation "EuVECA" should **inform the competent authority** of their home Member State of that intention. The competent authority should **register the manager** if all necessary information has been provided and if suitable arrangements to comply with the requirements of this Regulation are in place. Such registration should be **valid across the entire Union**.

**By 22 July 2015 and 22 July 2017** depending on the case, the Commission shall start a **review** including an assessment, *inter alia*, on: (i) the extent to which the designation "EuVECA" has been used; (ii) the geographical and sectoral distribution of investments undertaken by qualifying venture capital funds; (iii) the possibility of extending the marketing of qualifying venture capital funds to retail investors.

It should be noted that this Regulation – adopted in parallel with the [Regulation on European social entrepreneurship funds](#) – forms part of [Single Market Act](#) to stimulate growth and job creation and of the [action plan to improve access to finance for SMEs](#).

**ENTRY INTO FORCE:** 15/05/2013. The Regulation shall apply from 22/07/2013.

**DELEGATED ACTS:** the Commission may adopt delegated acts in order to specify the requirements provided by this Regulation. The power to adopt these acts is conferred on the Commission for a period of **four years from 15 May 2013**. A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **three months** of notification of that act (this delay may be extended by two months). If the European Parliament or the Council object, the delegated act shall not enter into force.