

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.