

# Preliminary assessment of coverage and impact of national regulation and self regulatory codes

**Gabriela Tschirkova**

**Asset Management, Internal Market and Services,  
European Commission**

Concerns raised in relation to private equity activities	Concerns addressed by national legislation, 8 Member States: FI, FR, DE, IT, NL, ESP, SE, UK	Concerns addressed by European legislation
NO PRIVATE EQUITY SPECIFIC REGULATORY FRAMEWORK EXISTS		
<b>I. Private equity managers</b>		
<b>REGISTRATION AND AUTHORISATION OF FUND MANAGERS</b>	Yes (5 MS)	No
<b>II. Financial stability</b>		
<b>CAPITAL REQUIREMENTS (INITIAL CAPITAL)</b>	Corporate/Company Law	The 2nd Company Law Directive, MiFID (only if subject to it)
<b>RISK BASED CAPITAL</b>	No	Capital Requirements Directive (lending institutions)
<b>III. Market integrity and Market stability</b>		
<b>MARKET ABUSE</b>	Corporate/Company Law	Market Abuse Directive
<b>MONEY LAUNDERING</b>	Corporate/Company Law	Money Laundering Directive
<b>IV. Corporate Governance</b>		
<b>SHAREHOLDER IDENTIFICATION</b>	Corporate/Company law	Transparency Directive (listed companies)
<b>TRANSPARENCY OF MANAGERS' REMUNERATION</b>	Dealt with in LPAs - contract law	Commission Recommendation on Directors' remuneration (listed companies)
<b>V. Transparency, Disclosure to investors, authorities, public</b>		
<b>INVESTMENT STRATEGIES, RISK MANAGEMENT AND VALUATION</b>	Investors: dealt with in LPAs - contract law. Authorities/Public: Company law	The 4th and 7th Company Law Directive (audited accounts - private & public companies, risk management and valuation - public companies), MiFID, Prospectus Directive, IORP Directive
<b>MANAGEMENT AND DISCLOSURE OF CONFLICTS OF INTEREST</b>	Dealt with in LPAs - contract law. (Directors' duties/liabilities)	Only if subject to MiFID
<b>VI. Social Economy</b>		
<b>CAPITAL SUSTAINABILITY OF PORTFOLIO COMPANIES (asset stripping)</b>	Corporate/Company law (Directors' duties/liabilities)	The 2nd Company Law Directive (formation, maintenance & alteration of company's capital)
<b>EXCESSIVE LEVERAGE OF PORTFOLIO COMPANIES</b>	Corporate/Company law (Directors' duties/liabilities)	No
<b>EMPLOYEES CONSULTATION AND INFORMATION</b>	Labour law	Transfer of Undertakings Directive, Framework directive for consulting and informing employees.

Concerns raised in relation to private equity activities	Are concerns addressed by existing industry codes or best practice guidelines?					
	Nnational/EVCA Code of Conduct	EVCA Corporate Governance Guidelines	EVCA Governing Principles	EVCA Reporting Guidelines	International Private Equity and Venture Capital Valuation Guidelines	National Transparency and Disclosure Guidelines
<b>I. Private equity managers</b>						
REGISTRATION AND AUTHORISATION OF FUND MANAGERS	enhance	enhance				
<b>II. Financial stability</b>						
CAPITAL REQUIREMENTS (INITIAL CAPITAL)			enhance			
RISK BASED CAPITAL						
<b>III. Market integrity and Market stability</b>						
MARKET ABUSE	enhance	enhance				
MONEY LAUNDERING	enhance	enhance	x			
<b>IV. Corporate Governance</b>						
SHAREHOLDER IDENTIFICATION		x				x
TRANSPARENCY OF MANAGERS' REMUNERATION		x		x		x
<b>V. Transparency, Disclosure to investors, authorities, public</b>						
INVESTMENT STRATEGIES, RISK MANAGEMENT AND VALUATION	x	x	x	complement	complement	x
MANAGEMENT AND DISCLOSURE OF CONFLICTS OF INTEREST	x	x	x			x
<b>VI. Social Economy</b>						
CAPITAL SUSTAINABILITY OF PORTFOLIO COMPANIES	x	x				x
EXCESSIVE LEVERAGE OF PORTFOLIO COMPANIES	x	x				x
EMPLOYEES CONSULTATION AND INFORMATION	x	x				x

ASSESSMENT CRITERIA	BENCHMARKS	National/EVCA Code of Conduct	EVCA Corporate Governance Guidelines	EVCA Governing Principles	EVCA Reporting Guidelines	International Private Equity and Venture Capital Valuation Guidelines	National Transparency and Disclosure Guidelines (DK, DE, NL, SE, UK + FI)
SCOPE/COVERAGE							
SCOPE/COVERAGE	Extent to which all private equity firms are covered.	15 MS - 6 MS apply EVCA, 9 MS apply own codes (EVCA members cover 80% of Assets under Management in the EU)	4 MS' national associations + 1 MS/FR own national standard	4 MS' national associations	11 MS' national associations	18 MS' national associations	coverage differs among MS (All vs. Qualified - by size/N° employees)
ENFORCEMENT							
COMPLIANCE	What compliance is required? (mandatory > comply or explain > voluntary)	Mandatory for members of national or EU association	Voluntary for EVCA members	Voluntary for EVCA members	Voluntary for EVCA members	Voluntary for EVCA members	"comply or explain"
MONITORING	How is monitoring of compliance organised? Who is responsible?	passive by EVCA, national authorities/association	limited to management of portfolio companies	limited to investors (LPAs)	limited to investors (LPAs)	limited to investors (LPAs)	independent body, MS' national association
SANCTIONS	Existence of enforcement and sanctions in the code or guidelines.	eviction from national/EU or withdrawal of authorisation	no reference	no reference	no reference	no reference,	"comply or explain", see above

# Questions

- Policy concerns raised by private equity are addressed to some extent by provisions of national and European legislation. However, these concerns are tackled in different ways, to varying degrees in different Member States.
  - **Do gaps and differences in existing regimes undermine the overall effectiveness of the regulatory framework?**
- A series of industry codes have emerged at national and European level alongside these national and European provisions.
  - **Do the industry codes contain the elements needed to address the remaining policy concerns?**
  - **Are they sufficiently clear, comprehensive and enforceable to change behaviour and outcomes?**