

6 March 2014

Recommendation for amendment of the Alternative Investment Fund Manager Act

Background^{1 2 3}

Austria ranks among Europe's top group of countries with the best general financing conditions for small companies. The very favourable general framework conditions, however, are opposed by a newer, and in international terms, smaller market for risk financing.

At 0.08 percent of GDP, the risk capital invested in 2012 in Austria is less than a third of the average for comparable European countries (0.26%). When it comes to raising funds at home and abroad for domestic companies, Austria is placed only 19 out of 25 comparison countries. A functioning risk capital market is, however, a basic requirement for joining the top knowledge and innovation-based economies. Ultimately with risk capital it is all about a special financing segment for small, young (or recently started) innovative companies, for which there are no real alternative forms of financing available.

Additional legal initiatives have recently been kick-started to invigorate the market, particularly for international financing. Based on the EU's "Alternative Investment Fund Manager Directive (AIFMD)", the Alternative Investment Fund Manager Act (AIFMG) was initiated in July 2013. Standardised admission requirements will also be stipulated with these provisions for risk capital funds across the EU.

The "European Venture Capital Pass" associated with this produces benefits with international financing. Higher costs for admission, however, are also produced.⁴ A sub-threshold area for small funds has therefore been

¹ Peneder, M.: "Von den trockenen Tälern der Risiko- und Wachstumsfinanzierung", WIFO Monthly Reports, 2013, 86 (8), pp. 637–648.

² Jud, Th.: "Funktionsmodell und Rahmenbedingung der Risikokapitalfinanzierung", WIFO Monthly Reports, 2013, 86 (8), pp. 663–672.

³ Jud, Th., Marchart, J.: "Mögliche Konsequenzen der Umsetzung der EU-Richtlinie zum Management alternativer Investmentfonds für die österreichische Risikokapitalbranche", WIFO Monthly Reports, 2013, 86 (8), pp. 699–706.

⁴ Jud, Th., Marchart, J., Friesenbichler, K. S., Peneder, M., Haslinger, S.: "Risikokapital in Österreich. Angebots- und nachfrageseitige Erklärungen der geringen Ausprägung und Empfehlungen zu ihrer Überwindung", A Study by Improveo, AVCO and WIFO, Vienna, 2013.

created⁵, which is excepted from regulation. If such typical for Austria small risk capital funds do not voluntarily meet the requirements of AIFMG, they miss out on the benefits of the European Pass. Following a one-time registration, the "European Venture Capital Regulation (EuVECA)" therefore offers an option for the administration of these funds with a similar pass, provided 70 percent of the capital applied goes to young and innovative companies.

The AIFMG itself does not utilise the scope granted by the EU directive, and with a transition period until July 2014 only continues to admit direct investments of private investors for real estate, some special funds and managed future funds. Sale to private investors, especially in the form of risk capital, would consequently no longer be permitted. Valuable investment resources for Austria would then also be lost, and would probably be diverted into funds invested outside of Austria.

This provision results, not least of all, in insufficient consistency with investor protection, as according to the AIFMG, private direct investment itself is restricted to large funds, while according to EuVECA, shares of smaller funds with technologically and financially more risk-intensive portfolios can be sold to private investors.

Recommendation

The Council confirms that a well-developed risk capital industry is an essential driving force for a national economy, which is based on innovation and technological market leadership.

The Council therefore recommends the Austrian Government utilise the regulatory scope to remove considerable obstacles to an increase in risk capital intensity, and welcomes the plans proposed in this direction for this legislative period.

The Council in particular recommends,

- that, following the end of the transition period in July 2014, the prohibition of sale for direct private investors coming into effect in accordance with § 48 AIFMG be lifted by the amendment
- the complementarity and consistency of the investor provisions of EuVECA and AIFMG in the sub-threshold area relevant in practical terms for Austria be optimised.

⁵ The sub-threshold for these funds is generally set at EUR 100 million and EUR 500 million for those funds that utilise leverage financing.