



ASSOGESTIONI

associazione del risparmio gestito

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European Commission

DG FISMA

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Assogestioni's response to the EU Commission's Consultation Document – Review of the European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF) Regulations

Assogestioni, the Italian Investment Management Association¹, welcomes the opportunity to respond to the Commission's Consultation Document on the Review of the European Venture Capital Funds (EuVECA) Regulation (No. 345/2013) and the European Social Entrepreneurship Funds (EuSEF) Regulation (No. 346/2013).

We fully support the EC's Capital Markets Union Plan (COM(2015)468 final) and believe that the investment management industry has a key role to play in sustaining the economy and fostering retail as well as professional investments. Diversification of sources of financing, by leveraging on, amongst others, already existing EU investment products, such as EuVECAs, EuSEFs and ELTIFs, can have the potential, if appropriately calibrated, to attract investments of both professional and retail investors, and reach eligible investment targets that are crucial for the growth of the EU economy, such as SME fundings and infrastructure projects.

We are conscious that a stable and coherent regulatory framework is the pre-requisite to make those policy objectives become real investment and economic opportunities and we therefore welcome the exercise undertaken by the Commission aimed at assessing measures of existing regulations (namely, in this case, EuSEFs and EuVECAs) that might have hindered so far such an outcome.

However, we would like to take the opportunity offered by this Consultation to also stress that, beyond the revision of specific and targeted measures applicable to certain types of investment products, it has come the time and the need for the law and regulations of European investment management to be consolidated. As already highlighted in our reply to the Commission's *Green Paper on Building a Capital*

¹ Assogestioni is the trade body for Italian investment management industry and represents the interests of members who manage funds and discretionary mandates around € 1,835 billion (as of November 2015).



Markets Union (COM(2015) 63 final)², over the years the European investment management industry has been the object of major reforms, resulting in a proliferation and fragmentation, in terms of sources of the law, of applicable disciplines. The creation of a consolidated L1 text / single rulebook becomes, thus, crucial, not only to grant certainty of the law to market players, but also to avoid future duplications, inconsistencies between different pieces of legislations/regulations and overlaps of requirements, an objective that the Commissions intends to tackle in its Action Plan on CMU, as demonstrated by the publication of the *Call for Evidence on the EU regulatory framework for financial services*. We feel the urgency of creating a regulatory system whereby a L1 text (such as a directive) would enshrine, for example, the general principles governing the investment management activities, the functioning of the passport as well as marketing (to avoid discrepancies between different marketing requirements between Member States), leaving to regulations the discipline of specific products, organizational requirements as well as depositary regimes.

In light of the considerations above and in order to avoid inconsistencies and possible downturns in terms of harmonized conditions to similar investment products, the possible revision of EuVECA and EuSEF Regulations should not be pursued to the detriment of other equally fundamental products entrusted with the goal to support long-term and infrastructure financing in the EU. The Commission should adequately pay attention to the consequences that specific policy choices could have on other investment vehicles which pursue equally relevant investment, economic and, therefore, policy objectives. In general, we believe that investment-oriented improvements on some products should not unintendly make other products (recognized as strategic as the former) indirectly less attractive.

Q1: Should managers authorized under the AIFMD be able to offer EuVECA to their clients? Please explain.

Q2: Should managers authorized under the AIFMD be able to offer EuSEF to their clients? Please explain.

We do not see obstacles to the possibility for managers authorized under the AIFMD whose total portfolio of assets is, thus, *ab origine* above the EUR 500 million threshold, to offer EuVECA and EuSEF funds. Such a requirement would be in line with the current regulation on ELTIF, which allows (EU) AIFMs (regardless of the size) to seek authorization to manage and market ELTIFs.

²Our reply is available at:

http://www.assogestioni.it/index.cfm/3,766,10899/20150513_assogestioni_response-to-cmu-green-paper.pdf



Q3: 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 EUR 500 million?
Q4: 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 EUR 500 million?

The current EuSEF and EuVECA regulatory frameworks recognize that in case the overall managed portfolios exceed the threshold set out in art. 3(2)(b) of directive 2011/61/UE (AIFMD), the EuSEF and EuVECA managers are required to seek authorization in accordance with the AIFMD.

It is important to assess whether the benefit of continuing to enjoy the EuSEF and EuVECA passports for those managers exceeding the portfolio threshold do not indirectly create disadvantages for other products, especially if this option (so called “grandfathering”) is considered in combination with other measures’ adjustments (please, also refer to our reply to Q6).

More in details, in line with the requirements set out in Regulation (EU) 2015/760 (ELTIF Regulation)³, we would expect that if an EuSEF and EuVECA manager exceeds, post registration, the EUR 500 million threshold, it would be possible for the manager to continue to benefit the EuSEF/EuVECA passports as long as it is compliant: (1) with the AIFMD directive; and (2) with the EuSEF/EuVECA regulation, as the case may be. Such an approach would be consistent with the one adopted in the ELTIF regulation, whereby the manager of the ELTIF, which can only be an EU AIFM according to art. 5(2), not only has to comply with the provisions of the ELTIF regulation but it shall at all times be compliant with Directive 2011/61/EU (art. 7(2)).

In this sense, the reference made to the “exemption from AIFMD authorization” in the last paragraph of page 7 is unclear to us. We would be cautious to extend the EuSEF/EuVECA passport without the prior authorization under the AIFMD of the fund manager, in case the threshold is exceeded after registration of the funds as EuVECA and EuSEF. This is particularly sensitive as the EuSEFs and EuVECAs, similarly to ELTIFs, are products which aim to reach not only professional investors, but also certain “qualified” retail investors and we would see the authorization as AIFMs to be coherent with the regulatory system in place for similar products.

Q5: What has been the effect of setting the current threshold at EUR 100,000?

N/A.

³ Please, see articles 5-7 of the ELTIF Regulation.



Q6: What effect would a reduction in the minimum EUR 100,000 investment have on the take-up of EuVECA? If you favor a reduction, what would be an appropriate level?

Q7: What effect would a reduction in the minimum EUR 100,000 investment have on the take-up of EuSEF?

Q8: How would any reduction of the minimum EUR 100,000 investment be balanced against the need to ensure appropriate retail investor protection?

As a general comment, we believe that any revision in terms of minimum protection requirements for investors other than professional investors to which EuVECA and EuSEFs are offered should be considered on the ground of levelled regulatory requirements. Different sets of measures currently exist for EuVECA/EuSEFs and ELTIFs offered to retail clients not only in terms of investible amounts, but also on obligations for the managers and depositary regime.

It should be stressed that it is not our intention to call for stricter rules on EuVECA and EuSEFs. Our considerations aim instead at bringing to the Commission's attention the need to seek to ensure levelled conditions for similar products. In this sense, an assessment on the possibility to reduce the minimum threshold should have a broader scope and analyze the whole set of possible measures for the protection of retail investors. We believe that once a certain degree of measures is deemed appropriate for certain types of products, such as EuSEFs and EuVECA, the same level should then apply to ELTIFs (or vice-versa), as these products encompass similar characteristics and pursue equally relevant policy objectives. In general, we believe that not only a modification of the investible amount, but also other types of incentives (such as fiscal ones) would these types of funds (EuSEF/EuVECA as well as ELTIFs) to become more attractive for retail investors.

Q9: Are the costs relating to fund registration proportionate to the potential benefits for funds from having the passport?

Q10: Are the registration requirements for EuVECA a hindrance to the setting up of such funds in your Member State and, if so, how could this be alleviated without reducing the current level of investor protection?

Q11: Are the registration requirements for EuSEF a hindrance to the setting up of such funds in your Member State and, if so, how could these hindrances be alleviated without reducing the current level of investor protection?

Q12: Are the requirements for minimum own funds imposed on the managers relating to fund registration proportionate to the potential benefits for funds from having a passport?

N/A.

Q13: Should the use of the EuVECA Regulation be extended to third country managers and if so, under what conditions?

Q14: Should the use of the EuSEF Regulation be extended to third country managers and if so, under what conditions?



In general, we believe that any decision on the extension to third country managers should consider an harmonization between EuSEFs/EuVECAs and ELTIFs. As known, the ELTIF Regulation, only recognized EU AIFMs authorized under Directive 2011/61/UE to seek approval to manage ELTIFs as “*whereas Directive 2011/61/EU also provides for a staged third-country regime governing non-EU AIFMs and non-EU AIFs, the rules on ELTIFs have a more limited scope emphasising the European dimension of the new long-term investment product*” (recital 9).

Any decision by the Commission on the EuVECAs and EuSEFs should consider the possible further levelling with ELTIFs. As mentioned in our reply to Q6-Q8, it is not our intention to support stricter measures on one or the other regulation. Our intention instead is to ensure that similar rules apply to similar products.

Q15: 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 EUR 50 million and balance sheet of less than EUR 43 million) hinder the ability to invest in suitable companies?

N/A.

Q16: Does the 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?
Q17: 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?

We do not see obstacles to the removal of the provision which currently requires the EuVECA to originate loans only to a qualifying portfolio undertaking in which the EuVECA is already invested. Such a revision would be coherent with the current conditions to originate loans for ELTIFs.

Q18: What are the key issues or obstacles when setting up and marketing EuVECA or other types of venture capital funds across Europe?
Q19: What are the key issues or obstacles when setting up and marketing EuSEF or other types of social investment funds across Europe?

N/A.



Q20: 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?

Q21: 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 take-up?

Q22: 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?

N/A.

The Director General