

Revised EuVECA and EuSEF Regulations Legislative Tracker

Last updated: 29 November 2016

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The Simmons & Simmons Revised EuVECA and EuSEF Regulations Legislative Tracker

This Legislative Tracker provides you with an update on the EU's proposed Regulation to amend the European Social Entrepreneurship Funds (EuSEF) and European Venture Capital Funds (EuVECA) Regulations, setting out:

- a high level background to, and summary of the main aims of, the proposed Regulation, and
- a table of the key dates, when available, in the process of agreeing the Level 1 text (with links to the relevant documents).

Background

The [European Social Entrepreneurship Funds \(EuSEF\) Regulation](#) and the [European Venture Capital Funds \(EuVECA\) Regulation](#) (together, the Regulations) came into effect across the European Union (EU) on 22 July 2013.

The original aim of the Regulations was to create new opportunities for market participants to raise and invest capital in innovative small and medium-sized enterprises (SMEs) and social undertakings throughout Europe. EuVECA's are intended to support young and innovative companies, while EuSEF's focus on investment in enterprises whose aim is to achieve positive social impact.

Requirements for qualification as a EuVECA/EuSEF or as a manager of a EuVECA/EuSEF

The Regulations impose a number of restrictions and limitations on both the EuVECA's and/or EuSEF's themselves and their managers (AIFMs).

- For a fund to qualify as a EuVECA or EuSEF, it must:
 - be established in the EU

- be a “collective investment undertaking”, other than a UCITS, which would qualify as an “alternative investment fund” (AIF) under the Alternative Investment Fund Managers Directive (AIFMD)
- intend to invest 70% or more of its aggregate capital contributions and uncalled committed capital in defined “qualifying investments” and
- not use leverage (other than in strictly limited circumstances).
- The AIFM of a EuVECA or EuSEF must:
 - be established in the EU
 - be registered with its home Member State regulator.
 - manage assets under below the threshold set out in Article 3(2)(b) of AIFMD (i.e., managing unleveraged portfolios of less than EUR 500m with a minimum 5 year lock-in).

Marketing passport under AIFMD

In return for compliance with these (and other) restrictions, qualifying funds may “opt in” to an EU-wide marketing passport, under which an AIFM which is registered in one Member State may market qualifying funds as a EuVECA or EuSEF (as applicable) in all other Member States to:

- professional clients (as defined in MiFID) or those who can be treated as such
- other investors investing at least EUR 100,000, who have certified that that they are aware of the inherent risks of investment
- executives, directors and employees involved in the management of the EuVECA or EuSEF.

Review of the Regulations

Uptake of the new fund types was disappointing. In the first two years, only 34 EuVECAs were registered, which, between them, aimed to raise EUR 1.3bn in capital. This figure is well below the EUR 4bn which the European Commission (Commission) had anticipated. In the same period, only six EuSEFs were registered, with an aggregate capital target of EUR 6m.

Each Regulation contained provision for a review after two years. However, since the rules were clearly not functioning as well as had been expected, the Commission brought the reviews forward. As part of this process, and, in parallel with its [Capital Markets Union \(CMU\) Action Plan](#), the Commission undertook a [public consultation](#) between September 2015 and January 2016, seeking views on a number of areas where feedback to its February 2015 CMU [Green Paper](#) had indicated that improvements could be made to the existing regimes, in particular:

- the rules that govern the way in which such funds may invest in assets
- the way in which managers run such funds
- how the Regulations interact with other existing investment fund law and
- the requirements with which EuSEFs and EuVECAs must comply in order to benefit from the marketing passport.

Summary

Following its review, on 14 July 2016, the Commission adopted a [proposal for a new Regulation](#) (the Proposal), to amend the existing Regulations.

Among its key provisions, the Proposal:

- confirms that AIFMs authorised under AIFMD (i.e., those above the threshold in Article 3(2)(b) of AIFMD) can use the "EuVECA" and "EuSEF" designations when marketing such funds in the EU.

The AIFM would have to register the EuVECA or EuSEF and comply with specific provisions under the respective Regulation, in particular:

- the 30% threshold for non-qualifying investments
- the rules on eligible investors and
- specific disclosures to investors and notifications.

EuSEF AIFMs would also have to comply with the provisions setting out procedures to measure the extent to which the undertakings in which the EuSEF invests achieve measurable positive social impacts.

- redefines the definition of a "qualifying portfolio undertaking" in the EuVECA Regulation by permitting investment in either:
 - unlisted undertakings which employ up to 499 persons (rather than 250 people as before) or
 - SMEs listed on a SME growth market.

The Proposal also permits follow-on investments in qualifying portfolio undertakings, provided the undertaking met the necessary criteria at the time of the EuVECA's first investment

- requires the development of Level 2 measures specifying how to determine whether a EuSEF or EuVECA AIFM has sufficient own funds.
- streamlines the registration process by:
 - providing that the competent authority of the home Member State must inform an AIFM as to whether it has been registered no later than two months after it has submitted all necessary information and
 - seeking to avoid duplicative registration processes under the Regulations and under AIFMD
- allows EuVECA and EuSEFs to be registered by authorised AIFMs in a Member State other than that in which the AIFM is authorised
- provides that competent national authorities may not impose fees or other charges in relation to crossborder marketing of EuVECA and EuSEFs.
- ensures that ESMA's central database includes information concerning all EuVECA and EuSEF AIFMs and the funds that they market.

Next steps

The Proposal will now be reviewed by the European Parliament (the EP) and the Council of the EU (the Council).

The EP and Council will consider what changes, if any, they wish to make to the Proposal and, having each decided their preferred positions, they and the Commission will join in trilogue negotiations in order to reach political agreement.

The approved Level 1 text would then be formally voted on in a plenary session of the EP and subsequently endorsed by the Council before being translated into the official languages of the EU and, in due course, published in the Official Journal of the EU.

Where are we in the process?

Table 1: Key stages in development of Level 1 text

Level 1 Text	Date
Commission proposal	14 July 2016
Council compromise proposal	22 September 2016
Council compromise proposal (2)	11 October 2016
Council compromise proposal (3)	24 October 2016
Council compromise proposal (4)	28 November 2016
Council General Approach	TBC
European Parliament's ECON draft report	TBC
European Parliament's ECON final report	TBC
European Parliament text adopted in plenary vote	TBC
Political Agreement	Trilogue negotiations not yet commenced
European Parliament adoption	TBC
European Council adoption	TBC
Publication in OJ	TBC
Entry into force	TBC

Table 2: Development of Level 2 / Level 3 measures

There are currently no discussion or consultation papers on Level 2/Level 3 measures.



Neil Simmonds
Partner – London
 Financial Markets
 D +44 20 7825 3151
 E neil.simmonds@simmons-simmons.com



David Williams
Partner – London
 Financial Markets
 D +44 20 7825 4150
 E david.williams@simmons-simmons.com

Offices

Abu Dhabi

Simmons & Simmons Middle East LLP
Level 10 The ADNIC Building Khalifa Street
PO Box 5931 Abu Dhabi United Arab Emirates
T +971 2 651 9200 F +971 2 651 9201

Amsterdam

Simmons & Simmons LLP
PO Box 79023 1070 NB
Claude Debussylaan 247 1082 MC Amsterdam
The Netherlands
T +31 20 722 2500 F +31 20 722 2599

Beijing

Simmons & Simmons
33rd Floor China World Tower 3
1 Jianguomenwai Avenue
Beijing 100004 People's Republic of China
T +86 10 8588 4500 F +86 10 8588 4588

Bristol

Simmons & Simmons LLP
One Linear Park Temple Quay
Bristol BS2 0PS United Kingdom
T +44 20 7628 2020 F +44 20 7628 2070

Brussels

Simmons & Simmons LLP
Avenue Louise 149 b 16 1050 Brussels Belgium
T +32 2 542 09 60 F +32 2 542 09 61

Doha

Simmons & Simmons Middle East LLP
Level 5 Al Mirqab Tower Al Corniche Street
PO Box 23540 Doha State of Qatar
T +974 4409 6700 F +974 4409 6701

Dubai

Simmons & Simmons Middle East LLP
Level 7 The Gate Village Building 10
Dubai International Financial Centre
PO Box 506688 Dubai United Arab Emirates
T +971 4 709 6600 F +971 4 709 6601

Düsseldorf

Simmons & Simmons LLP
BroadwayOffice Breite Straße 31
40213 Düsseldorf Germany
T +49 2 11-4 70 53-0 F +49 2 11-4 70 53-53

Frankfurt

Simmons & Simmons LLP
MesseTurm Friedrich-Ebert-Anlage 49
60308 Frankfurt am Main Germany
T +49 69-90 74 54-0 F +49 69-90 74 54-54

Funchal

Sociedade Rebelo de Sousa in association with
Simmons & Simmons
Av. Zarco nº2-2º 9000-069 Funchal Madeira
T +351 291 20 22 60 F +351 291 20 22 61

Hong Kong

Simmons & Simmons
13th Floor One Pacific Place
88 Queensway Hong Kong
T +852 2868 1131 F +852 2810 5040

Jeddah

Hammad & Al-Mehdar in alliance with Simmons & Simmons
Office #1209, King Road Tower, Malik Road,
PO Box 864 Jeddah 21421
Kingdom of Saudi Arabia
T +966 92000 4626 F +966 2 606 9190

Lisbon

Sociedade Rebelo de Sousa in association with
Simmons & Simmons
Rua D. Francisco Manuel de Melo 21
1070-085 Lisbon Portugal
T +351 21 313 2000 F +351 21 313 2001

London

Simmons & Simmons LLP
CityPoint One Ropemaker Street
London EC2Y 9SS United Kingdom
T +44 20 7628 2020 F +44 20 7628 2070

Luxembourg

Simmons & Simmons Luxembourg LLP
Royal Monterey 26A Boulevard Royal
Luxembourg L-2429 Luxembourg
T +352 26 21 16 01 F +352 26 21 16 02

Madrid

Simmons & Simmons LLP
Calle Miguel Angel 11 5th floor 28010 Madrid Spain
T +34 91 426 2640 F +34 91 578 2157

Milan

Studio Legale Associato in affiliation with
Simmons & Simmons LLP
Corso Vittorio Emanuele II 1 20122 Milan Italy
T +39 02 72505.1 F +39 02 72505.505

Munich

Simmons & Simmons LLP
Lehel Carré, Thierschplatz 6
80538 Munich Germany
T +49 89-20 80 77 63-00 F +49 89-20 80 77 63-01

Paris

Simmons & Simmons LLP
5 boulevard de la Madeleine 75001 Paris France
T +33 1 53 29 16 29 F +33 1 53 29 16 30

Riyadh

Hammad & Al-Mehdar in alliance with Simmons & Simmons
Office No 1802 Level 18 Al Anoud Tower 2
Olaya King Fahad Road
Riyadh Kingdom of Saudi Arabia
T +966 11 484 7145 F +966 12 606 9190

Shanghai

Simmons & Simmons
40th Floor Park Place 1601 Nanjing Road West
Shanghai 200040 People's Republic of China
T +86 21 6249 0700 F +86 21 6249 0706

Singapore

Simmons & Simmons Asia LLP
12 Marina Boulevard #38-04
Marina Bay Financial Centre Tower 3 Singapore 018982
T +65 6831 5600 F +65 6831 5688

Tokyo

Simmons & Simmons Gaikokuho Jimu Bengoshi Jimusho
(Gaikokuho Joint Enterprise TMI Associates)
23rd floor Roppongi Hills Mori Tower
6-10-1 Roppongi Minato-ku Tokyo 106-6123 Japan
T +81 3 6438 5255 F +81 3 6438 5256