Press Releases

Brussels is stopping venture capital investment law - BVK is promoting new start for private equity regulation

01. Oktober 2009

The EU competition regulator has stopped parts of the law on the modernisation of the framework for equity investments (MoRaKG) and thereby the introduction of the law on venture capital investment (WKBG) for definite. As the EU Commission advised today, sections of the law are not compatible with the single European market regulations. "It is now up to the new federal government to make a new start on regulating the private equity sector in Germany. Growth and jobs need capital. After the banking crisis, equity is more important than ever," stated Dr. Hanns Ostmeier, President of the German Private Equity and Venture Capital Association (BVK). The BVK had already submitted a comprehensive concept for the regulation of private equity with its "Recommendation for a capital market framework for the regulation of private equity in Germany" in September. This comprises regulatory aspects, regulates the different levels of the private equity model and includes the conversion of existing decrees by the Ministry of Finance into internationally reliable statutory form, which is long overdue. And in view of the Europe-wide regulation of all alternative investment fund managers (AIFM) currently in preparation in Brussels, the BVK proposal for a consistent statutory regulation offers a basis for a solution workable at international level to implement this regulation in national legislation by 2011.The veto from Brussels has now blocked the compromises negotiated by the grand coalition for regulating the exemption from business tax and the tax transparency of venture capital firms, respectively, and the forms of relief available for treating losses carried forward by financed companies. However, the WKBG was condemned to failure even before the EU veto. Even for the venture capital sector it addressed, no improvements could be expected for Germany as a business location and for the financing situation of young enterprises in view of the restrictive and unrealistic regulations resulting from the achieved compromises. The envisaged criteria for the tax transparency of venture capital funds, for instance, were very tight, and the exclusive focus on venture capital funds discriminated against other private equity funds. In addition, the restricting demands made on the financed companies as regulated in the law - such as the restriction to capital companies within the EU or within the European Economic Area as well as the size restriction to companies with a max. 20 million EUR equity - would hardly have brought about the desired positive effects on the venture capital financing of start-ups.

The BVK once again stresses the need for a consistent private equity law for the entire private equity sector including the areas of venture capital, growth financing and buy-outs, through which the framework in Germany will become competitive within Europe for private equity and thereby for the financing of young companies and SMEs. Germany is the largest economy in Europe, but lagging behind in terms of the ratio between private equity investments and the country's economic power. This is not least due to the framework for private equity in Germany, which is undefined compared to other countries. The "Recommendation for a capital market framework for the regulation of private equity in Germany" illustrates how Germany might be able to catch up in international competition. The BVK hopes that the new federal government will therefore promote the introduction of comprehensive private equity legislation with a view to supporting the financing situation for German enterprises.