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 entrepeneurs 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.