

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.