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NOTE

from: Presidency

to: Delegations

Subject: a) Proposal for a Regulation of the European Parliament and of the Council on European Venture Capital Funds (EuVECA)
b) Proposal for a Regulation of the European Parliament and of the Council on European Social Entrepreneurship Funds (EuSEF)
= New Presidency compromise proposals

Delegations will find attached new Presidency compromise proposals related to Articles 2, 3 and 6 in the above-mentioned proposals in view of preparation of the next informal trilogue at Coreper on 6 June 2012.

The additions and changes to the mandate, which was agreed in March, are denoted by bold underlining, and the deletions by strikethroughs.

1. AMENDMENT OF ART. 2 - EuVECA and EuSEF (st 8132/12 and st 8124/12) – only the EuVECA text is presented in the following but corresponding amendment is foreseen for the EuSEF-text.

Article 2

1. This Regulation applies to managers of collective investment undertakings as defined in point (b) of Article 3, whose assets under management in total do not exceed the threshold mentioned in Article 3 (2) (b) of Directive 2011/61/EU, who are established in the Union and who are subject to registration with the competent authorities of their home Member State in accordance with point (a) of Article 3 (3) of Directive 2011/61/EU, provided that those managers manage portfolios of qualifying venture capital funds.
2. **Venture capital fund managers who are registered under this Regulation in accordance with Article 13, and whose assets in total subsequently grow to exceed the threshold mentioned in Article 3 (2) (b) of Directive 2011/61/EU, and who therefore become subject to authorisation with the competent authorities of their home Member State in accordance with Article 6 of Directive 2011/61/EU, may continue to use the designation "EuVECA", provided that they comply with the conditions laid down in Directive 2011/61/EC and that they continue to comply with the conditions for the use of the designation "EuVECA" in Chapter II of this Regulation at all times in relation to the qualifying venture capital funds.**
3. Venture capital fund managers who are registered under this Regulation can additionally manage UCITS subject to authorisation under Directive 2009/65/EC so long as they are external managers.

2. AMENDMENT OF ART. 3(a) - EuVECA (st 8132/12)

- (a) 'qualifying venture capital fund' means a collective investment undertaking that :
- **intends to** invests at least 70 percent of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments within a time frame laid down in the rules or instruments of incorporation of the qualifying venture capital fund;
 - **never uses more than 30 percent of the fund's aggregate capital contributions and uncalled committed capital for the acquisition of assets other than qualifying investments; and**
 - **- is established in the EU or in a third country where:**
 - (ii) **appropriate cooperation arrangements are in place between the competent authorities of the home Member State of the venture capital fund manager and the supervisory authorities of the third country where the qualifying venture capital fund is established in order to ensure at least an efficient exchange of information taking into account Article 21 of this Regulation that allows the competent authorities to carry out their duties in accordance with this Regulation;**
 - (iii) **the third country where the qualifying venture capital fund is established is not listed as a Non-Cooperative Country and Territory by FATF;**
 - (iv) **the third country where the qualifying venture capital fund is established has signed an agreement with the home Member State of the venture capital fund manager and with each other Member State in which the units or shares of the qualifying venture capital fund are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.**
 - The 70 percent shall be calculated on the basis of amounts investible after deduction of all relevant costs;

3. AMENDMENT OF ART. 3(a) – EuSEF (st 8124/12)

(a) 'European Social Entrepreneurship Fund' (EuSEF) means a collective investment undertaking that :

- **intends to** invests at least 70 percent of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments within a time frame laid down in the rules or instruments of incorporation of the qualifying venture capital fund;
- **never uses more than 30 percent of the fund's aggregate capital contributions and uncalled committed capital for the acquisition of assets other than qualifying investments;**
- **- is established in the EU or in a third country where:**
 - (ii) **appropriate cooperation arrangements are in place between the competent authorities of the home Member State of the EuSEF manager and the supervisory authorities of the third country where the EuSEF is established in order to ensure at least an efficient exchange of information taking into account Article 22 of this Regulation that allows the competent authorities to carry out their duties in accordance with this Regulation;**
 - (iii) **the third country where the EuSEF fund is established is not listed as a Non-Cooperative Country and Territory by FATF;**
 - (iv) **the third country where the EuSEF is established has signed an agreement with the home Member State of the EuSEF manager and with each other Member State in which the units or shares of the EuSEF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.**

4. AMENDMENT OF ART. 3(d) – EuVECA (st 8132/12)

(d) 'qualifying portfolio undertaking' means an undertaking that;

- at the time of an investment by the qualifying venture capital fund, is not admitted to trading on a regulated market or on a multilateral trading facility (MTF) as defined in point (14) and point (15) of Article 4 (1) of Directive 2004/39/EC, unless the trading platform is a SME growth market, **employs fewer than 250 persons**; and either has an annual turnover not exceeding EUR 50 million, or an annual balance sheet in total not exceeding EUR 43 million, ~~and which~~
- is not itself a collective investment undertaking;
- **is established in the EU or in a third country where:**
 - (ii) **appropriate cooperation arrangements are in place between the competent authorities of the home Member State of the venture capital fund manager and the supervisory authorities of the third country where the qualifying portfolio undertaking is established in order to ensure at least an efficient exchange of information taking into account Article 21 of this Regulation that allows the competent authorities to carry out their duties in accordance with this Regulation;**
 - (iii) **the third country where the qualifying portfolio undertaking is established is not listed as a Non-Cooperative Country and Territory by FATF;**
 - (iv) **the third country where the qualifying portfolio undertaking is established has signed an agreement with the home Member State of the venture capital fund manager and with each other Member State in which the units or shares of the qualifying venture capital fund are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.]**

5. AMENDMENT OF ART. 6 - EuVECA and EuSEF (st 8132/12 and st 8124/12) – only the EuVECA text is presented in the following but corresponding amendment is foreseen for the EuSEF-text.

Article 6

1. Venture capital fund managers shall market the units and shares of qualifying venture capital funds exclusively to investors which are considered to be professional clients in accordance with Section I of Annex II of Directive 2004/39/EC or may, on request, be treated as professional clients in accordance with Section II of Annex II of Directive 2004/39/EC, or to other investors where:
 - (a) those other investors commit to invest a minimum of EUR 100.000;
 - (ba) those other investors present to the venture capital fund manager an assessment made by a credit institution, another professional of the financial sector subject to Directive 2004/39/EC, or by a management company within the meaning of Directive 2009/65/EC certifying their expertise, their experience and their knowledge in adequately appraising an investment in risk capital.**
 - ~~(b) those other investors state in writing, in a separate document from the contract to be concluded for the commitment to invest, that they are aware of the risks associated with the envisaged commitment or investment;~~
 - ~~(c) the venture capital fund manager undertakes an assessment of the expertise, experience and knowledge of the investor, without presuming that the investor has the market knowledge and experience of those listed in Section I of Annex II of Directive 2004/39/EC;~~
 - ~~(d) the venture capital fund manager is reasonably assured, in light of the nature of the commitment or investment envisaged, that the investor is capable of making his own investment decisions and understanding the risks involved and that a commitment of this kind is appropriate for such an investor;~~
 - ~~(e) the venture capital fund manager confirms in writing that he has undertaken the assessment referred to in point (c) and that the conditions set out in point (d) are fulfilled.~~
2. Paragraph 1 shall not apply to the investments made by executives, ~~or~~ directors **or employees** of a venture capital fund manager when investing in the qualifying venture capital funds they manage.