

IN...

# Capital Markets & Financial Regulation

Securities

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Capital Markets Union:

Towards new vital sources of funding for SMEs?

- Capital Markets Union
- Cross-border access to finance

SMEs financing vehicles:

The role of the European Union Venture Capital Funds Regulation (EuVECA)

- EuVECA Regulation
- Greek Venture Capital vehicles

## Capital Markets Union: Towards new vital sources of funding for SMEs?

by Athina Siafarika

### *Capital Markets Union*

The European Commission has recently launched its ambitious plan towards a true single market for capital in Europe, a Capital Markets Union (CMU) (COM(2015)468 "Action Plan on Building a Capital Markets Union"). Its creation is a key element of the Investment Plan announced by the Juncker Commission in November 2014.

One of the main objectives of the CMU is the development of a diversified financial system complementing bank financing, while at the same time, small and medium-sized businesses (SMEs) are placed at the forefront of the CMU initiatives. Providing more funding options for Europe's small businesses has been recognised as essential for investment and business. SMEs are the backbone of the European economy, yet they are struggling to raise capital, particularly during the important development phase.

### *Cross-border access to finance*

Cross-border access to finance, as well as diversified sources of funding (e.g. venture capital, crowdfunding platforms, MTF platforms) presupposes a solid legal framework promoting transparency and investor protection, especially in cases not sufficiently regulated such as non-listed companies and SMEs. European regulators seem to place SMEs regulation and funding high up on their agenda. On the other hand, national regulation differs from country to country depending on the degree of standardization for SMEs that the regulation intends to provide.

The starting point of the new policy and regulation is the opportunity for SMEs to promote themselves as promising investment cases and, consequently, attract the interest of financiers, especially funds, looking to spot -on a cross-border basis- the best SME-opportunities to invest in. In other words, policy makers and regulators are aiming at implementing common standards for SMEs across Europe, in order to boost competition between them in terms of alternative sources of funding, while enable financiers, other than banks, to compare investment opportunities across Europe.

Pioneering and extrovert SMEs looking for financial partners outside the banking sector, should abide by standards set by law or best practices related to, inter alia:

- (a) Transparency
- (b) Disclosure
- (c) Publication of best practices (payment methods etc.)
- (d) Corporate governance.

Even in cases where the national regulatory approach for SMEs is still fragmented, it should be appropriate for SMEs to adopt and promote best practices, mainly under a "Code of Conduct" concept in line with the European standards. For example, SME could adopt provisions for disclosing its payment practices, the persons exercising an important influence on its business operation or its credibility rating and assessment by banks or other institutions (CRAs etc.).

Further and apart from the SME-targeted framework, SMEs could also extract useful examples from listed companies and their standards of increased transparency and disclosure obligations. For example, listed companies have to make public their annual financial statements, as well as inside information concerning their operation or the financial instruments issued. Moreover, shareholders in listed companies enjoy a high level of protection through European and national provisions concerning information for shareholders, participation in general shareholder meetings, voting rights etc. The underlying policy of all those provisions for listed companies is ultimately investors' protection. The same level of protection SMEs should aim to achieve if they wish to satisfy investors' requirements for transparency, impartiality of the management body and sound corporate governance before securing funding.

All in all, SMEs wishing to diversify their funding sources, in times when banking finance has become scarce, have to seriously consider reaching high business standards such as those employed by other European SMEs or even those implemented by listed companies wishing to consolidate investor confidence. Legal expertise is needed to assist SMEs in the new challenge as well as financiers wishing to capture this business opportunity.

## SMEs financing vehicles: The role of the European Union Venture Capital Funds Regulation (EuVECA)

by Athina Siafarika

### *EuVECA Regulation*

The European Venture Capital Fund Regulation (EuVECA) came into effect on 22 July 2013 to complement and coincide with the implementation of the Alternative Investment Fund Managers Directive (AIFMD). The European Commission first published its proposal for a European Venture Capital Fund Regulation in December 2011, as part of its action plan to improve access to finance for SMEs.

The Regulation includes measures to allow qualifying venture capital managers to market their funds to investors across the EU under the "European Venture Capital Fund" label, thus, offering a single, pan-European, marketing passport for those that meet the requirements.

The EuVECA regime is available to managers of Collective Investment Undertakings established in the European Union falling below the AIFMD threshold of €500 million of assets under management (applicable to Alternative Investment Funds that are unleveraged and have no redemption rights exercisable during a period of 5 years) and which are subject to registration with the competent authority of their home Member State. Importantly, every fund using the "EuVECA label" will have to prove that it intends to invest a high percentage of investments (at least 70% of the capital commitments) in supporting young and innovative companies.

The Regulation is not compulsory. If a fund manager does not wish to use the EuVECA designation, then it does not have to comply with the Regulation. A Venture Capital fund manager, whether eligible for EuVECA or not, may, in any event, always elect to voluntarily apply the AIFMD and acquire an EU marketing passport via that route.

Managers intending to market a fund under the "EuVECA label" have to inform the competent authority of their home Member State of their intention and shall provide information such as on the identity of the persons who will actively conduct the business, the identity of the fund and its marketing strategies etc.

It should be highlighted that, according to EuVECA Regulation, managers can market the units and shares of

the qualifying funds exclusively to investors which are considered to be professional clients under MiFID or to investors committing to invest at least €100,000 who have stated in writing that they are aware of the risks associated with this type of investment.

### *Greek Venture Capital vehicles*

In Greece, a EuVECA equivalent could be venture capital funds structured as closed-end mutual funds (called "AKES"). Those are closed-end investment schemes organised in a contractual form and governed by law 2992/2002, as amended by law 4141/2013. They are not incorporated, but rather formed under an Agreement among the Unit holders, a Custodian and a management company. They are formed with a maximum duration of 20 years, have their seat in Greece (the seat of the management company or that of the custodian) and a minimum asset value of €3 million. AKES can invest in both listed and non-listed companies of different maturities, e.g. start-up and seed capital phase, subsequent growth phase.

Under the current legislative framework (law 2992/2002 & law 4209/2013), the management of an AKES may be carried out by:

- A Greek S.A. with minimum total assets of 100,000 €, specialized in managing AKES or by a company authorized to manage such investment schemes by the competent authorities of another Member - State of the European Economic Area.
- An investment firm under law 3606/2007 (which transposed MiFID into the Greek legal order)
- A UCITS Management Company of law 4099/2012.

AKES cannot be marketed outside Greece, without benefiting from a European passporting provision.

AKES can seek for a AIFMD passport. Such passport can be acquired even in case AKES's assets fall below the thresholds of €100 million and €500 million, as defined in AIFMD under its exemption regime, provided that all relevant sub-threshold fund managers requirements are met.



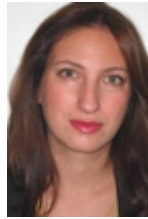
On the other hand, AKES could benefit from the EuVECA Regulation, which is an entirely voluntary regime, existing alongside the AIFMD, allowing smaller funds access to a marketing passport without the regulatory costs of the AIFMD. Sub-threshold fund managers (in terms of the AIFMD) have an alternative option to market their qualifying venture capital funds under the designation of "EuVECA" throughout the EU pursuant to a passport, without opting into full compliance with the AIFMD. In order to benefit from the EuVECA Regulation, AKES have to invest in the so-called "qualifying portfolio undertakings", which essentially reflects small and medium sized enterprises (SMEs) definition referring to undertakings not admitted to trading on a regulated market or MTF, employ fewer than 250 persons and have an annual turnover not exceeding €50 million (or annual balance sheet total not exceeding €43 million).

While the EuVECA Regulation limits its benefits to sub-threshold managers, there are cases where a EuVECA manager subsequently exceeds the AIFMD threshold. That manager will have to seek authorisation in accordance with the AIFMD and comply with the AIFMD requirements. However, he can continue using the EuVECA denomination in relation to the marketing of qualifying funds, subject to certain conditions set in the EuVECA regulation. The EuVECA Regulation does not prohibit the managers in this situation from setting up and marketing new funds under the EuVECA denominations.

Each of the aforementioned alternatives (EuVECA, AIFMD, AKES) or even other similar (e.g. "EKES", as an incorporated case of venture capitals in Greece under the law 2367/1995) can be traced as a separate "business case" for undertakings (SMEs) and financiers provided that an appropriate "fine-tuning" either from a legal or economic perspective can be achieved.

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