

Position Paper

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

CREATING LASTING VALUE



On behalf of the Public Affairs Executive (PAE) of the *EUROPEAN PRIVATE EQUITY AND VENTURE CAPITAL INDUSTRY*

13 May 2015

To: European Commission

Re: Response to the European Commission Consultation
on the review of the Prospectus Directive

Who we are:

The European Private Equity & Venture Capital Association (EVCA) is the voice of European private equity. Our membership covers all private equity activity, from early-stage venture capital through to large private equity firms and funds investing in infrastructure. Our members also include institutional investors, such as pension funds and insurance companies, who are a key source of long-term financing in Europe and who invest in private equity, venture capital and infrastructure funds. We represent 650 member firms and 500 affiliate members.

Private equity fund managers act as “connectors” between large institutional investors and European businesses that require funding at different stages of their life-cycle. In that context, private equity activity has three components: **fundraising**, during which fund managers raise capital from investors; **investment**, during which the manager puts that capital to work, investing it into companies and working with them to develop the business; **exit**, the point at which the company is transferred to its next owner(s), providing a return for the investor which is then used, in part, to help fund investment in future private equity and venture capital funds.

Private Equity & Prospectuses:

Prospectus requirements can create barriers or hurdles at the fundraising and exit stages and can therefore act as a disincentive for European private equity when investing into European companies.

While investors into private equity ordinarily are institutional investors such as pension or insurance funds, private equity funds may in some cases raise funds on capital markets and therefore may issue transferable securities. This can constitute an additional fundraising route to private equity firms for whom, in the past, it has been prohibitively expensive to

Position Paper

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu



CREATING LASTING VALUE

carry out this activity. Changes to the Prospectus Directive could therefore make capital markets more attractive as an indirect source of funding for European businesses.

Similarly, private equity firms may be faced with Prospectus requirements if they decide to divest a portfolio company by way of a listing or Initial Public Offering (IPO) after an average of six years of patient and active investment in the business. While we recognize the important role played by the Prospectus to inform potential investors about a company and the risks inherent to their investments, costs faced by small innovative companies backed by small venture capital funds are often disproportionate and put the capital markets beyond the reach of many start-ups. Following a 2010 UK government consultation, it was estimated that the cost of preparing a prospectus was between 7 to 12% of the amount of the overall public offer¹.

General Comments on the Consultation Document:

For the reasons outlined above, we support the proposed review of the Prospectus Directive and potential streamlining and simplification of its requirements. We agree with the Commission that the Prospectus process is often seen as expensive, complex and time-consuming. Ensuring that prospectus documents are proportionate to the size of companies which are issuing them without reducing investor protection, as these investors are not professional or “sophisticated”, must be the key objective of the proposed review.

In order to achieve this objective, we feel that the following paths can be followed:

- Ensure Prospectus requirements are not duplicating existing sectorial requirements,
- Increase the threshold that trigger full prospectus requirement when fundraising ,
- Increase the maximum number of investors an offer can go to before a prospectus is to be produced,
- Ensure requirements for SMEs are proportionate to the size of their business,
- Revise the role of competent authorities.

Some of these points are detailed in the EU IPO Report issued by the European IPO Task Force on 23rd March 2015, which the EVCA initiated with FESE and EuropeanIssuers².

¹ The UK consultation can be found [here](#).

² The full Report, as well as a summary can be found online [here](#).

Position Paper

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu



CREATING LASTING VALUE

Specific Comments:

Q4. Exemptions designed to strike an appropriate balance between investor protection and administrative burden on small issuers and small offers.

Costs faced by small issuers need to be reduced while maintaining an appropriate level of investor protection. The best approach would not necessarily be to change current thresholds - with the risk of allowing a larger number of any type of retail investors to invest without protection - but rather to allow a new set of sophisticated investors to be exempted from the Prospectus requirements by enlarging the exemption in Article 3.2 (a) and (b) to semi-professional investors as defined in the EuVECA Regulation (Article 6.1).

Q13. Treatment of EuVECA and ELTIFs

There should be a **full exemption for EuVECA and ELTIF funds** from the Prospectus Directive requirements **where these funds are marketed only to professional or “semi-professional” investors**, i.e. those who invest a minimum of 100.000€ and understand the nature/risk of the investment, as defined in the EuVECA Regulation (Art 6.1). Article 23 of the new ELTIF Regulation should be modified to take this into account and avoid imposing additional requirements on fund managers, for the apparent benefit of professional/semi-professional investors who do not need such measures, thereby naturally discouraging managers from taking up the ELTIF product.

We believe this would be in line with the current objective of the Directive, would provide more legal certainty for these funds and avoid making them less attractive to professional investors by adding requirements which are ill-suited to this type of investor.

We feel that venture capital funds should not generally be marketed to retail investors. Retail investors who wish to access the asset class can do so through fund-of-funds which are able to repackage traditional investor positions into something better suited to the needs of individual investors.

If EuVECA funds were to issue transferable securities to the public, it would then be crucial for these funds to be caught under the Prospectus Directive, in order to give retail investors the legal protection which they need. However, the Commission could then take into account the current sectorial requirements set in EuVECA as part of the Prospectus Directive review in order to avoid duplication and overlap.

Position Paper

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu



CREATING LASTING VALUE

Contact

Thank you in advance for taking our comments into account as part of the consultation process. We would be more than happy to further discuss any of the comments made in this paper.

For further information, please contact Christophe Verboomen (christophe.verboomen@evca.eu) at the European Private Equity & Venture Capital Association (EVCA).

Phone +32 2 290 02 37

About the PAE

The Public Affairs Executive (PAE) consists of representatives from the venture capital, mid-market and large buyout parts of the private equity industry, as well as institutional investors and representatives of national private equity associations (NVCAs). The PAE represents the views of this industry in EU-level public affairs and aims to improve the understanding of its activities and its importance for the European economy.

About EVCA

The EVCA is the voice of European private equity.

Our membership covers the full range of private equity activity, from early-stage capital to the largest private equity firms, investors such as pension funds, insurance companies, fund-of-funds and family offices and associate members from related professions. We represent 650 member firms and 500 affiliate members.

The EVCA shapes the future direction of the industry, while promoting it to stakeholders such as entrepreneurs, business owners and employee representatives.

We explain private equity to the public and help shape public policy, so that our members can conduct their business effectively.

The EVCA is responsible for the industry's professional standards, demanding accountability, good governance and transparency from our members and spreading best practice through our training courses.

We have the facts when it comes to European private equity, thanks to our trusted and authoritative research and analysis.

The EVCA has 25 dedicated staff working in Brussels to make sure that our industry is heard.

Position Paper

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu



CREATING LASTING VALUE



The European Private Equity and Venture Capital Association (EVCA) is a member-based, non-profit trade association that was established in Brussels in 1983. The EVCA is a member of the Transparency register (ID: 60975211600-74).