

## Revised EuVECA and EuSEF Regulations Legislative Tracker

Last updated: 20 November 2017

simmons-simmons.com

### 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 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 - 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](#), to amend the existing Regulations.

On 10 November 2017, following agreement with the European Parliament (the EP) and the Council of the EU (the Council), [Regulation \(EU\) 2017/1991](#) ('the Amending Regulation') was published in the Official Journal of the EU, which will introduce a number of amendments to the EuVECA and EuSEF Regulations.

Among its key provisions, the Amending Regulation:

- confirms that AIFMs which are authorised under AIFMD (i.e., those above the threshold in Article 3(2)(b) of AIFMD) are entitled to use the "EuVECA" and "EuSEF" designations when marketing such funds in the EU. Previously, such usage had been restricted to sub-threshold AIFMs
- streamlines the process for registration by:
  - providing that the competent authority of its home Member State must inform an AIFM whether it has been registered no later than two months after it has submitted all necessary information and
  - avoiding duplicative registration processes under the Regulations and under AIFMD
- requires the AIFM to register the EuVECA or EuSEF and to comply with specific provisions under the respective Regulation
- allows EuVECAs and EuSEFs to be registered by authorised AIFMs in a different Member State from than that in which the AIFM is authorised
- 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 Amending Regulation 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

- imposes a minimum initial capital requirement of EUR 50,000 for both internally managed vehicles and for external managers
- imposes additional own fund requirements (of 0.02% of the excess amount) where the value of the qualifying funds managed by a manager exceeds EUR 250 million
- ensures that ESMA's central database includes information concerning all EuVECA and EuSEF AIFMs and the funds that they market.

## Next steps

Following trilogue negotiations between the EP, the Council and the Commission, political agreement on a Level 1 text was reached on 30 May 2017. This text was formally adopted at a plenary session of the EP on 14 September 2017, endorsed by the Council on 09 October 2017 and published in the Official Journal of the EU on **10 November 2017**.

Its provisions formally enter into force on the twentieth day following publication and will be applicable from **01 March 2018**.

## **Review of the Regulations following the Commission's Proposal to reform the European System of Financial Supervision**

On 20 September 2017, the Commission adopted a [Proposal for a Regulation](#) (the ESA Proposal) to amend (among other measures) the Regulations which established the European Supervisory Authorities (i.e., the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority).

As part of the ESA Proposal, the Commission put forward changes to the EuVECA and EuSEF Regulations, under which, ESMA would become the single supervisory body for EuVECAs and EuSEFs in order to ensure consistent application across all Member States. Where the EuVECA or EuSEF exceeded the Article 3 threshold under AIFMD, ESMA would ensure that the affected managers complied with the national law of the AIFM by which AIFMD was implemented.

Under the ESA Proposal, ESMA would also be granted the power to conduct investigations and on-site inspections for these types of funds.

The ESA Proposal will now be subject to scrutiny by the EP and the Council.

## Where are we in the process?

Table 1: Key stages in development of Level 1 text

Level 1 Text	Date
Commission <a href="#">proposal</a>	14 July 2016
Council <a href="#">compromise proposal</a>	22 September 2016
Council <a href="#">compromise proposal (2)</a>	11 October 2016
Council <a href="#">compromise proposal (3)</a>	24 October 2016
Council <a href="#">compromise proposal (4)</a>	28 November 2016
Council <a href="#">General Approach</a>	16 December 2016
European Parliament - <a href="#">ECON draft report</a>	13 December 2016
European Parliament - <a href="#">ECON final report</a>	30 March 2017
<a href="#">Political Agreement</a>	30 May 2017
Adoption by the EP	14 September 2017
Endorsement by Council	09 October 2017
<a href="#">Publication in OJ</a>	10 November 2017
Entry into force	Twentieth day following publication
Date of application	01 March 2018
 <b><u>ESA Proposal</u></b>	
Commission <a href="#">ESA Proposal</a>	20 September 2017

## 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](mailto:neil.simmonds@simmons-simmons.com)



**David Williams**  
**Partner – London**  
 Financial Markets  
 D +44 20 7825 4150  
 E [david.williams@simmons-simmons.com](mailto:david.williams@simmons-simmons.com)

# ANNEX

## 1. Level 2 Measures

The [Amending Regulation](#) contains a number of areas in which ESMA is either permitted or mandated to develop Level 2 measures in respect of both the EuVECA Regulation and the EuSEF Regulation.

The measures to be developed are essentially identical in the two Regulations and the relevant provisions from both Regulations are set out together below – where there are differences, the text is contained in square brackets and references from the EuVECA Regulation are put before those from the EuSEF Regulation.

The Level 2 measures are in respect of:

- A. Applications for registration of the manager - **Article 14** of the EuVECA Regulation / **Article 15** of the EuSEF Regulation
- B. Applications for registration of the fund - **Article 14a** of the EuVECA Regulation / **Article 15a** of the EuSEF Regulation
- C. Organisation and conduct of peer reviews of the registration - **Article 16a** of the EuVECA Regulation / **Article 17a** of the EuSEF Regulation

Looking at each measure in turn:

### A. Applications for registration of the manager - (Article 14 of the EuVECA Regulation / Article 15 of the EuSEF Regulation)

#### (i) What does Level 1 say?

**Article 14** of the EuVECA Regulation and **Article 15** of the EuSEF Regulation state that:

1. Managers of qualifying [venture capital / social entrepreneurship] funds that intend to use designation ["EuVECA" / "EuSEF"] for the marketing of their qualifying [venture capital / social entrepreneurship] funds shall inform the competent authority of their home Member State of their intention and shall provide the following information:
  - (a) the identity of the persons who effectively conduct the business of managing qualifying [venture capital / social entrepreneurship] funds;
  - (b) the identity of the qualifying [venture capital / social entrepreneurship] funds, the units or shares of which are to be marketed and their investment strategies;
  - (c) information on the arrangements made for complying with the requirements of Chapter II;
  - (d) a list of Member States where the manager of a qualifying [venture capital / social entrepreneurship] fund intends to market each qualifying [venture capital / social entrepreneurship] fund.
2. The competent authority of the home Member State shall only register the manager of a qualifying [venture capital / social entrepreneurship] fund if the following conditions are met:
  - (a) the persons who effectively conduct the business of managing qualifying [venture capital / social entrepreneurship] funds are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the manager of a qualifying [venture capital / social entrepreneurship] fund;
  - (b) the information required under paragraph 1 is complete;

- (c) the arrangements notified according to point (c) of paragraph 1 are suitable for complying with the requirements of Chapter II.

**(ii) What is ESMA's mandate?**

**Article 14(7)** of the EuVECA Regulation and **Article 15(7)** of the EuSEF Regulation each empowers ESMA to adopt regulatory technical standards (RTS) specifying the information to be provided to the competent authorities in the application for registration as set out in **Article 14(1)** or **Article 15(1)** and to further specify the conditions as set out in **Article 14(2)** or **Article 15(2)** as applicable.

**Article 14(8)** of the EuVECA Regulation and **Article 15(8)** of the EuSEF Regulation each empowers ESMA to adopt implementing technical standards (ITS) on standard forms, templates and procedures for the provision of information to the competent authorities in the application for registration set out in **Article 14(1)** or **Article 15(1)** and the conditions set out in **Article 14(2)** or **Article 15(2)** as applicable

**(iii) Timing**

The Level 1 text specifies no time limit by which ESMA must develop draft RTS under **Article 14(7)** of the EuVECA Regulation or **Article 15(7)** of the EuSEF Regulation.

The Level 1 text specifies no time limit by which ESMA must develop draft ITS under **Article 14(8)** of the EuVECA Regulation or **Article 15(8)** of the EuSEF Regulation.

ESMA is yet to consult on these measures.

**B. Applications for registration of the fund - (Article 14a of the EuVECA Regulation / Article 15a of the EuSEF Regulation)**

**(i) What does Level 1 say?**

**Article 14a** of the EuVECA Regulation and **Article 15a** of the EuSEF Regulation state that:

1. Managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU shall apply for registration of the qualifying venture capital funds for which they intend to use the designation ["EuVECA" / "EuSEF"].
2. The application for registration referred to in paragraph 1 shall be made to the competent authority of the qualifying venture capital fund and shall include the following:
  - (a) the rules or instruments of incorporation of the qualifying venture capital fund;
  - (b) information on the identity of the depositary;
  - (c) the information referred to in [Article 14(1) / Article 15(1)];
  - (d) a list of Member States where the managers referred to in paragraph 1 have established, or intend to establish, qualifying venture capital funds.

For the purposes of point (c) of the first subparagraph, the information on the arrangements made for complying with the requirements of Chapter II shall refer to the arrangements made for complying with Articles 5 and 6 and points (c) and (i) of [Article 13(1) / Article 14(1)].

**(ii) What is ESMA's mandate?**

**Article 14a(8)** of the EuVECA Regulation and **Article 15a(8)** of the EuSEF Regulation each empowers ESMA to adopt regulatory technical standards (RTS) specifying the information to be provided to the competent authorities in accordance with **Article 14a(2)** or **Article 15a(2)** as applicable.

**Article 14a(9)** of the EuVECA Regulation and **Article 15a(9)** of the EuSEF Regulation each empowers ESMA to adopt implementing technical standards (ITS) on standard forms, templates and procedures for the provision of information in accordance with **Article 14(2)** or **Article 15(2)** as applicable

**(iii) Timing**

The Level 1 text specifies no time limit by which ESMA must develop draft RTS under **Article 14a(8)** of the EuVECA Regulation or **Article 15a(8)** of the EuSEF Regulation.

The Level 1 text specifies no time limit by which ESMA must develop draft ITS under **Article 14(9)** of the EuVECA Regulation or **Article 15(9)** of the EuSEF Regulation.

ESMA is yet to consult on these measures.

## C. Organisation and conduct of peer reviews of the registration processes- (Article 16a of the EuVECA Regulation / Article 17a of the EuSEF Regulation)

**(i) What does Level 1 say?**

**Article 16a(1)** of the EuVECA Regulation and **Article 17a(1)** of the EuSEF Regulation state that:

For the purpose of organising and conducting peer reviews in accordance with Article 14(9) and Article 14a(10) the competent authority of the home Member State or, where different, the competent authority of the qualifying venture capital fund, shall ensure that the final information on the basis of which the registration was granted as set out in Article 14(1) and (2) and Article 14a(2) is made available to ESMA in a timely manner after the registration. Such information shall be made available by means of the procedure referred to in Article 22.

**Article 14(9)** and **Article 14a(10)** of the EuVECA Regulation and **Article 15(9)** and **Article 15a(10)** of the EuSEF Regulation state that:

ESMA shall organise and conduct peer reviews in accordance with Article 30 of Regulation (EU) No 1095/2010 in order to strengthen the consistency of the registration processes carried out by competent authorities pursuant to this Regulation.

**(ii) What is ESMA's mandate?**

**Article 16a(2)** of the EuVECA Regulation and **Article 17a(2)** of the EuSEF Regulation each empowers ESMA to develop draft regulatory technical standards specifying the information to be made available to ESMA in accordance with **Article 16a(1)** or **Article 17a(1)** as applicable.

**Article 16a(3)** of the EuVECA Regulation and **Article 17a(3)** of the EuSEF Regulation each mandates ESMA to develop draft implementing technical standards on standard forms, templates and procedures for the provision of information to be made available to ESMA in accordance with **Article 16a(1)** or **Article 17a(1)** as applicable.



**(iii) Timing**

The Level 1 text specifies no time limit by which ESMA must develop draft RTS under **Article 16a(1)** of the EuVECA Regulation or **Article 17a(1)** of the EuSEF Regulation.

The Level 1 text specifies no time limit by which ESMA must develop draft ITS under **Article 16a(1)** of the EuVECA Regulation or **Article 17a(1)** of the EuSEF Regulation.

ESMA is yet to consult on these measures.

## 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