



The Future Regulation of Venture Capital in the EU

Introduction

The Irish Venture Capital Association (IVCA) is the representative organisation for all venture capital firms in Ireland.

Venture capital is the provision of capital for growth and expansion to companies with underdeveloped or developing products and revenues at an early stage of their corporate life cycle. Typically, investee companies are innovative, unquoted, small to medium sized enterprises.

Irish venture capital funds are structured, in the main, as limited partnerships under the Limited Partnerships Act 1907. The partners (investors) are long-term (10 year capital commitments) professional investors i.e. pension funds, insurance companies, family trusts, banks and endowment funds. Venture capital funds do not market to the retail sector.

Impact of AIFMD and of EuVECA on the Venture Capital Industry

In recognition of the fact that many venture capital fund managers would fall within the de minimis thresholds established within AIFMD and the importance of the venture capital industry within Europe¹, the European Commission, created a voluntary European Regulation on European Venture Capital Funds ("EuVECA"). Managers registered under EuVECA will have passporting rights to raise capital throughout Europe into qualifying funds. EVCFs may not use leverage and may only be marketed to professional type investors.

All EVCFs must abide by uniform rules and quality standards (including disclosure standards to investors and operation requirements). It is anticipated that voluntary regulation under EuVECA will become standard throughout the venture capital industry in Europe. The appendix attached outlines the current position in relation to regulatory proposals across Europe.

Future Regulation of the Venture Capital Industry in Ireland

As we understand it, those venture capital fund managers currently authorised under the MiFID Regulations will come within the AIFMD and EuVECA for below threshold funds and therefore will no longer fall to be authorised under MiFID.

The IVCA would advocate that the future regulatory landscape in Ireland will emulate good practice in Europe and we believe that the provisions outlined in EuVECA would represent an appropriate template for this purpose.

Irish Venture Capital Association

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¹ Europe's 23 million small and medium sized enterprises ("SMEs") provided 80% of all new jobs in Europe in the past 5 years and contribute significantly to European growth. (Source: European Commission).

APPENDIX: VC Regulation in Europe

Venture Capital Funds and their fund managers, depending on the legal structure, abide by and conform to:

- local company legislation
- local partnership law
- international contractual agreements
- self regulation (local and international professional standards of conduct and governance – EVCA/IPEV)

In the US, the recent Dodd Frank Act has exempted all venture capital funds from regulation.

The approach in most European countries distinguishes between marketing to professional and non-professional investors. A fund marketing to non professional investors will in general be obliged to comply fully with the AIFMD.

The table summarises the position across Europe for below threshold funds, in particular venture capital funds.

Country (% of EU)	Regulated (Pre-AIFMD)	Regulated (Post-AIFMD)
UK (23%)	Yes	Yes FCA
France (23%)	Yes	Yes AMF
Germany (18%)	No	Yes EuVECA
Nordics (11%)	No	No
Spain (9%)	Yes	Yes SSMC
Netherlands (6%)	No	No

UK:

Venture Capital Fund Managers will be regulated and supervised by the Financial Conduct Authority (FCA). The regime proposed by the FCA will be similar to that outlined under EuVECA. The FCA will apply a capital requirement of €5,000.

France:

Venture Capital Fund Managers are supervised by the Securities Market Authority (AMF). If the scheme attracts retail investment then full compliance with the AIFMD will normally be required (the retail investor is a significant player in funding VC activity). Otherwise regulation will mirror EuVECA provisions.

Germany:

Fund managers will be regulated using the registration and reporting guidelines as outlined under EuVECA.

Nordics:

Denmark and Finland – AIFMD registration only. In Sweden there will be a simple registration process similar to that proposed under EuVECA.

Spain:

Venture Capital Funds are currently regulated under Spanish Private Equity Law 2005 and are supervised by the Spanish Securities Market Commission. The system includes a proportionate regime of capital requirements, diversification rules and disclosure requirements similar to those already in place for LPs and indeed similar to those outlined under EuVECA. The SSMC is proposing to amend domestic legislation to bring it into line with the AIFMD and EuVECA.

Netherlands:

AIFMD registration only.