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8 September 2017
Third edition
The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.

Reviving risk capital

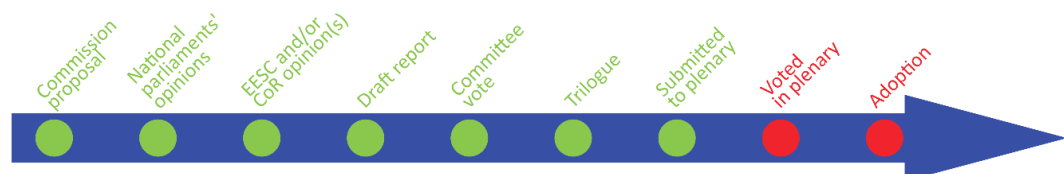
The proposal to amend EuVECA and EuSEF

The European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF) are collective investment schemes, harmonised at EU level by means of two Regulations: (EU) No 345/2013 (EuVECA) and (EU) No 346/2013 (EuSEF). In its 2016 review, the Commission noted that these funds remain small and concentrated in a few Member States and that, while the take-up of EuVECA could be considered successful, the EuSEF results have been disappointing. To overcome the obstacles identified, it has proposed some measures that – by removing limitations on larger managers managing EuVECA and EuSEF funds, decreasing costs for EuVECA and EuSEF funds, and broadening the range of eligible assets EuVECA funds may invest in – should increase investment into these funds. The Commission's proposal was extensively amended by the European Parliament and the Council, with regard to – among other things – initial capital requirements for those funds, minimum own funds for the funds' managers, investor-protection provisions, as well as the powers of the European Securities and Markets Authority (ESMA). The provisional agreement struck in trilogue is due to be voted during the European Parliament's September plenary session.

Proposal for a Regulation amending Regulation (EU) No 345/2013 on European venture capital funds (EuVECA) and Regulation (EU) No 346/2013 on European social entrepreneurship funds (EuSEF)

COM(2016)0461, 14.07.2016, 2016/0221(COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')

Committee responsible:	Economic and Monetary Affairs (ECON)
Rapporteur:	Sirpa Pietikäinen (EPP, Finland)
Shadow rapporteurs:	Andrea Cozzolino (S&D, Italy) Syed Kamall (ECR, UK) Cora Van Nieuwenhuizen (ALDE, the Netherlands) Marco Zanni (EFDD, Italy)
Next steps expected:	Vote in plenary



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Introduction

The European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF) are collective investment schemes that are harmonised at EU level. They belong to the wider category of asset management, which is of particular importance in the current low growth economic context, given that it can channel institutional and personal savings to companies and projects, and could stir Europe's economic recovery.

The first attempt to harmonise the funds' treatment at EU level took place in 2011, with two regulations proposed by the European Commission. Regulation (EU) No 345/2013 laid down uniform requirements and conditions for managers of collective investment undertakings wishing to use the 'EuVECA' designation to market qualifying venture capital funds in the EU (which focus on young and innovative companies). Regulation (EU) No 346/2013, laid down uniform requirements and conditions for managers of collective investment undertakings that wished to use the designation 'EuSEF' in relation to the marketing of qualifying social entrepreneurship funds in the Union (which focus on enterprises whose aim is to achieve a positive social impact and address social objectives as their corporate aim, rather than simply maximising profit).

While these two regulations did help to boost the take-up of these funds, the Commission considered that there was still room for improvement and decided in July 2016 to propose a regulation to amend the original regulations.

Context

Venture capital

A company can raise capital mainly through [equity](#) (i.e. by selling shares) or [debt](#) (i.e. by selling bonds) financing. While debt financing, usually obtained through banks, can be 'cheaper' than equity financing (depending on interest rates and tax deductibility), it can be [difficult](#) for companies, especially start-ups, to access funding from banks. Furthermore, the amount of risk accepted in equity participation makes it more attractive to high-growth (and high-risk) start-up companies that are at an early stage in their development. Indeed, **venture capital funds**, which operate by acquiring equity in those specific companies, are willing to accept more risk than banks (and get paid after them in the event of bankruptcy) on account of the high-return opportunities associated with them. For this reason, they are also ready to provide additional, non-financial support,¹ something very valuable to these companies at this early stage. Finally, a number of studies² that the Commission considered before drafting its 2011 proposals show that start-ups in their early stages that attract financing from equity investors do better than those that have to rely on debt.

1 According to the Commission, this support can take various forms including consultancy services, financial advice, marketing strategy or training.

2 See, for example, [Venture Capital: policy lessons from the VICO project](#), or the European Private Equity and Venture Capital

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Social entrepreneurship

A social enterprise is an operator in the [social economy](#) whose main objective is to have a social impact rather than make a profit for owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative way and uses its profits primarily to achieve social objectives. Many social enterprises operate as social cooperatives and a lot of them are non-profit distributing organisations like associations, voluntary organisations, charities or foundations. In 2011, they represented 10 % of all European businesses and employed over 11 million paid employees.

Like start-ups, social enterprises have traditionally faced obstacles in accessing financing. Banks are reluctant to provide finance, except against collateral, because of these companies' business model. Similarly, investment funds that decide to invest in these companies tend to be costly to set up and can only get limited investment from investors in Member States other than the one they are based in. In addition, they face problems differentiating themselves from their competitors.

Existing situation

At the moment, the legislation that applies in the field consists of the EuVECA and EuSEF Regulations, completed by two implementing regulations.

The EuVECA Regulation

The EuVECA Regulation creates a 'European Venture Capital Fund' label and lays down uniform requirements and conditions by which managers of collective investment undertakings that wish to use the label must abide. It also lays down rules for marketing of these funds to eligible investors, portfolio composition, eligible investment instruments and techniques, and the organisation, conduct and transparency of the managers that market them across the EU.

Conditions for the use of the designation EuVECA

Funds applying for this label must prove that their assets under management (AUM) do not exceed €500 million (above this threshold, the Alternative Investment Fund Managers (AIFM) Directive No 2011/61/EU applies instead), that they are established within a territory of a Member State, and that at least 70 % of the capital they receive from investors is spent on supporting young and innovative companies. The companies invested in must not be admitted to trading on the stock exchange, must employ fewer than 250 people and must have an annual turnover not exceeding €50 million or a balance sheet not exceeding €43 million. The managers of these funds must market the units/shares of the funds only to professional investors, or to investors that commit to invest at least €100 000 and must state in writing that they are aware of the risks involved with those investments. Managers that satisfy these conditions and register with the relevant regulatory authority in a Member State, are in addition required to comply with certain 'conduct of business' rules (for instance, managers must act honestly, their liability remains unaffected if functions

Association's [Survey on the economic and social impact of venture capital in Europe](#)



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are delegated to a third party, they must avoid conflicts of interest,³ they must have sufficient own funds and they must make available an annual report to the competent authorities of the home Member State).

Supervision and administrative cooperation

In addition to the above, the regulation contains provisions relating to information that EuVECA managers need to supply to competent home Member State authorities for the marketing of their funds. It also has provisions relating to the European Securities and Markets Authority (ESMA) (the creation and maintenance of a publicly available central database by ESMA listing EuVECA managers and funds marketed) and to competent authorities (compliance supervision, procedure in case of breach of the regulation, related investigatory powers and administrative sanctions, cooperation and exchange of information between competent authorities and ESMA).

The EuSEF Regulation

The EuSEF Regulation provides for a 'European Social Entrepreneurship Fund' label, so that investors can easily identify funds that focus on investing in European social businesses. Like EuVECA, the regulation sets out uniform requirements and conditions within which managers of collective investment undertakings that wish to use the label must abide, as well as rules on the marketing of these funds to eligible investors; their portfolio composition; the eligible investment instruments and techniques; and the organisation, conduct and transparency of managers that market them across the EU.

The provisions relating to the conditions for the use of the designation, as well as those relating to supervision and administrative cooperation are in many ways similar to those in the EuVECA Regulation: the threshold of €500 million, the obligation to invest 70 % of capital invested, the investors concerned, as well as the conduct of business rules are the same as for EuVECA. The main addition to the EuVECA Regulation concerns the 'qualifying portfolio undertaking' for EuSEF which – the regulation notes – must have as a primary objective a measurable and positive social impact. Furthermore, the regulation states that managers must employ procedures to measure the extent to which the undertakings in which the fund invests achieve the positive social impact to which they are committed.⁴

Implementing Regulations (EU) No 593/2014 and (EU) No 594/2014

The EU legislative framework is completed by two implementing Regulations ([\(EU\) No 593/2014](#) for EuVECA and [\(EU\) No 594/2014](#) for EuSEF) adopted on 3 June 2014, which lay down technical standards with regard to the format for notification among competent authorities and to the European Securities and Markets Authority of the supervisory information relating to specific events provided for in the respective regulations.

3 Or, where such conflicts cannot be avoided, 'manage and monitor and, in accordance with paragraph 4, disclose promptly, those conflicts of interest in order to prevent them from adversely affecting the interests of the qualifying venture capital funds and the investors.'

4 The regulation further specifies that managers should include indicators such as employment and labour markets, social inclusion and protection of particular groups, or public health and safety.

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Parliament's starting position

The European Parliament has dealt with the topic on numerous occasions.

In February 2013, in its resolution on improving access to finance for SMEs ([2012/2134\(INI\)](#)), the European Parliament (a) noted that the fragmentation of the banking sector and the subsequent great divergence in lending rates and credit offers among countries demanded a differentiated approach to improving SMEs' access to funding and (b) called for measures to improve financing conditions by ensuring that venture capital and other relevant funding streams fully recognised the growth potential of innovative enterprises working with public sector partners.

In February 2014, in its resolution on long-term financing of the European economy ([2013/2175\(INI\)](#)), Parliament expressed the view that venture capital and private equity firms could provide valuable non-financial support, including consultancy services, financial advice, advice on marketing strategy, and training and called on the Commission to look further into the role of such firms in financing the EU economy.

In September 2015, in its resolution on social entrepreneurship and social innovation in combating unemployment ([2014/2236\(INI\)](#)), the European Parliament welcomed the adoption of the regulation on European social entrepreneurship funds. However, it regretted the fact that social and solidarity-based economy enterprises encountered more difficulties than traditional enterprises in securing financing. It called for public authorities and financial service providers to develop a wide range of appropriate financial instruments to support social enterprises at all stages in their development and to create a framework to bring together potential investors and specialised funds. Finally, it pointed out that access to financing was hindered by the fact that financial intermediary managers had little knowledge of the actual situation of social and solidarity-based economy enterprises and stressed the need to improve training for these managers with regard to such enterprises, so as to facilitate their access to financing. It therefore called for the introduction of a European trust mark for 'social entrepreneurship' enabling investors to identify funds with a portfolio comprising social enterprises.



Proposal

Preparation of the proposal

The idea that venture capital funds, which are an essential form of capital for SMEs in their early stages and drivers of the economy, are limited by market fragmentation already figured in a 2007 Commission communication Removing obstacles to cross-border investments by venture capital funds ([COM\(2007\) 853](#)). In it, the Commission identified various barriers that hampered venture capital mobility and focused on framework conditions (e.g. developing domestic policies, such as public co-funding) to be put in place and incentives (e.g. reducing tax obstacles, or reviewing existing legislation and adopting new laws) to be given to increase private investment.

On 15 June 2011 and 13 July 2011 respectively, the Commission services launched two consultations. The [first](#) concerned a new European regime for venture capital, to improve access to finance for innovative SMEs, in the context of the Single Market Act, while the [second](#) dealt with promoting Social Investment Funds as part of the Social Business Initiative. The consultations were followed on 7 December 2011 by a [proposal](#) for a regulation on European venture capital funds and a [proposal](#) for a regulation on European social entrepreneurship funds. The regulations, as adopted by the European Parliament and the Council, were finally published in the Official Journal on 17 April 2013.

On 30 September 2015, the Commission launched a [consultation](#) on the review of the EuVECA and EuSEF Regulations, with a view to improving the take-up of these funds as part of the Capital Markets Union [Action Plan package](#). In it, the Commission stated that, despite its previous efforts (i.e. the two regulations), venture capital funds in the European Union remained relatively small (€60 million/fund – half the size of their US counterparts) and concentrated (90 % of investment was concentrated in eight Member States). Furthermore, the Commission [noted](#) that so far, 70 EuVECA and four EuSEF had been notified to ESMA and that while those satisfactory figures could still be improved further for EuVECA (not least in the light of the current economic situation in the EU), in the case of EuSEF, the results were clearly unsatisfactory.

The Commission's impact assessment identified three [main obstacles](#) to further growth: limitations imposed on managers (size and dual requirements imposed by AIFM Directive and the regulations), product rules (e.g. the eligible assets for a EuVECA fund) and the different application of regulatory fees in Member States, with regard to managing and marketing the funds. To overcome those obstacles, the Commission has identified some [measures](#), which should increase investments in venture capital and social enterprises, by removing limitations on larger managers managing EuVECA and EuSEF funds and dual registration requirements, decreasing costs for EuVECA and EuSEF funds, and broadening the range of eligible assets in which EuVECA funds may invest (see below).

With regard to preparatory work for these new proposals, the EPRS has published an [implementation appraisal](#) of the EuVECA and EuSEF Regulations and an [initial appraisal](#) of the current proposal. The implementation appraisal concludes that 'while the proposed amendments look to go some way to address some of the key issues highlighted by stakeholders and in particular, the inconsistent implementation of the regulations, ... the regulations have only been in force for a relatively short period of time, which makes it difficult to assess any long-term impacts of the schemes. A lack of quantitative data also somewhat hampers the assessment, which is based mostly on consultations with stakeholders. To ensure that all



potential barriers to take-up were explored, a more consistent effort in capturing stakeholder feedback, could have been undertaken' (page 11).

As for the initial appraisal, it concludes that, while the Commission's impact assessment is based on sound knowledge and on relevant data relating to the investment funds industry, specific evidence regarding the two fund frameworks under review is (by the IA's own admission) limited. Furthermore, the IA and the review attached to it do not cover all the points listed in the review clauses of the two regulations, for instance the geographical and sectoral distribution of investments undertaken specifically by EuVECA and EuSEF funds. At first sight, it appears that different conclusions could be drawn using the same data provided in the IA, for instance regarding the low take-up and lower than expected performance of the funds. In addition, the range of options analysed in depth seems rather narrow. Finally, the purpose of the existing regulations is to enhance the growth of small and medium-sized enterprises and of social businesses. The IA states that it is too early to judge whether these objectives have been achieved, and excludes this issue from the scope of the analysis. Even so, an initial analysis of the public consultations undertaken shows that, despite the absence of more concrete evidence, a greater effort could have been made to integrate the voice of non-financial businesses, including SMEs and social enterprises, within the IA.

The changes the proposal would bring

The Commission proposes to:

- > remove the existing threshold so as to allow (all) managers authorised under the AIFM Directive (2011/61/EU) to use the EuVECA and EuSEF designations when marketing those funds in the EU (amendment to Article 2(2));
- > expand EuVECA eligible assets beyond the current definition of 'SME'⁵ by amending the definition of 'qualifying portfolio undertaking' in Regulation (EU) No 345/2013 and including unlisted undertakings that employ up to 499 people and small and medium-sized enterprises listed on an SME growth market (amendment to Article 3(b)(i));
- > entrust ESMA with the development of draft regulatory technical standards specifying the methodologies for the determination of what constitutes sufficient own funds (amendments to Article 10(3) for EuVECA and Article 11 for EuSEF);
- > add two points (in Articles 14 for EuVECA and 15 for EuSEF), so that authorised AIFMs can also apply to register qualified funds as EuVECA/EuSEF; the amendments describe the necessary information on the application for registration and the notification procedure for competent authorities, and introduce an obligation for authorities to substantiate any potential refusal;

5 Unlisted companies with fewer than 250 employees, as well as an annual turnover of less than €50 million, or annual balance sheet worth less than €43 million.



Preparation of the proposal

The changes the proposal would bring

- > decrease costs of determining managers' own funds by providing that administrative procedures (including fees and other charges) may not be imposed by competent authorities of host Member States in relation to cross-border marketing of EuVECA and EuSEF funds (amendments to Article 16(2) (EuVECA) and Article 17(2) (EuSEF));
- > build a publicly accessible central database, to be managed by ESMA, including all managers of qualifying EuVECA/EuSEF funds, as well as the funds for which they use the label (Articles 17 for EuVECA, 18 for EuSEF).

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Views

Advisory committees

The EESC, in its [opinion](#) adopted on 15 December 2016, welcomes and supports the Commission's initiative. It believes that such a regulation can reduce the danger of different interpretations at national level, thus promoting the establishment of a capital markets union. It calls for closer coordination with existing financing sources in connection with the new direction of EuVECA and EuSEF. It should be ensured that the hitherto very restrictive access criteria, as well as other restrictive conditions, are significantly relaxed by the Commission. In order to expand participation in such investment funds, it proposes to increase the involvement of non-institutional investors. Finally, it considers it equally important to create an environment in which the financing objectives of social investment funds, such as social enterprises (SE) and social sector organisations (SSO), can develop.

National parliaments

The proposal has been examined by the parliaments of a number of Member States. None of them have expressed subsidiarity concerns in the form of a reasoned opinion. The [subsidiarity deadline](#) was set at 17 October 2016.

Stakeholders' views⁶

On 14 July 2016, both [Invest Europe](#) (formerly the European Private Equity and Venture Capital Association (EVCA)) and the [European Fund and Asset Management Association](#) welcomed those improvements.

On 12 September 2016, the European Central Bank published its [opinion](#) on the Commission's proposal. While the ECB supports the aims of the proposed regulation in general, it noted, in relation to the registration of EuVECA and EuSEF funds and their managers, that it strongly supports the use of internationally agreed standards, such as the global Legal Entity Identifier (LEI) and International Securities Identification (ISIN), given that they 'improve the reliability of statistical information and thus allow for the effective implementation of monetary policy'. In this context, it considers that fund managers should be required — when registering such funds — to include the global LEI for identifying the funds and themselves, as well as the ISIN, in order to identify the units of, or shares in, the funds to be marketed. It also argues that databases established by ESMA for managers of EuVECA and EuSEF funds, should include the global LEI of each fund and its manager, as well as the ISIN for the units or shares of the fund.

⁶ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.



Legislative process

European Parliament

In March 2017, the Committee on Economic and Monetary Affairs of the European Parliament adopted its [report](#) (rapporteur: Sirpa Pietikäinen, EPP, Finland). The main amendments to the Commission proposal for EuVECA are the following:

- > a minimum investment threshold of €100 000 for non-professional investors for investing in EuVECA funds and a similar threshold €50 000 for investing in EuSEF funds (recital 5a, 5b);
- > initial capital set at €30 000 for both EuVECA and EuSEF funds (Article 10(2));
- > minimum own funds for managers set at 1/8 of their previous year's fixed overheads.⁷ Those funds must be invested in liquid assets, or assets that can be converted into cash in the short term (Article 10(2a-c));
- > with regard to investor information, managers of funds should inform their clients about the non-qualifying investments they intend to make. In addition, for EuSEF, managers should describe how environmental and climate factors are considered in the investment approach of the fund (Article 13(1)c);
- > more powers are given to ESMA. Managers must inform ESMA of their intention to use the designation 'EuVECA' and of the place(s) where they intend to market their funds. Member States must communicate to ESMA agreements they have signed with third-country jurisdictions to ensure effective exchange of information on tax matters. In addition, ESMA, among other things, is to develop draft regulatory technical standards (RTS) to specify the information in the application for registration, and to determine standard forms, templates and procedures for the provision of specific information; will maintain a central database accessible by competent authorities of the home and host Member States; and must perform a coordination and oversight role, to ensure that the competent authorities take a consistent approach in relation to the registration process and to the use of their supervisory and investigatory powers. (Articles 14(3c), 14(3e), 14a(2), 14a(5a), 14a(5b), 16 and 17a(2)).

Most of the proposed amendments for EuSEF are similar to those for EuVECA. Two additional amendments, however, stand out:

- > the definition of 'positive social impact' in the definition of 'qualifying portfolio undertaking' is broadened (from 'where the undertaking provides services or goods to vulnerable or marginalised, disadvantaged or excluded persons' to 'where the undertaking provides services or goods which

⁷ For funds under management (FUM) exceeding €300 000 000, this amount increases by an additional 0.015% of the amount by which the total value of the funds managed exceed €300 000 000.



European Parliament

Council

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generate a social return') to be aligned with the definition used by the [European Investment Fund](#) and in the [Social Business Initiative](#) (amendment to Article 3(1) point d(ii));

- > additional information in the annual report of a EuSEF would include information on the nature, value and purpose of the investments other than 'qualifying investments', as well as a description of how environmental and climate-related risks are taken into account in the investment approach of the EuSEF (Article 13(2e) and (2ea)).

Council

On 6 December 2016, the Slovak Council Presidency published a [compromise text](#) on the Commission proposal. The Council was considering the following amendments:

- > the scope of articles applying to managers of AIFMD funds that want to use the label 'EuVECA' is broadened (Article 2(2));
- > the competent authority for qualifying funds is the one in the country where they are established⁸ (Article 3);
- > initial capital for EuVECA funds is set at €50 000 and minimum own funds for EuVECA managers are set at 1/6 of the previous year's fixed overheads of the manager⁹ (Article 10 par. 2-6);
- > the competent authority of the home Member State must ensure that all information gathered in the annual report is made available to the relevant competent authorities by means of specific procedures (Article 12);
- > qualifying fund managers should notify competent authorities of any material changes to the conditions for initial registration, before these changes are implemented. Competent authorities are able to impose restrictions or reject changes, but they need to inform the managers within one month of receipt of the notification (Article 14(3)c);
- > the competent authority of the EuVECA should ask the competent authority of the manager for information on whether conditions laid down in Article 14(2)(a) are fulfilled. Furthermore, it is responsible for supervising the fund's compliance with Articles 5, 6 and 13(1)c and (1)j of the Regulation, and with the obligations set out in the rules or instruments of incorporation of the EuVECA (Articles 14a and 18a);

⁸ And not where they have their registered office or head office.

⁹ For funds under management (FUM) exceeding €250 000 000, this amount increases by an additional 0.02% of the amount by which the total value of the funds managed exceed €250 000 000. However, the article includes the possibility for the manager not to provide up to 50% of additional amount, if he benefits from a bank or insurance guarantee.



European Parliament

Council

Trilogue agreement

- > the right under Article 14b to appeal against the refusal of the competent authority to register managers and/or funds should apply when no decision has been taken within two months of the fund's managers having provided all necessary information (Article 14a);
- > Member States are able to request that all national administrative preliminary remedies be exhausted before allowing managers to exercise the right of appeal (Article 14b);
- > competent authorities of host Member States cannot impose on the managers of qualifying funds any requirements or administrative procedures – including fees or charges – in relation to the marketing of their funds (Article 16);
- > the competent authority of the manager supervises the adequacy of the arrangements and organisation of the manager, as well as compliance of the manager with the regulation (Article 18a);
- > managers referred to in Article 2(1) must comply with the EuVECA Regulation, and are liable for infringements of the regulation, as well as losses or damages resulting from non-compliance with it. Managers referred to in Article 2(2) must comply with the AIFMD. They are responsible for ensuring compliance with the regulation in accordance with the AIFMD for any infringements of the regulation, as well as losses or damages resulting from non-compliance with the regulation (Article 20(3));
- > where a EuVECA manager falls under one of the provisions listed in Article 21(1), the competent authority prohibits use of the EuVECA designation and removes the manager or qualifying fund from the relevant registers (Article 21a).

The Council's proposed changes to EuSEF are largely the same as those set out above for EuVECA. One difference concerns the SME amendment, where there is no mention of a maximum number of employees or a listing on an SME growth market.

Trilogue agreement

On 30 May, the EP and Council reached a provisional political agreement in trilogue. Following endorsement of the text by Coreper, the ECON committee voted on 11 July to approve it, and thus it now needs to be voted in plenary to complete Parliament's first reading. The main changes to the Commission proposal the agreed text introduces with regard to EuVECA (Article 1 of the amending regulation) are the following:

- > the 'competent authority of the host Member State' is the authority of the Member State other than the home Member State in which the qualifying venture capital fund is marketed (Article 3d);
- > initial capital for EuVECA funds is set at €50 000 and minimum own funds for EuVECA managers are set at 1/8 of the previous year's fixed overheads of the manager¹⁰ (Article 10(2)-(2d))

¹⁰ Similar to the Council proposal.



- > minimum investment remains at €100 000 for both types of funds;
- > the competent authority of the home Member State must ensure that all information gathered in the funds' annual reports and applications for registration is made available to all relevant national competent authorities (NCAs), and by them to ESMA by means of specific procedures (Article 12);
- > managers of qualifying EuVECA funds must inform their investors (before they make their investment decision) about the amount of own funds available to them for maintaining 'the adequate human and technical resources necessary for the proper management' of their funds (Article 13(1));
- > qualifying fund managers should notify competent authorities of any material changes to the conditions for initial registration, before these changes are implemented. Competent authorities are able to impose restrictions or reject changes, but they need to inform the managers within one month of receipt of the notification (Article 14(3c));
- > ESMA's powers are strengthened: obligation of notification on behalf of the NCAs in case a manager commits a breach of Article 21(1), similar obligation in case of addition or removal of a qualifying fund, the draft RTS mentioned in the EP proposal, the power of ESMA to organise and conduct peer reviews of NCAs to strengthen the consistency of the registration processes, as well as the possibility of ESMA to draft recommendations for measures to the NCAs (among others, Articles 14(3d), 14(3d), 16(1), 16a, and 21(4a) ;
- > the right under Article 14b to appeal against the refusal of the competent authority to register managers and/or funds should also apply when no decision has been taken within two months of the fund's managers having provided all necessary information. However, Member States may request that all national administrative preliminary remedies be exhausted before allowing managers to exercise the aforementioned right of appeal (Article 14b);
- > for managers, the competent authority of the home Member State is responsible for supervising compliance with, and the adequacy of, the arrangements and organisation of the manager, as well as supervising the compliance of the fund with the rules set out in Articles 5,6 and 13(1) points (c) and (i) (Article 18(1a));
- > where a EuVECA manager falls under one of the provisions listed in Article 21(1), the competent authority prohibits use of the EuVECA designation, and removes the manager or qualifying fund from the relevant registers (Article 21(2)). It also informs without delay the relevant NCAs and ESMA (Article 21(3));

Most amending provisions for EuSEF are identical to those for EuVECA. The two main proposals from the EP (see above) have made it into the compromise agreement.

Finally, Article 3 specifies that Articles 10(2-6) and 13(1) (initial capital and own funds) of the EuVECA Regulation and, similarly, Articles 11(2-6) and 14(1) of the EuSEF Regulation will not apply to existing managers in relation to EuVECA and EuSEF funds, during their existing terms. Those managers, however,



will have to ensure that they can justify at all times the sufficiency of their own funds to maintain operational continuity.



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