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NOTE

from:	Presidency
to:	Delegations
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on European Venture Capital Funds - Text provisionally agreed with the European parliament

Delegations will find attached the text of the above-mentioned Regulation, as provisionally agreed with the European Parliament.

REGULATION (EU) No …/2012
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

on European Venture Capital Funds

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure[3],

Whereas:

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1 OJ C …p…
2 OJ C …p…
3 Position of the European Parliament of …

(1) Venture capital provides finance to undertakings that are generally very small, in the initial stages of their corporate existence and display a strong potential for growth and expansion. In addition, venture capital funds provide ▌ undertakings with valuable expertise and knowledge, business contacts, brand-equity and strategic advice. By providing finance and advice to these undertakings, venture capital funds ***stimulate*** economic growth, contribute to the creation of jobs ***and capital mobilisation***, ***foster the establishment and expansion of*** innovative undertakings, increase their investment in research and development and foster entrepreneurship, innovation and competitiveness ***in line with the objectives of EU 2020 Strategy and in the context of the long-term challenges of the Member States, such as those identified in the European Strategy and Policy Analysis System's report, Global Trends 2030***.

(2) It is necessary to lay down a common framework of rules regarding the use of the designation 'European Venture Capital Fund' ('EuVECA'), in particular the composition of the portfolio of funds that operate under this designation, their eligible investment targets, the investment tools they may employ and the categories of investors that are eligible to invest in such funds by uniform rules in the Union. In the absence of such a common framework, there is a risk that Member States take diverging measures at national level having a direct negative impact on, and creating obstacles to, the good functioning of the internal market, since venture capital funds that wish to operate across the Union would be subject to different rules in different Member States. Moreover, diverging quality requirements on portfolio composition, investment targets and eligible investors could lead to different levels of investor protection and generate confusion as to the investment proposition associated with a 'EuVECA'. Investors should, furthermore, be able to compare the investment propositions of different venture capital funds. It is necessary to remove significant obstacles to cross-border fundraising by venture capital funds and to avoid distortions of competition between those funds, and to prevent any further likely obstacles to trade and significant distortions of competition from arising in the future. Consequently, the appropriate legal basis is Article 114 TFEU, as interpreted in accordance with the consistent case law of the Court of Justice of the European Union.

(3) It is necessary to adopt a Regulation establishing uniform rules applicable to the European Venture Capital Funds and imposing corresponding obligations on their managers in all Member States that wish to raise capital across the Union using the designation 'EuVECA'. These requirements should ensure the confidence of investors that wish to invest in venture capital funds.

(4) Defining the quality requirements for the use of the designation 'European Venture Capital Fund' in the form of a Regulation would ensure that those requirements will be directly applicable to the managers of collective investment undertakings that raise funds using this designation. This would ensure uniform conditions for the use of this designation by preventing diverging national requirements as a result of the transposition of a Directive. This Regulation would entail that managers of collective investment undertakings that use this designation would need to follow the same rules in all of the Union, which would also boost confidence of investors that wish to invest in venture capital funds. A Regulation would also reduce regulatory complexity and the managers' cost of compliance with often divergent national rules governing venture capital funds, especially for those managers that want to raise capital on a cross-border basis. A Regulation should also contribute to eliminating competitive distortions.

(4a) As stated in Commission Communication, entitled 'An action plan to improve access to finance for SMEs' (COM(2011)870), in 2012 the Commission will complete its examination of tax obstacles to cross-border venture capital investments with a view to presenting solutions in 2013 aimed at eliminating the obstacles while at the same time preventing tax avoidance and evasion.

(4b) ***It should be possible for a qualifying venture capital fund to be either externally or internally managed. Where the qualifying venture capital fund is internally managed, the qualifying venture capital fund is also the manager and should therefore comply with all requirements for managers of qualifying venture capital funds under this Regulation and be registered as such. A qualifying venture capital fund which is internally managed should however not be permitted to be the external manager of other collective investment undertakings or UCITS.***

(5) In order to clarify the relationship between this Regulation and ***other*** rules on collective investment undertakings and their managers, it is necessary to establish that this Regulation should only apply to managers of collective investment undertakings, other than UCITS in accordance with Article 1 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS),[4] who are established in the Union and are registered with the competent authority in their home Member State in accordance with Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010[5]***, provided that those*** managers ▌ manage portfolios of qualifying venture capital funds. ***However, venture capital fund managers who are registered under this Regulation and who are external managers should be allowed to additionally manage UCITS subject to authorisation under Directive 2009/65/EC.***

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4 OJ L 302, 17.11.2009, p. 32.
5 OJ L 174, 1.7.2011, p. 1.

(5a) Furthermore, ***this Regulation applies*** only ▌ to managers of those ***collective investment undertakings*** whose assets under management in total do not exceed ***the*** threshold ***referred to in Article 3(2)(b)*** of Directive 2011/61/EU. ***This means that the calculation of the threshold for the purposes of this Regulation follows the calculation of the threshold of Article 3(2)(b) of Directive 2011/61/EU.***

(5b) However, venture capital fund managers who are registered under this Regulation and whose assets in total subsequently grow to exceed the threshold referred to in Article 3(2)(b) of Directive 2011/61/EU, and who therefore become subject to authorisation with the competent authorities of their home Member State in accordance with Article 6 of that Directive, may continue to use the designation 'EuVECA' in relation to the marketing of qualifying venture capital funds in the Union, provided that they comply with the requirements laid down in that Directive and that they continue to comply with certain requirements for the use of the designation 'EuVECA' specified in this Regulation at all times in relation to the qualifying venture capital funds. This applies to both existing qualifying venture capital funds and qualifying venture capital funds established after exceeding the threshold.

(6) Where managers of collective investment undertakings do not wish to use the designation 'EuVECA', this Regulation should not apply. In these cases, existing national rules and general Union rules should continue to apply.

(7) This Regulation should establish uniform rules on the nature of qualifying venture capital funds, notably on the portfolio undertakings into which the qualifying venture capital funds are to be permitted to invest and the investment instruments to be used. This is necessary so that a clear demarcation line can be drawn between a qualifying venture capital fund and other alternative investment funds that engage in other, less specialised, investment strategies, for example ***buyouts or speculative real estate investments, which this Regulation is not seeking to promote***.

(8) In line with the aim of precisely circumscribing the collective investment undertakings which will be covered by this Regulation and in order to ensure ***a*** focus on providing capital to small undertakings in the initial stages of their corporate existence, ***as qualifying venture capital funds should be considered those funds that intend to invest*** at least 70 percent of their aggregate capital contributions and uncalled committed capital in such undertakings***. The qualifying venture capital fund should not be permitted to invest more than 30 percent of its aggregate capital contributions and uncalled committed capital in assets other than qualifying investments. This means that whereas the 30 percent should be the maximum limit for non-qualifying investments at all times, the 70 percent should be reserved for qualifying investments during the life time of the qualifying venture capital fund. The above mentioned limits should be calculated on the basis of amounts investible after deduction of all relevant costs and holdings of cash and cash equivalents. This Regulation should set out the details necessary for the calculation of the referred investment limits.***

(8a) A qualifying venture capital fund should, for the time being, be established in the Union in order to be entitled to use the designation 'EuVECA' as established by this Regulation. The Commission should, at the latest within two years of the date of application of this Regulation, review the limitation on the use of the designation 'EuVECA' to funds established in the EU, taking into account experience in applying the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters.

(8b) ***The purpose of this Regulation is to support growth and innovation in small and medium-sized undertakings in the Union. Investments in qualifying portfolio undertakings established in third countries can bring more capital to qualifying venture capital funds and thereby benefit small and medium sized enterprises in the Union. However, under no circumstances should this Regulation benefit investments made in portfolio undertakings established in third countries characterised by a lack of appropriate cooperation arrangements between the competent authorities of the home Member State of the EuVECA manager and with each other Member State in which units or shares of the EuVECA are intended to be marketed or by a lack of effective exchange of information in tax matters.***

(8c) ***Managers of a qualifying venture capital fund should be able to attract additional capital commitments during the lifetime of that fund. Such additional capital commitments in the lifetime of the qualifying venture capital fund should be taken into account when the next investment in assets other than qualifying assets is contemplated. Additional capital commitments should be permitted in accordance with criteria and subject to conditions set out in the qualifying venture capital fund's rules or instruments of incorporation.***

(8d) ***The qualifying investments should be in the form of equity or quasi equity instruments. Quasi equity instruments comprise a type of financing instrument, which is a combination of equity and debt, where the return on the instrument is linked to the profit or loss of the qualifying portfolio undertaking, and where the repayment of the instrument in the event of default is not fully secured. Such instruments include a variety of financing instruments such as subordinated loans, silent participations, participating loans, profit participating rights, convertible bonds and bonds with warrants.***

As a possible complement to - but not a substitute for - equity and quasi equity instruments, secured or unsecured loans, e.g. bridge financing, granted by the qualifying venture capital fund to a qualifying portfolio undertaking in which the qualifying venture capital fund already holds qualifying investments should be permitted, provided that no more than 30 percent of the aggregate capital contributions and uncalled committed capital in the qualifying venture capital fund is used for such loans. Furthermore, to reflect existing business practises in the venture capital market, a qualifying venture capital fund should be allowed to buy existing shares of a qualifying portfolio undertaking from existing shareholders of that undertaking. Also, for the purposes of ensuring the widest possible opportunities for fundraising, investments into other qualifying venture capital funds should be permitted. To prevent dilution of the investments into qualifying portfolio undertakings, qualifying venture capital funds should only be permitted to invest into other qualifying venture capital funds, provided that those qualifying venture capital funds have not themselves invested more than 10 percent of their aggregate capital contributions and uncalled committed capital in other qualifying venture capital funds.

(8e) The core activities of venture capital funds are providing finance to small and medium sized enterprises through primary investments. Venture capital funds should not participate in systemically important banking activities outside of the usual prudential regulatory framework (so-called 'shadow banking'). Neither should they follow typical private equity strategies, such as leveraged buyouts.

(8e) In line with the Europe 2020 strategy for delivering smart, sustainable and inclusive growth, this Regulation aims to promote venture capital investments into innovative small and medium-sized enterprises (SMEs) anchored in the real economy. Credit institutions, investment firms, insurance undertakings, financial holding companies and mixed-activity holding companies should therefore be excluded from the definition of qualifying portfolio undertakings under this Regulation.

(9) In order to put in place an essential safeguard that differentiates qualifying venture capital funds under this Regulation from the broader category of alternative investment funds which trade in issued securities on secondary markets, it is necessary to ***lay down rules so that*** qualifying venture capital funds ***makes*** investments ***primarily*** in directly issued instruments.

(10) In order to allow venture capital fund managers a certain degree of flexibility in the investment and liquidity management of their qualifying venture capital funds, ▌ trading***, such as in shares or participations in non-qualifying portfolio undertakings or acquisitions of non-qualifying investments*** should be permitted up to a maximum threshold not exceeding 30 percent of aggregate capital contributions and uncalled capital ▌.

(11) In order to ensure that the designation '***EuVECA***' is reliable and easily recognisable for investors across the Union this Regulation should establish that only venture capital fund managers which comply with the uniform quality criteria as set out in this Regulation shall be eligible to use the designation '***EuVECA***' when marketing qualifying venture capital funds across the Union.

(12) In order to ensure that qualifying venture capital funds have a distinct and identifiable profile which is suited to their purpose, there should be uniform rules on the composition of the portfolio and on the investment techniques which are permitted for such qualifying funds.

(13) In order to ensure that qualifying venture capital funds do not contribute to the development of systemic risks, and ▌ that such funds concentrate, in their investment activities, on supporting qualifying portfolio ***undertakings, the use of*** leverage at the level of the fund should not be permitted. ***The venture capital fund manager should only be permitted to borrow, issue debt obligations or provide guarantees, at the level of the qualifying venture capital fund, provided that such borrowings, dept obligations or guarantees are covered by uncalled commitments and thus do not increase the exposure of the fund beond the level of its committed capital. Under this approach cash advances from investors of the qualifying venture capital fund that are fully covered by capital commitments from those investors do not increase the exposure of the qualifying venture capital fund and should therefore be allowed. Also***, in order to permit the fund to cover extraordinary liquidity needs that might arise between a call of committed capital from investors and the actual reception of the capital in its accounts, short-term borrowing should be allowed ***so long as it does not exceed uncalled committed capital***.

(14) In order to ensure that qualifying venture capital funds are ***only*** marketed to investors who have the ▌ experience***, knowledge*** and ***expertise*** to ***make their own investment decisions and properly assess*** the risks these funds carry, and in order to maintain investor confidence and trust in qualifying venture capital funds, certain specific safeguards should be laid down. Therefore, qualifying venture capital funds should ▌ only be marketed to investors who are professional clients or who can be treated as professional clients under Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC[6].

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[6] OJ L 145, 30.4.2004, p. 1.

However, in order to have a sufficiently broad investor base for investment into ***qualifying*** venture capital funds it is also desirable that certain other investors have access to qualifying venture capital funds, including high net worth individuals. For those other investors, however, specific safeguards should be laid down in order to ensure that qualifying venture capital funds are only marketed to investors that have the appropriate profile for making such investments. These safeguards exclude marketing through the use of periodic savings plans. ***Furthermore, investments made by executives, directors or employees involved in the management of a venture capital fund manager should be possible when investing in the qualifying venture capital fund they manage, as such individuals are knowledgeable enough to participate in venture capital investments.***

(15) To ensure that only venture capital fund managers who fulfil uniform quality criteria as regards their behaviour in the market use the designation '***EuVECA***', this Regulation should establish rules on the conduct of business and the relationship of the venture capital fund manager to its investors. For the same reason this Regulation should lay down uniform conditions concerning the handling of conflicts of interest by such managers. These rules should also require the manager to have the necessary organisational and administrative arrangements in place to ensure a proper handling of conflicts of interest.

(15a) Where a venture capital fund manager intends to delegate functions to third parties, the manager's liability towards the venture capital fund and its investors should not be affected by the delegation of functions by the venture capital fund manager to a third party. Moreover, the venture capital fund manager should not delegate functions to the extent that, in essence, it can no longer be considered to be the venture capital fund manager and has become a letter-box entity. The venture capital fund manager should remain responsible for the proper performance of delegated functions and compliance with this Regulation at all time. The delegation of functions should not undermine the effectiveness of supervision of the venture capital fund manager, and, in particular, should not prevent the venture capital fund manager from acting, or the venture capital fund from being managed, in the best interests of its investors.

(16) In order to ensure the integrity of the designation '***EuVECA***' this Regulation should also contain quality criteria as regards the organisation of a venture capital fund manager. Therefore, this Regulation should lay down uniform, proportionate requirements for the need to maintain adequate technical and human resources ▌.

(16a) In order to ensure the proper management of the qualifying venture capital fund and the ability of the manager to cover potential risks arising from its activities this Regulation should lay down uniform, proportionate requirement for the EuVECA managers to maintain sufficient own funds. The amount of such own funds should be sufficient to ensure the continuity and proper management of qualifying venture capital funds.

(17) It is necessary for the purpose of investor protection to ensure that the assets of the qualifying venture capital fund are properly evaluated. Therefore, the ***rules or instruments of incorporation*** of qualifying venture capital funds should contain rules on the valuation of assets. This should ensure the integrity and transparency of the valuation.

(18) In order to ensure that venture capital fund managers which make use of the designation '***EuVECA***' give sufficient account of their activities, uniform rules on annual reports should be established.

(19) It is necessary, for the purposes of ensuring the integrity of the designation '***EuVECA***' in the eyes of investors that it is only used by venture capital fund managers who are fully transparent as to their investment policy and their investment targets. This Regulation should therefore set out uniform rules on disclosure requirements that are incumbent on a venture capital fund manager in relation to its investors. In particular, there should be pre-contractual disclosure obligations related to the investment strategy and objectives of the qualifying venture capital funds, the investment instruments which are used, information on costs and associated charges, and the risk/reward profile of the investment proposed by a qualifying fund. In view of achieving a high degree of transparency, such disclosure requirements should also include information on how the remuneration of the venture capital fund manager is calculated.

(20) In order to ensure effective supervision of the uniform requirements contained in this Regulation, the competent authority of the home Member State shall supervise compliance of the venture capital fund manager with the uniform requirements set out in this Regulation. To this effect, the qualifying venture capital manager who wishes to market its qualifying funds under the designation '***EuVECA***' should inform the competent authority of his home Member State of this intention. The competent authority should register the venture capital fund manager if all necessary information has been provided and if there are suitable arrangements to comply with the requirements of this Regulation are in place. This registration should be valid across the entire Union.

(20a) In order to facilitate the efficient cross-border marketing of qualifying venture capital funds, registration of the manager should be as quick as possible.

(20b) While safeguards are included in this Regulation to ascertain that funds are properly used, supervisory authorities should be vigilant in ensuring that those safeguards are complied with.

(21) In order to ensure effective supervision of compliance with the uniform criteria set out in this Regulation, this Regulation should contain rules on the circumstances under which information supplied to the competent authority in the home Member State needs to be updated.

(22) For the effective supervision of the requirements of this Regulation, this Regulation should also lay down a process for cross-border notifications between the competent supervisory authorities, to be triggered by the registration of the venture capital fund manager in its home Member State.

(23) In order to maintain transparent conditions for the marketing of qualifying venture capital funds across the Union, the ***European Supervisory Authority (***European Securities and Markets Authority***)*** ('ESMA'), ***established by Regulation (EU) No 1095/2011 of the European Parliament and of the Council***[7]***,*** should be entrusted with maintaining a central database listing all qualifying venture capital ***fund managers and the qualifying venture capital funds they manage*** that are registered in accordance with this Regulation.

(23a) Where the competent authority of the host Member State have clear and demonstrable grounds for believing that the venture capital fund manager acts in breach of this Regulation within its territory, it shall promptly inform the competent authority of the home Member State, which shall take appropriate measures.

(23b) If, despite the measures taken by the competent authority of the home Member State or because the competent authority of the home Member State fails to act within a reasonable timeframe, or the venture capital fund manager persists in acting in a manner that is clearly in conflict with this Regulation, the competent authority of the host Member State, may, after informing the competent authority of the home Member State, take all the appropriate measures needed in order to protect investors, including the possibility of preventing the manager concerned from carrying out any further marketing of its venture capital funds within the territory of the host Member State.

(24) In order to ensure the effective supervision of the uniform criteria established in this Regulation, this Regulation should contain a list of supervisory powers that competent authorities shall have at their disposal.

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[7] ***OJ L 331, 15.12.2010, p. 84.***

(25) In order to ensure proper enforcement, this Regulation should contain ***administrative*** sanctions ***and measures*** for the breach of key provisions of this Regulation, which are the rules on portfolio composition, on safeguards relating to the identity of eligible investors, and on the use of the designation 'European Venture Capital Fund' only by registered venture capital fund managers. It should be established that a breach of these key provisions entails the prohibition of the use of the designation and the removal of venture capital fund manager from the register.

(26) Supervisory information should be exchanged between the competent authorities in the home and host Member States and ESMA.

(27) Effective regulatory cooperation among the entities tasked with supervising compliance with the uniform criteria set out in this Regulation requires that a high level of professional secrecy should apply to all relevant national authorities and to ESMA.

(28) Technical standards in financial services should ensure consistent harmonisation and a high level of supervision across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA with the elaboration of draft implementing technical standards where these do not involve policy choices, for submission to the Commission.

(29) The Commission should be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union and in accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC[8]. ESMA should be entrusted with drafting implementing technical standards for the format of the notification ***referred to in this Regulation***.

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8 OJ L 331, 15.12.2010, p. 84.

(30) In order to specify the requirements set out in this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of ▌ the types of conflicts of interests venture capital funds managers need to avoid and the steps to be taken in that respect. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. ***The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.***

▌

(32) At the latest four years after the date on which this Regulation becomes applicable a review of this Regulation should be carried out in order to take account of the development of the venture capital market. ***The review should include a general survey of the functioning of the rules in this Regulation and the experience acquired in applying them.*** On the basis of the review, the Commission should submit a report to the European Parliament and the Council accompanied, if appropriate, by legislative ***proposals***.

(32a) Furthermore, by 22 July 2017, the Commission should start a review of the interaction between this Regulation and other rules on collective investment undertakings and their managers, especially those of Directive 2011/61/EU. In particular, this review should address the scope of this Regulation assessing whether it is necessary to extend the scope to allow for larger alternative investment funds managers to use the designation 'EuVECA'. On the basis of the review, the Commission should submit a report to the European Parliament and the Council accompanied, if appropriate, by legislative proposals.

(32b) In the context of this review, the Commission should evaluate any barriers that may have impeded the uptake of the funds by investors, including the impact on institutional investors of other regulation as may apply to them of a prudential nature. In addition, the Commission should gather data for assessing the contribution of EuVECA to other Union programs such as Horizon 2020 that seek also to support innovation in the Union.

(32c) In light of the Commission Communication on an Action Plan to improve to access to finance for SME's, and the Commission Communication on the European 2020 flagship initiative: innovation union[9], it is important to ensure the effectiveness of public schemes across the Union to support the venture capital market, and the coordination and mutual coherence of different Union policies aimed at fostering innovation, including policies on competition and research. A key focus of Union policies on innovation and growth is green technology, given the objective of the Union to be a global leader on smart and sustainable growth and on energy and resource efficiency, including in respect of financing for SME's. When reviewing this Regulation, it will be important to assess its impact on progress towards this objective.

(32d) ESMA should assess its staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.

(32e) The European Investment Fund (EIF) invests, amongst other things, in venture capital funds across the Union. The measures in this Regulation to allow for the easy identification of venture capital funds with defined common features, should make it easier for the EIF to identify venture capital funds under this Regulation as possible investment targets. The EIF should therefore be encouraged to invest in European venture capital funds.

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[9] ***COM (2010) 546, and COM (2011) 870 final.***

(33) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to respect for private and family life (Article 7) and the freedom to conduct a business (Article 16).

(34) Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[10] governs the processing of personal data carried out in the Member States in the context of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data[11], governs the processing of personal data carried out by ESMA within the framework of this Regulation and under the supervision of the European Data Protection Supervisor.

(35) This Regulation should be without prejudice to the application of state aid rules to qualifying venture capital funds.

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[10] OJ L 281, 23.11.1995, p. 31.
[11] OJ L 8, 12.1.2001, p. 1.

(36) ***Since*** the ***objectives*** of this Regulation, ***namely*** to ensure uniform requirements apply to the marketing of qualifying venture capital funds, ***and to establish a simple registration system for venture capital fund managers, thereby taking full account of the need to balance safety and reliability associated with the use of the designation 'EuVECA' with the efficient operation of the venture capital market and the cost for its various stakeholders*****,** cannot be sufficiently achieved by the Member States ***and can therefore, by reason of its scale and effects, be better achieved at Union level,*** the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation ▌ does not go beyond what is necessary in order to achieve ***those objectives***.

HAVE ADOPTED THIS REGULATION:

CHAPTER I
SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

This Regulation lays down uniform requirements ***and conditions*** for those managers of collective investment undertakings who wish to use the designation 'European Venture Capital Fund' ***('EuVECA') in relation to*** the marketing ***of qualifying venture capital funds*** in the Union, ***and*** thereby contributing to the smooth functioning of the internal market. It lays down uniform rules for the marketing of qualifying venture capital funds to eligible investors across the Union, for the portfolio composition of qualifying venture capital funds, for the eligible investment instruments and techniques to be used by qualifying venture capital funds as well as for the organisation, conduct and transparency of venture capital fund managers that market qualifying venture capital funds across the Union.

Article 2

1. This Regulation applies to managers of collective investment undertakings as defined in point (b) of Article 3, ***whose assets under management in total do not exceed the threshold mentioned in Article 3(2)(b) of Directive 2011/61/EU,*** who are established in the Union and who are subject to registration with the competent authorities of their home Member State in accordance with point (a) of Article 3(3) of Directive 2011/61/EU, provided that those managers manage portfolios of qualifying venture capital funds .

1b. Venture capital fund managers registered under this Regulation in accordance with Article 13, and whose assets in total subsequently grow to exceed the threshold mentioned in Article 3(2)(b) of Directive 2011/61/EU, and who therefore become subject to authorisation with the competent authorities of their home Member State in accordance with Article 6 of that Directive, may continue to use the designation 'EuVECA' in relation to the marketing of qualifying venture capital funds in the Union, provided that they comply with the requirements laid down in that Directive and that they continue to comply with the Articles 3, 5, 12(b) and (ga) of this Regulation at all times in relation to the qualifying venture capital funds.

1c. Venture capital fund managers that are registered in accordance with this Regulation may additionally manage UCITS subject to authorisation under Directive 2009/65/EC provided that they are external managers.

Article 3

For the purposes of this Regulation, the following definitions apply:

(a) 'qualifying venture capital fund' means a collective investment undertaking that***:***

(i) ***intends to invest*** at least 70 percent of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments ***within a time frame laid down in the rules or instruments of incorporation of the qualifying venture capital fund;***

(ii) ***never uses more than 30 percent of the fund's aggregate capital contributions and uncalled committed capital for the acquisition of assets other than qualifying investments;***

(iii) ***is established within the territories of a Member State,***

The limits referred to in points (i) and (ii) shall be calculated on the basis of amounts investible after the deduction of all relevant costs and holdings in cash and cash equivalents;

(aa) ***'relevant costs' means all fees, charges and expenses which are directly or indirectly borne by investors and which are agreed between the manager of the qualifying venture capital fund and the investors;***

(b) 'collective investment undertaking' means an ***AIF as defined in Article 4 (1) (a) of Directive 2011/61/EU***;

(c) 'qualifying investments' means ***any of the following instruments*:**

(i) equity or quasi equity instruments that are

- issued by a qualifying portfolio undertaking and acquired directly by the qualifying venture capital fund from the qualifying portfolio undertaking,
- issued by a qualifying portfolio undertaking in exchange for an equity security issued by the qualifying portfolio undertaking, or
- issued by an undertaking of which the qualifying portfolio undertaking is a majority-owned subsidiary and which is acquired by the qualifying venture capital fund in exchange for an equity instrument issued by the qualifying portfolio undertaking;

(ii) secured or unsecured loans granted by the qualifying venture capital fund to a qualifying portfolio undertaking in which the qualifying venture capital fund already holds qualifying investments, provided that no more than 30 percent of the aggregate capital contributions and uncalled committed capital in the qualifying venture capital fund is used for such loans;

(iii) shares of a qualifying portfolio undertaking acquired from existing shareholders of that undertaking;

(iv) units or shares of one or several other qualifying venture capital funds, provided that those qualifying venture capital funds have not themselves invested more than 10 percent of their aggregate capital contributions and uncalled committed capital in qualifying venture capital funds;

(d) 'qualifying portfolio undertaking' means an undertaking that***:***

(i) at the time of an investment by the qualifying venture capital fund***:***

- is not ***admitted to trading*** on a regulated market ***or on a multilateral trading facility (MTF)*** as defined in point (14) ***and point (15)*** of Article 4(1) of Directive 2004/39/EC,

- employs fewer than 250 persons, and

- either has an annual turnover not exceeding EUR 50 million, or an annual balance sheet ***in*** total not exceeding EUR 43 million

(ii) is not itself a collective investment undertaking;

(iii) is not one or more of the following:

- ***a credit institution within the meaning of Article 4(1) of Directive 2006/48/EC,***

- ***an investment firm within the meaning of Article 4(1) of Directive 2004/39/EC,***

- ***an insurance undertaking within the meaning of Article 13(1) of Directive 2009/138/EC,***

- ***a financial holding company within the meaning of Article 19 of Directive 2006/48/EC, or***

- ***a mixed-activity holding company within the meaning of Article 4(1) of Directive 2006/48/EC;***

(iv) is established within the territories of a Member State, or in a third country provided that the third country:

- *is not listed as a Non-Cooperative Country and Territory by FATF,*
- *has signed an agreement with the home Member State of the venture capital fund manager and with each other Member State in which the units or shares of the qualifying venture capital fund are intended to be marketed, so that it is ensured that the third country fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;*

(e) 'equity' means ownership interest in an undertaking, represented by the shares or other ***forms*** of participation in the capital of the qualifying portfolio undertaking, issued to ***its*** investors;

(f) 'quasi-equity' means any ***type of financing*** instrument ***which is a combination of equity and debt, where the return on the instrument is linked to the profit or loss*** of the qualifying portfolio undertaking and ***where the repayment of the instrument*** in the event of default ***is not fully secured***;

(g) 'marketing' means a direct or indirect offering or placement at the initiative of the venture capital fund manager or on behalf of the venture capital fund manager of units or shares of a venture capital fund it manages to or with investors domiciled or with a registered office in the Union;

(h) 'committed capital' means any commitment pursuant to which ***an investor is obliged, within the time frame laid down in the rules or instruments of incorporation of the qualifying venture capital fund,*** to acquire an interest in the venture capital fund or make capital contributions to the venture capital fund;

(i) 'venture capital fund manager' means a legal person whose regular business is managing at least one qualifying venture capital fund;

(j) 'home Member State' means the Member State where the venture capital fund manager is established ***and is subject to registration with the competent authorities in accordance with point (a) of Article 3 (3) of Directive 2011/61/EU***;

(k) 'host Member State' means the Member State, other than the home Member State, where the venture capital fund manager markets qualifying venture capital funds in accordance with this Regulation;

(l) 'competent authority' means the national authority which the home Member State designates, by law or regulation, to undertake the registration of managers of collective investment undertakings as referred to in paragraph (1) of Article 2;

(la) 'UCITS' means an undertaking for collective investment in transferable securities authorised in accordance with Article 5 of Directive 2009/65/EC.

In regard to point (i) of the first subparagraph, where the legal form of a qualifying venture capital fund permits internal management and where the governing body of the fund chooses not to appoint an external manager, the qualifying venture capital fund itself shall be registered as the venture capital fund manager. A qualifying venture capital fund who is registered as internal venture capital fund manager can not be registered as external venture capital fund manager of other collective investment undertakings.

CHAPTER II

CONDITIONS FOR THE USE OF THE DESIGNATION

'***EuVECA***'

Article 4

Venture capital fund managers who comply with the requirements set out in this Chapter shall be entitled to use the designation '***EuVECA***' in relation to the marketing of qualifying venture capital funds in the Union.

Article 5

1. The venture capital fund manager shall ensure that, when acquiring assets other than qualifying investments, no more than 30 percent of the fund's aggregate capital contributions and uncalled committed capital is used for the acquisition of assets other than qualifying investments; ***the 30 percent shall be calculated on the basis of amounts investible after the deduction of all relevant costs;*** holdings in cash and cash equivalents shall not be taken into account for calculating this limit ***as cash and cash equivalents are not to be considered as investments***.

2. The venture capital fund manager ***may*** not ***employ*** at the level of the qualifying venture capital fund ▌ any method by which the exposure of the fund will be increased ***beyond the level of its committed capital***, whether through borrowing of cash or securities, the engagement into derivative positions or by any other means.

2a. The venture capital fund manager may only borrow, issue debt obligations or provide guarantees, at the level of the qualifying venture capital fund, where such borrowings, debt obligations or guarantees are covered by uncalled commitments.

▌

Article 6

1. Venture capital fund managers shall market the units and shares of qualifying venture capital funds exclusively to investors which are considered to be professional clients in accordance with Section I of Annex II of Directive 2004/39/EC or may, on request, be treated as professional clients in accordance with Section II of Annex II of Directive 2004/39/EC, or to other investors where:

(a) those other investors commit to ***investing*** a minimum of EUR 100 000;

(b) those other investors state in writing, in a separate document from the contract to be concluded for the commitment to invest, that they are aware of the risks associated with the envisaged commitment or investment.

2. ***Paragraph 1 shall not apply to investments made by executives, directors or employees involved in the management of a venture capital fund manager when investing in the qualifying venture capital funds that they manage.***

Article 7

Venture capital fund managers shall, in relation to the qualifying venture capital funds they manage:

(a) act ***honestly*** with due skill, care and diligence ***and fairly*** in conducting their activities;

(b) apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the interests of investors and the qualifying portfolio undertakings;

(c) conduct their business activities so as to promote the best interests of the qualifying venture capital funds they manage, the investors in those qualifying venture capital funds they manage and the integrity of the market;

(d) apply a high level of diligence in the selection and ongoing monitoring of investments in qualifying portfolio undertakings;

(e) possess adequate knowledge and understanding of the qualifying portfolio undertakings they invest in;

(ea) treat their investors fairly;

(eb) ensure that no investor shall obtain preferential treatment, unless such preferential treatment is disclosed in the rules or instruments of incorporation of the qualifying venture capital fund.

Article 7a

1. Where a venture capital fund manager intends to delegate functions to third parties, the manager's liability towards the qualifying venture capital fund and its investors shall not be affected by the fact that the manager has delegated functions to a third party, nor shall the manager delegate to the extent that, in essence, it can no longer be considered to be the manager of the qualifying venture capital fund and to the extent that it becomes a letter-box entity.

2. The delegation must not undermine the effectiveness of supervision of the venture capital fund manager, and, in particular, must not prevent the venture capital fund manager from acting, or the qualifying venture capital fund from being managed, in the best interests of its investors.

Article 8

1. Venture capital fund managers shall identify and avoid conflicts of interest and, where they cannot be avoided, manage and monitor and, in accordance with paragraph 4, disclose ***promptly***, those conflicts of interest in order to prevent them from adversely affecting the interests of the qualifying venture capital funds and their investors and to ensure that the qualifying venture capital funds they manage are fairly treated

2. The venture capital fund manager shall identify in particular those conflicts of interest that may arise between:

   (a) venture capital fund managers, those persons who effectively conduct the business of the venture capital fund manager, employees or any person who directly or indirectly controls or is controlled by the venture capital fund manager, and the qualifying venture capital fund managed by the venture capital fund managers or the investors in those qualifying venture capital funds;

   (b) the qualifying venture capital fund or the investors in that qualifying venture capital fund, and another qualifying venture capital fund managed by the same venture capital fund manager or the investors in that other qualifying venture capital fund;

   (ba) the qualifying venture capital fund or the investors in that qualifying venture capital fund, and a collective investment undertaking or UCITS managed by the same venture capital fund manager or the investors in that collective investment undertaking or UCITS.

3. Venture capital fund managers shall maintain and operate effective organisational and administrative arrangements in order to comply with the requirements set out in paragraphs 1 and 2.

4. Disclosures of conflicts of interest as referred to in paragraph 1 shall be provided, where organisational arrangements made by the venture capital fund manager to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented. The venture capital fund managers shall clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 23 measures specifying:

   (a) the types of conflicts of interest as referred to in paragraph 2 of this Article;

   (b) the steps venture capital fund managers ***shall*** take, in terms of structures and organisational and administrative procedures in order to identify, prevent, manage, monitor and disclose conflicts of interest.

Article 9

At all times, venture capital fund managers shall have sufficient own funds and use adequate and appropriate human and technical resources as are necessary for the proper management of qualifying venture capital funds.

It shall be incumbent upon the venture capital fund managers, at all times, to ensure that they are able to justify the sufficiency of their own funds to maintain operational continuity and disclose their reasoning as to why these funds are sufficient as specified in Article 12.

Article 10

Rules for the valuation of assets shall be laid down in the ***rules or instruments of incorporation*** of the qualifying venture capital fund ***and shall ensure a sound and transparent valuation process***.

Valuation procedures used shall ensure that the assets are valued properly and that the asset value is calculated at least once a year.

Article 11

1. The venture capital fund manager shall make available an annual report to the competent authority of the home Member State for each qualifying venture capital fund under management no later than 6 months following the end of the financial year. The report shall describe the composition of the portfolio of the qualifying venture capital fund and the activities of the past year. ***It shall also include a disclosure of the profits of the qualifying venture capital funds by the end of its life time and, where applicable, a disclosure of the profits distributed during its lifetime.*** It shall contain the audited financial accounts for the qualifying venture capital fund. ***The audit shall confirm that money and assets are held in the name of the fund and that the venture capital fund manager has established and maintained adequate records and controls in respect of the use of any mandate or control over the money and assets of the qualifying venture capital fund and its investors, and shall be conducted at least once a year. The annual report*** shall be produced in accordance with existing reporting standards and the terms agreed between the venture capital fund manager and the investors. The venture capital fund manager shall provide the report to investors on request. Venture capital fund managers and investors may agree to make additional disclosures ***to each other***.

2. Where the venture capital fund manager is required to make public an annual financial report in accordance with Directive 2004/109/EC of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market[12] in relation to the qualifying venture capital fund, the information referred to in paragraph 1 may be provided either separately or as an additional part of the annual financial report.

Article 12

1. Venture capital fund managers shall***, in relation to the qualifying venture capital funds they manage,*** inform their investors***, in a clear and understandable manner,*** about the following elements prior to their investment decision:

(a) the identity of the venture capital fund manager and any other service providers contracted by the venture capital fund manager in relation to their management of the qualifying venture capital funds, and a description of their duties;

(aa) the amount of own funds available to the venture capital fund manager, as well as a detailed statement as to why the venture capital fund manager deems these own funds sufficient for maintaining the adequate human and technical resources necessary for the proper management of its qualifying venture capital funds;

(b) a description of the investment strategy and objectives of the qualifying venture capital fund, including***:***

(i) the types of the qualifying portfolio undertakings ***in which it intends to invest;***

(ii) any other qualifying venture capital ***funds in which it intends to invest;***

[12] OJ L 390, 31.12.2004, p. 38.

(iii) the types of qualifying portfolio undertakings in which any other qualifying venture capital funds, as referred to in point (ii), intend to invest;

(iv) the non-qualifying investments which it intends to make;

(v) the techniques it ***intends to*** employ, and

(vi) any applicable investment restrictions;

(c) a description of the risk profile of the qualifying venture capital fund and any risks associated with the assets in which the fund may invest or investment techniques that may be employed;

(d) a description of the qualifying venture capital fund's valuation procedure and of the pricing methodology for the valuation of assets, including the methods used for the valuation of qualifying portfolio undertakings;

(e) a description of how the remuneration of the venture capital fund ***manager*** is calculated;

(f) a description of all ***relevant costs*** and of the maximum amounts thereof ▌;

(g) where available, the historical performance of the qualifying venture capital fund;

(ga) the business support services and the other support activities the manager of the qualifying venture capital fund is providing or arranging through third parties in order to facilitate the development, growth or in some other respect the on-going operations of the qualifying portfolio undertakings in which the qualifying venture capital fund invests, or, where these services or activities are not provided, an explanation of that fact;

(h) a description of the procedures by which the qualifying venture capital fund may change its investment strategy or investment policy, or both.

1a. All of the information referred to in paragraph 1 shall be fair, clear and not misleading. It shall be kept up-to-date and reviewed regularly where relevant.

2. Where the qualifying venture capital fund is required to publish a prospectus in accordance with Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading[13] or in accordance with national law in relation to the qualifying venture capital fund, the information referred to in paragraph 1 of this Article may be provided either separately or as a part of the prospectus.

CHAPTER III
SUPERVISION, ADMINISTRATIVE COOPERATION

Article 13

1. Venture capital fund managers who intend to use designation '***EuVECA***' for the marketing of their qualifying venture capital funds shall inform the competent authority of their home Member State of this intention and shall provide the following information:

   (a) the identity of the persons who effectively conduct the business of managing qualifying venture capital funds;

   (b) the identity of the qualifying venture capital funds whose units or shares shall be marketed and their investment strategies;

   (c) information on the arrangements made for complying with the requirements of Chapter II;

[13] OJ L 345, 31.12.2003, p. 64.

(d) a list of Member States where the venture capital fund manager intends to market each qualifying venture capital fund;

(da) a list of Member States where the venture capital fund manager has established, or intends to establish, qualifying venture capital funds.

2. The competent authority of the home Member State shall only register the venture capital fund manager if it is satisfied that ***the following conditions are met:***

(-a) the persons who effectively conduct the business of managing the qualifying venture capital fund are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the manager of the qualifying venture capital fund;

(a) the information required under paragraph 1 is complete; ▌

(b) the arrangements notified according to point (c) of paragraph 1 are suitable in order to comply with the requirements of Chapter II***;***

(ba) the list notified according to point (e) of paragraph 1 reveals that all of the qualifying venture capital funds are established in accordance with Article 3(a)(iii) of this Regulation.

3. The registration shall be valid for the entire territory of the Union and shall allow venture capital fund managers to market qualifying venture capital funds under the designation '***EuVECA***' throughout the Union.

Article 14

The Venture capital fund manager shall inform the competent authority of the home Member State where the venture capital fund manager intends to market:

(a) a new qualifying venture capital fund;

(b) an existing qualifying venture capital fund in a Member State not mentioned in the list referred to in point (d) of Article 13(1).

Article 15

1. Immediately after the registration of a venture capital fund manager, ***the addition of a new qualifying venture capital fund, the addition of a new domicile for the establishment of a qualifying venture capital fund or the addition of a new Member State where the venture capital fund manager intends to market qualifying venture capital funds,*** the competent authority of the home Member State shall notify ***this*** to the Member States indicated in accordance with point (d) of Article 13(1) and to ESMA

2. The host Member States indicated in accordance with point (d) of Article 13 (1) shall not impose, on the venture capital fund manager registered in accordance with Article 13, any requirements or administrative procedures in relation to the marketing of its qualifying venture capital funds, nor shall they require any approval of the marketing prior to its commencement.

3. In order to ensure uniform application of this article, ESMA shall develop draft implementing technical standards to determine the format of the notification.

4. ESMA shall submit those draft implementing technical standards to the Commission by **...*** .

5. Power is conferred on the Commission to adopt the implementing technical standards referred to in paragraph 3 of this Article in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Article 16

ESMA shall maintain a central database, publicly accessible on the internet, listing all venture capital fund managers registered in the Union in accordance with this Regulation ***and all qualifying venture capital funds that they market as well as the countries in which they are marketed***.

Article 17

1. The competent authority of the home Member State shall supervise compliance with the requirements set out in this Regulation.

2. Where the competent authority of the host Member State has clear and demonstrable grounds for believing that the venture capital fund manager is in breach of this Regulation within its territory, it shall promptly inform the competent authority of the home Member State accordingly, which shall take appropriate measures.

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* ***OJ: please insert date: nine months after entry into force of this Regulation.***

3. If, despite the measures taken by the competent authority of the home Member State or because the competent authority of the home Member State fails to act within a reasonable timeframe, or the venture capital fund manager persists in acting in a manner that is clearly in conflict with this Regulation, the competent authority of the host Member State, may, as a consequence and after informing the competent authority of the home Member State, take all the appropriate measures needed in order to protect investors, including the possibility of preventing the manager concerned from carrying out any further marketing of its venture capital funds within the territory of the host Member State.

Article 18

Competent authorities shall, in conformity with national law, have all supervisory and investigatory powers that are necessary for the exercise of their functions. They shall in particular have the power to:

(a) request access to any document in any form, and to receive or take a copy thereof;

(b) require the venture capital fund manager to provide information without delay;

(c) require information from any person related to the activities of the venture capital fund manager or the qualifying venture capital fund;

(d) carry out on site inspections with or without prior announcements;

(da) take appropriate measures to ensure that a venture capital fund manager continues to comply with the requirements of this Regulation;

(e) issue an order to ensure that a venture capital fund manager complies with the requirements of this Regulation and desists from a repetition of any conduct that may consist of a breach of this Regulation.

Article 19

1. Member States shall lay down the rules on administrative sanctions and ***measures*** applicable to breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The ***administrative sanctions and*** measures provided for shall be effective, proportionate and dissuasive.

2. By ...[*] the Member States shall notify the rules referred to paragraph 1 to the Commission and ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

Article 20

1. The competent authority of the home Member State shall***, while respecting the principle of proportionality,*** take the appropriate measures referred to in paragraph 2 where a venture capital fund manager:

   (a) fails to comply with the requirements that apply to portfolio composition in breach of Article 5;

   (b) ***markets, in breach of Article 6, the units and shares of a*** qualifying venture capital fund ***to non-eligible*** investors ▌;

   (c) ***uses the designation 'EuVECA' without being registered*** with the competent authority of their home Member State in ***accordance with*** Article 13***;***

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[*] OJ: Please insert date: 24 months after entry into force of this Regulation.

(ca) ***uses the designation 'EuVECA' for the marketing of funds which are not established in accordance with Article 3(a)(iii) of this Regulation;***

(cb) ***obtained a registration through false statements or any other irregular means in breach of Article 13;***

(cc) ***fails to act honestly with due skill, care and diligence and fairly in conducting their business in breach of Article 7(a);***

(cd) ***fails to apply appropriate policies and procedures for preventing malpractices in breach of Article 7(b);***

(ce) ***repeatedly fails to comply with the requirements under Article 11 regarding the annual report;***

(cf) ***repeatedly fails to comply with the obligation to inform investors in accordance with Article 12.***

2. In the cases referred to in paragraph 1 the competent authority of the home Member State shall take the following measures, as appropriate:

(-a) ***take measures to ensure that a venture capital fund manager complies with Articles 3(a)(iii), 5, 6, 7(a), 7(b), 11, 12 and 13 of this Regulation;***

(a) prohibit the use of the designation '***EuVECA***' ***and remove*** the venture capital fund manager ***from the register.***

▌

3. The competent authority of the home Member State shall inform the competent authorities of the host Member States indicated in accordance with point (d) of Article 13(1) ***and ESMA without delay*** of the removal of the venture capital fund manager from the register referred to in ***point (a)*** of paragraph 2 of this Article

4. The right to market one or more qualifying venture capital funds under the designation '***EuVECA***' in the Union expires with immediate effect from the date of the decision of the competent authority referred to in ***point (a)*** of paragraph 2 ***of this Article***.

Article 21

1. Competent authorities and ESMA shall cooperate with each other ▌ for the purpose of carrying out their respective duties under this Regulation ***in accordance with Regulation (EU) No 1095/2010***.

2. ***Competent authorities and ESMA*** shall exchange all information and documentation necessary to ***carry out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010, in particular to*** identify and remedy breaches of this Regulation.

Article 22

1. All persons who work or who have worked for the competent authorities or ESMA, as well as auditors and experts instructed by the competent authorities, are bound by the obligation of professional secrecy. No confidential information which those persons receive in the course of their duties shall be divulged to any person or authority whatsoever, save in summary or aggregate form such that venture capital fund managers and qualifying venture capital funds cannot be individually identified, without prejudice to cases covered by criminal law and proceedings under this Regulation.

2. The competent authorities of the Member States or ESMA shall not be prevented from exchanging information in accordance with this Regulation or other Union law applicable to venture capital fund managers and qualifying venture capital funds.

3. Where competent authorities and ESMA receive confidential information in accordance with paragraph 2, they may use it only in the course of their duties and for the purpose of administrative and judicial proceedings.

Article 22a

Dispute settlement

In case of disagreement between competent authorities of Member States on an assessment, action or omission of one competent authority in areas where this Regulation requires cooperation or coordination between competent authorities from more than one Member State, competent authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010, in so far as the disagreement is not related to Article 3(a)(iii) or Article 3(d)(iv) of this Regulation.

CHAPTER IV
TRANSITIONAL AND FINAL PROVISIONS

Article 23

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in ▌ Article 8(5) shall be conferred on the Commission for a period of four years from ...[*]. The Commission shall draw up a report in respect of the delegation of powers not later than nine months before the end of the four-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in ▌ Article 8(5) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to ▌ Article 8(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ***three months*** of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by ***three months*** at the initiative of the European Parliament or the Council.

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[*] OJ: please insert date: entry into force of this Regulation.

Article 24

1. The Commission shall review this Regulation ***within the timeframes referred to in paragraph 1a***. The review shall include a general survey of the functioning of the rules in this Regulation and the experience acquired in applying them, including:

(a) the extent to which the designation '***EuVECA***' has been used by venture capital fund managers in different Member States, whether domestically or on a cross border basis;

(aa) the use of the different qualifying investments by venture capital fund managers and especially whether there is a need to adjust the qualifying investments in this Regulation;

(b) ***the possibility of extending the marketing of European venture capital funds to retail investors;***

(ba) the appropriateness of the information requirements under Article 12, in particular whether they are sufficient to enable investors to take an informed investment decision;

(bb) the effectiveness, proportionality and application of administrative sanctions and measures provided for by Member States in accordance with this Regulation;

(bc) the geographical and sectoral distribution of investments undertaken by European venture capital funds;

(bd) the impact of this Regulation on the venture capital market;

(be) the possibility of allowing venture capital funds established in a third country to use the designation "EuVECA", taking into account experience in applying the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters;

(bf) the appropriateness of complementing this Regulation with a depositary regime;

(bg) an evaluation of any barriers that may have impeded the uptake of the funds by investors, including the impact on institutional investors of other Union legislation of a prudential nature.

1a. The review shall take place as follows:

(a) at the latest four years after the date of application of this Regulation on points (a), (aa), (b), (ba), (bb), (bc), (bd), (bf) and (bg), and

(b) at the latest two years after the date of application of this Regulation on point (be).

2. *Following the review referred to in paragraph 1 and* after consulting ESMA the Commission shall submit a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal.

Article 24a

1. By 22 July 2017, the Commission shall start a review of the interaction between this Regulation and other rules on collective investment undertakings and their managers, especially those of Directive 2011/61/EU. This review shall address the scope of this Regulation. It shall gather data for assessing whether it is necessary to extend the scope to allow for managers who manage venture capital funds the total assets of which exceed the threshold provided for in Article 2(1) to become venture capital fund managers in accordance with this Regulation.

2. Following the review referred to in paragraph 1 and after consulting ESMA the Commission shall submit a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal.

Article 25

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the 22 July 2013, except for ▌ Article 8(5), which shall apply from the date of entry into force of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...

For the European Parliament *For the Council*
The President *The President*