



BANKING AND FINANCE

# Public consultation on the review of the European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF) regulations

Fields marked with \* are mandatory.

## Introduction

The objective of this consultation is to collect further information on the performance of the current legislation and identify measures the Commission could propose to increase take-up of the of EuVECA and EuSEF fundraising passports for venture capital and social entrepreneurship funds.

This consultation takes up the replies received in the CMU consultation and requests more details as to where and how the regulations could be changed to increase the take up of these funds without reducing the existing levels of investor protection.

**Please note:** In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact [fisma-euveca-eusef-consultations@ec.europa.eu](mailto:fisma-euveca-eusef-consultations@ec.europa.eu).

More information:

- [on this consultation](#)
- [on the protection of personal data regime for this consultation](#) 

# 1. Information about you

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\* Are you replying as:

- ☐ a private individual
- ☒ an organisation or a company
- ☐ a public authority or an international organisation

\* Name of your organisation:

The Investment Association

Contact email address:

The information you provide here is for administrative purposes only and will not be published

peter.capper@theinvestmentassociation.org

\* Is your organisation included in the Transparency Register?

(If your organisation is not registered, [we invite you to register here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#))

- ☒ Yes
- ☐ No

\* If so, please indicate your Register ID number:

5437826103-53

\* Type of organisation:

- |   |   |
|---|---|
| <input type="radio"/> Academic institution            | <input type="radio"/> Company, SME, micro-enterprise, sole trader |
| <input type="radio"/> Consultancy, law firm           | <input type="radio"/> Consumer organisation                       |
| <input checked="" type="radio"/> Industry association | <input type="radio"/> Media                                       |
| <input type="radio"/> Non-governmental organisation   | <input type="radio"/> Think tank                                  |
| <input type="radio"/> Trade union                     | <input type="radio"/> Other                                       |

\* Where are you based and/or where do you carry out your activity?

United Kingdom



\* Field of activity or sector (*if applicable*):

at least 1 choice(s)

- ☐ Accounting
- ☐ Auditing
- ☐ Banking
- ☐ Credit rating agencies
- ☐ Insurance
- ☐ Pension provision
- ☒ Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- ☐ Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- ☐ Social entrepreneurship
- ☐ Other
- ☐ Not applicable



## Important notice on the publication of responses

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\* Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?


(see [specific privacy statement](#) )

- ☒ Yes, I agree to my response being published under the name I indicate (*name of your organisation/company/public authority or your name if your reply as an individual*)
- ☐ No, I do not want my response to be published

## 2. Your opinion

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### Who can manage and market EuVECA and EuSEF funds?

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

1. Should managers authorised under the AIFMD be able to offer EuVECA to their clients?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not relevant

Please explain your answer regarding whether managers authorised under the AIFMD should be able to offer EuVECA to their clients:

We don't see any particular reason that this should not be allowed. A firm that has been authorised in full scope of the Alternative Investment Fund Managers Directive (AIFMD) ought to be adequate to manage a EuVECA fund. Presumably the AIFM would have to comply with Article 8 of the EuVECA regulation which would ensure that it had adequate expertise in order to offer the product.

However it is unclear whether it is envisaged that a firm authorised in the full scope of AIFMD would need to comply with all of its relevant AIFMD requirements with respect of the EuVECAs that it would manage. If so, EuVECAs offered by full scope AIFMs would be at a considerable competitive disadvantage to those offered by sub-threshold registered AIFMs. In particular, these would be subject to the cost of appointing a depositary and the significantly more expansive reporting requirements for full scope AIFMs. It is also worth noting that this consultation envisages possible changes to the definition of "qualifying portfolio undertaking" for the purposes of EuVECAs. If this were to happen, in the event that a full scope AIFM could manage a EuVECA, this could lead to a EuVECA coming into scope of Section Two of AIFMD "Obligations for AIFMs managing AIFs which acquire control of non-listed companies and issuers" if the definition of "qualifying portfolio undertaking" were no longer aligned with the scope as set out in AIFMD Article 26(2)(a).

The result would be a two tiered and inconsistent EuVECA regime, or arguably a three tiered regime in the case where full scope AIFMs were to fully comply with the relevant AIFMD requirements. There would be further divergence between Member States that have exercised the derogation at AIFMD Article 21(3) with respect of depositaries for AIFs with no redemption rights exercisable in the first five years from initial investment and which do not generally hold assets that can be held in custody, and those Member States that have not.

It is also improbable that full scope AIFMs would be interested in offering EuVECAs under these circumstances as the benefits gained – a slightly broadened marketing passport and the right to use the EuVECA badge – would not be attractive enough to compensate for the additional regulatory requirements.

The reasons that justified granting the EuVECA marketing passport for sub-threshold registered AIFMs were that they do not represent any systemic risk and that they are not available to general consumers, thus the full requirements of AIFMD are redundant. In our view, these reasons would also apply in the case of full scope AIFMs offering EuVECAs and thus full scope AIFMs should not need to apply full AIFMD requirements with respect of any EuVECAs they manage.


2. Should managers authorised under the AIFMD be able to offer EuSEF to their clients?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not relevant

Please explain your answer regarding whether managers authorised under the AIFMD should be able to offer EuSEF to their clients:

The rationale is the same as applies to EuVECA in question 1. See also the answer for question 20.

## What happens when a EuVECA or EuSEF manager, post registration, exceeds the €500 million threshold?

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

3. What would be the effect of EuVECA or EuSEF managers, managing EuVECA or EuSEF funds only, continuing to enjoy the relevant passports once the total EuVECA or EuSEF assets under management, subsequent to their registration as fund managers, exceed the threshold of €500 million?


In general it should not be an issue for a sub-threshold AIFM to lose the EuVECA marketing passport if its total assets under management grow to a point where it exceeds the AIFMD threshold. The EuVECA regulation envisages a closed ended fund of a fixed lifecycle with an initial subscription period at the outset. Once this subscription period has closed, the EuVECA manager would, in general, no longer market and would therefore no longer need the expanded passport nor the EuVECA label. However it could be conceivable the AIFM might facilitate secondary trading of EuVECA holdings under certain circumstances thus it might be worth making provision for this scenario.

As noted in our answer in question 1, our favoured approach would be to allow fully authorised AIFMs to manage and market EuVECAs. If such an approach were to be adopted, “grandfathering” of the passport would cease to be an issue.

4. What would be the effect of EuVECA or EuSEF managers, managing EuVECA and/or EuSEF funds, continuing to enjoy the relevant passports once their total assets under management, subsequent to their registration as fund managers, exceed the threshold of €500 million?

See answer to question 3 – the same response applies to EuSEF – and question 20.

## Who can invest in EuVECA or EuSEF funds?

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

## 5. What has been the effect of setting the current threshold at €100,000?

The 100,000 EUR limit does not adequately identify and protect suitable investors for EuVECA and simultaneously hinders investors for whom such a product might be suitable.

An alternative approach would be to replace it with a genuine wealth test whereby investors with assets above a certain level would be able to have EuVECAs marketed to them. The level would need to be net of certain assets – notably the investor's primary residence, any loans secured on it, and their primary pension (although the rules should not prevent EuVECAs being used by an investor within a diversified portfolio for retirement provision).

A wealth test better demonstrates whether a potential investor has the ability to absorb and replenish losses in reflection of the fact that EuVECA is a relatively high risk product, as the wealth test considers the investor's wider portfolio of investments. In the case of a minimum subscription, the amount invested could conceivably be the entirety of liquid assets available to the investor.

A further benefit would be that potential investors that are suitable could invest any amount they choose (subject to minimum investment levels set by the AIFM for the EuVECA) and would not be deterred by the need to commit 100,000 EUR.

500,000 EUR in line with Annex 2 II.1 may be a suitable level of net investible assets for prospective EuVECA investors.

Along with the wealth threshold test, an income test may also be considered for prospective investors for individuals with gross annual incomes above a certain threshold. Again this would demonstrate that an investor would have means to replenish potential losses from investing in the EuVECA.

Finally there might be consideration for prospective investors who through their professional experience can be demonstrated to adequately understand the risks a EuVECA entails.

These three criteria could work on an either / or basis.

The same response above could also apply to EuSEFs in their current form (see the answer to question 20).

6.1 What effect would a reduction in the minimum €100,000 investment have on the take-up of EuVECA?

See answer to question 5.

6.2 Do you favour a reduction in the minimum €100,000 investment have on the take-up of EuVECA?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not relevant

6.2.1 If you favour a reduction in the minimum €100,000 investment have on the take-up of EuVECA, what would be an appropriate level?

See answer to question 5.

7.1 What effect would a reduction in the minimum €100,000 investment have on the take-up of EuSEF?

See answer to question 5

7.2 Do you favour a reduction in the minimum €100,000 investment have on the take-up of EuSEF?


- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not relevant

7.2.1 If you favour a reduction in the minimum €100,000 investment have on the take-up of EuSEF, what would be an appropriate level?

See answer to question 5



## Is it too expensive to set up EuVECA or EuSEF funds?

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

9. Are the costs relating to fund registration proportionate to the potential benefits for funds from having the passport?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not relevant

Please explain your answer regarding whether the costs relating to fund registration are or are not proportionate to the potential benefits for funds from having the passport:

10. Are the registration requirements for EuVECA a hindrance to the setting up of such funds in your Member State?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not relevant

Please explain your answer regarding whether the registration requirements for EuVECA are or are not a hindrance to the setting up of such funds in your Member State:

11. Are the registration requirements for EuSEF a hindrance to the setting up of such funds in your Member State?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not relevant


Please explain your answer regarding whether the registration requirements for EuSEF are or are not a hindrance to the setting up of such funds in your Member State:

12. Are the requirements for minimum own funds imposed on the managers relating to fund registration proportionate to the potential benefits for funds from having the passport?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not relevant

Please explain your answer regarding whether the requirements for minimum own funds imposed on the managers relating to fund registration are proportionate or not to the potential benefits for funds from having the passport:

## Should third country managers be able to use the EuVECA or EuSEF designations?

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

13. Should the use of the EuVECA Regulation be extended to third country managers and if so, under what conditions?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not relevant


Please explain your answer regarding whether the use of the EuVECA Regulation should or not be extended to third country managers:

14. Should the use of the EuSEF Regulation be extended to third country managers and if so, under what conditions?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not relevant

Please explain your answer regarding whether the use of the EuSEF Regulation should or not be extended to third country managers:

## Should the range of eligible assets available to EuVECA funds be broadened?

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

15. Is the current profile of eligible portfolio assets conducive to setting up EuVECA funds? In particular, does the delineation of a “qualifying portfolio undertaking” (unlisted, fewer than 250 employees, annual turnover of less than €50 million and balance sheet of less than €43 million) hinder the ability to invest in suitable companies?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not relevant

Please explain your answer to question 15:

16. Does a EuVECA's inability to originate loans to a qualifying portfolio undertaking in which the EuVECA is not already invested hinder the attractiveness of the scheme for potential managers of such funds?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not relevant


Please explain your answer regarding whether a EuVECA's inability to originate loans to a qualifying portfolio undertaking in which the EuVECA is not already invested do or does not hinder the attractiveness of the scheme for potential managers of such funds:

17. In this context, does the rule that a EuVECA can only use 30% of the aggregate capital contributions and uncalled committed capital for loan origination reduce the attractiveness of the scheme?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not relevant

Please explain your answer regarding whether the rule that a EuVECA can only use 30% of the aggregate capital contributions and uncalled committed capital for loan origination does or does not reduce the attractiveness of the scheme:

## Barriers to cross-border activity

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

18. What are the key issues or obstacles when setting up and marketing EuVECA or other types of venture capital funds across Europe?

No response

19. What are the key issues or obstacles when setting up and marketing EuSEF or other types of venture capital funds across Europe?

No response

## Other issues

**20. What other measures could be put in place to encourage both fund managers and investors to make greater use of the EuVECA or EuSEF fundraising frameworks?**

Consideration should be given to decoupling EuVECA and EuSEF as a package. Given the crowded regulatory schedule when the first iterations of the Regulations were being considered, it was understandable that the two regulations were considered alongside each other. It may now be worth considering each Regulation separately rather than applying the same template to each.

There are significant differences between models for social investment and venture capital investment. Most notably social investment does not necessarily follow the venture capital model of investing in a range of undertakings over a fixed period with a view to disinvestment at a fixed point. It would be worth considering adapting the EuSEF model to incorporate open ended funds and funds that are not of a fixed lifecycle – this would be more aligned to the structures traditionally adopted by funds investing in social enterprises. In this scenario it would be necessary to make clearer provision for the management and marketing of EuSEFs by full scope AIFMs as the scenario of an AIFM going over threshold would become a more pressing scenario.

It is also worth noting that social enterprises typically do not have making a profit as their primary objective, and generally will reinvest the majority of their profits back into the enterprise or other social causes. Investments in such enterprises will therefore not deliver the scale of returns traditionally expected by investors. Investors in social enterprises will usually therefore be seeking to participate in social enterprises for other purposes, eg. to support the social projects being undertaken by the enterprise. While investors may wish to dedicate part of their investment portfolio to such enterprises, given the overall objective of the investor will be to achieve capital growth or income (or some combination of the two), investors are unlikely to want to allocate a significant sum to such investments. Therefore, investment thresholds and requirements for non-professional investors should be set at a level which can allow such investors to participate in EuSEFs without committing a significant proportion of their investment capital.

**21. What other barriers exist to the growth of EuVECA and EuSEF? Please specify. Are there other changes that could be made to the EuVECA and EuSEF regulations that would increase their up-take?**

No response

22. What changes to the regulatory framework that govern EuVECA or EuSEF investments (tax incentives, fiscal treatment of cross-border investments) would make EuVECA or EuSEF investments more attractive?

No response

### 3. Additional information

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Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

#### Useful links

Consultation details ([http://ec.europa.eu/finance/consultations/2015/venture-capital-funds/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/venture-capital-funds/index_en.htm))

Consultation document

([http://ec.europa.eu/finance/consultations/2015/venture-capital-funds/docs/consultation-document\\_en.pdf](http://ec.europa.eu/finance/consultations/2015/venture-capital-funds/docs/consultation-document_en.pdf))

Specific privacy statement

([http://ec.europa.eu/finance/consultations/2015/venture-capital-funds/docs/privacy-statement\\_en.pdf](http://ec.europa.eu/finance/consultations/2015/venture-capital-funds/docs/privacy-statement_en.pdf))

More on the Transparency register (<http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en>)

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#### Contact

✉ [fisma-euveca-eusef-consultations@ec.europa.eu](mailto:fisma-euveca-eusef-consultations@ec.europa.eu)

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