



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

Brussels, 15 March 2013
(OR. en)

2011/0417 (COD)

PE-CONS 73/12

EF 320
ECOFIN 1085
COMPET 783
SOC 1007
IND 238
CODEC 3064
OC 759

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL on European venture capital funds
COMMON GUIDELINES
Consultation deadline for Croatia: 20.3.2013

REGULATION (EU) No .../2013
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 Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 175, 19.6.2012, p. 11.

² OJ C 191, 29.6.2012, p. 72.

³ Position of the European Parliament of 12 March 2013 (not yet published in the Official Journal) and decision of the Council of

Whereas:

- (1) Venture capital provides finance to undertakings that are generally very small, that are in the initial stages of their corporate existence and that 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 those 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 the Europe 2020 Strategy set out in the Commission Communication of 3 March 2010 entitled 'Europe 2020: A strategy for delivering smart, sustainable and inclusive growth' (Europe 2020) and in the context of the long-term challenges of the Member States, such as those identified in the report of the European Strategy and Policy Analysis System of March 2012 entitled 'Global Trends 2030 – citizens in an interconnected and polycentric world'.

- (2) It is necessary to lay down a common framework of rules regarding the use of the designation 'EuVECA' for qualifying venture capital funds, in particular the composition of the portfolio of funds that operate under that designation, their eligible investment targets, the investment tools they may employ and the categories of investors that are eligible to invest in them 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 proper 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 qualifying venture capital funds. Investors should, furthermore, be able to compare the investment propositions of different qualifying venture capital funds. It is necessary to remove significant obstacles to cross-border fundraising by qualifying venture capital funds, 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 for this Regulation is Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted by 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 qualifying 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'. Those 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 'EuVECA' in the form of a regulation ensures that those requirements are directly applicable to the managers of collective investment undertakings that raise funds using that designation. This also ensures uniform conditions for the use of the designation by preventing diverging national requirements as a result of the transposition of a directive. Managers of collective investment undertakings that use the designation should follow the same rules across the Union, which will also boost the confidence of investors. This Regulation reduces regulatory complexity and the managers' costs 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. It also contributes to eliminating competitive distortions.
- (5) As stated in the Commission Communication of 7 December 2011, entitled 'An action plan to improve access to finance for SMEs', the Commission was to complete its examination of tax obstacles to cross-border venture capital investments in 2012, with a view to presenting solutions in 2013 aimed at eliminating the obstacles while at the same time preventing tax avoidance and tax evasion.

- (6) It should be possible for a qualifying venture capital fund to be externally or internally managed. Where a qualifying venture capital fund is internally managed, the fund is also the manager and should therefore comply with all relevant requirements for managers under this Regulation and be registered in accordance with this Regulation. A qualifying venture capital fund which is internally managed should not, however, be permitted to be the external manager of other collective investment undertakings or of undertakings for collective investment in transferable securities (UCITS).
- (7) 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 only apply to managers of collective investment undertakings, other than UCITS falling within the scope 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)¹, which are established in the Union and are registered with the competent authority in their home Member State in accordance with Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers², provided that those managers manage portfolios of qualifying venture capital funds. However, external managers of qualifying venture capital funds that are registered in accordance with this Regulation should also be allowed to manage UCITS, subject to authorisation under Directive 2009/65/EC.

¹ OJ L 302, 17.11.2009, p. 32.

² OJ L 174, 1.7.2011, p. 1.

- (8) Furthermore, this Regulation applies only to managers of those collective investment undertakings with assets under management that in total do not exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU. The calculation of the threshold for the purposes of this Regulation is the same as for the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU.
- (9) However, venture capital fund managers registered in accordance with this Regulation with assets under management that in total subsequently exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU, and that therefore become subject to authorisation with the competent authorities of their home Member State in accordance with Article 6 of that Directive, should be able to 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 both to existing qualifying venture capital funds and to qualifying venture capital funds established after exceeding the threshold.
- (10) 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.

- (11) This Regulation should establish uniform rules on the nature of qualifying venture capital funds, in particular on qualifying 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 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.
- (12) In line with the aim of precisely circumscribing the collective investment undertakings which are to 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, qualifying venture capital funds should be deemed to be funds that intend to invest at least 70 % of their aggregate capital contributions and uncalled committed capital in such undertakings. Qualifying venture capital funds should not be permitted to invest more than 30 % of their aggregate capital contributions and uncalled committed capital in assets other than qualifying investments. This means that whereas the 30 % threshold should be the maximum limit for non-qualifying investments at all times, the 70 % threshold should be reserved for qualifying investments during the life of the qualifying venture capital fund. Those thresholds 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 thresholds.

- (13) The purpose of this Regulation is to enhance the growth and innovation of small and medium-sized enterprises (SMEs) in the Union. Investments in qualifying portfolio undertakings established in third countries can bring more capital to qualifying venture capital funds and thereby benefit SMEs 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 manager of a qualifying venture capital fund and with each other Member State in which units or shares of the qualifying venture capital fund are intended to be marketed or by a lack of effective exchange of information in tax matters.
- (14) A qualifying venture capital fund should, as a first step, be established in the Union in order to be entitled to use the designation ‘EuVECA’ as established by this Regulation. The Commission should, 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 Union, taking into account experience of applying the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters.
- (15) Managers of qualifying venture capital funds should be able to attract additional capital commitments during the life of that fund. Such additional capital commitments during the life 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.

- (16) 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, such as 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 % 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 practices 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 % of their aggregate capital contributions and uncalled committed capital in other qualifying venture capital funds.

- (17) The core activities of venture capital funds are providing finance to SMEs through primary investments. Venture capital funds should neither participate in systemically important banking activities outside of the usual prudential regulatory framework (so-called 'shadow banking') nor follow typical private equity strategies, such as leveraged buyouts.
- (18) In line with Europe 2020, this Regulation aims to promote venture capital investments into innovative 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.
- (19) 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 make investments primarily in directly issued instruments.
- (20) In order to allow managers of qualifying venture capital funds 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 of 30 % of aggregate capital contributions and uncalled capital.

- (21) In order to ensure that the designation 'EuVECA' is reliable and easily recognisable for investors across the Union, only managers of qualifying venture capital funds which comply with the uniform quality criteria as set out in this Regulation should be eligible to use the designation 'EuVECA' when marketing qualifying venture capital funds across the Union.
- (22) 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 funds.
- (23) 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. Managers of qualifying venture capital funds 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, debt obligations or guarantees are covered by uncalled commitments and thus do not increase the exposure of the fund beyond the level of its committed capital. Cash advances from investors of qualifying venture capital funds 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 provided that the amount of such borrowing does not exceed the fund's uncalled committed capital.

- (24) 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 that those 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 instruments¹. 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 manager of a qualifying venture capital fund should be possible when investing in the qualifying venture capital fund that they manage, as such individuals are knowledgeable enough to participate in venture capital investments.

¹ OJ L 145, 30.4.2004, p. 1.

- (25) To ensure that only managers of qualifying venture capital funds that fulfil uniform quality criteria as regards their behaviour in the market use the designation 'EuVECA', there should be rules on the conduct of business and the relationship of those managers with their investors. For the same reason, uniform conditions concerning the handling of conflicts of interest by those managers should be established. Those rules and conditions should also require the managers to have the necessary organisational and administrative arrangements in place to ensure a proper handling of conflicts of interest.
- (26) Where a manager of a qualifying venture capital fund intends to delegate functions to third parties, the manager's liability towards the venture capital fund and the investors therein should not be affected by such delegation of functions to a third party. Moreover, the manager should not delegate functions to the extent that, in essence, it can no longer be considered to be a manager of a qualifying venture capital fund and has become a letter-box entity. The 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 manager, and, in particular, should not prevent the manager from acting, or the fund from being managed, in the best interests of its investors.

- (27) In order to ensure the integrity of the designation 'EuVECA' quality criteria as regards the organisation of a manager of a qualifying venture capital fund should be established. Therefore, uniform, proportionate requirements for the need to maintain adequate technical and human resources should be laid down.
- (28) In order to ensure the proper management of qualifying venture capital funds and the ability of their managers to cover potential risks arising from their activities, uniform, proportionate requirements for managers of qualifying venture capital funds to maintain sufficient own funds should be laid down. The amount of such own funds should be sufficient to ensure the continuity and proper management of qualifying venture capital funds.
- (29) It is necessary for the purpose of investor protection to ensure that the assets of the qualifying venture capital fund are properly evaluated. The rules or instruments of incorporation of qualifying venture capital funds should therefore contain provisions on the valuation of assets. This should ensure the integrity and transparency of the valuation.
- (30) In order to ensure that managers of qualifying venture capital funds which make use of the designation 'EuVECA' give sufficient account of their activities, uniform rules on annual reports should be established.

- (31) 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 managers of qualifying venture capital funds that are fully transparent as to their investment policy and their investment targets. Uniform rules on disclosure requirements that are incumbent on a such managers in relation to their investors should therefore be laid down. 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 managers is calculated.
- (32) In order to ensure effective supervision of the uniform requirements contained in this Regulation, the competent authority of the home Member State should supervise compliance of managers of qualifying venture capital funds with the uniform requirements set out in this Regulation. To that end, the managers that intend to market their qualifying funds under the designation 'EuVECA' should inform the competent authority of their home Member State of that intention. The competent authority should register the manager if all necessary information has been provided and if suitable arrangements to comply with the requirements of this Regulation are in place. Such registration should be valid across the entire Union.
- (33) In order to facilitate the efficient cross-border marketing of qualifying venture capital funds, registration of the manager should be effected as quickly as possible.

- (34) 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.
- (35) In order to ensure effective supervision of compliance with the uniform criteria laid down in this Regulation, rules on the circumstances under which information supplied to the competent authority in the home Member State needs to be updated should be established.
- (36) For the effective supervision of the requirements laid down in this Regulation, a process for cross-border notifications between the competent supervisory authorities, to be triggered by the registration of a manager of a qualifying venture capital fund in its home Member State should also be established.
- (37) 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 1095/2010 of the European Parliament and of the Council¹, should be entrusted with maintaining a central database listing managers of qualifying venture capital funds and the qualifying venture capital funds that they manage that are registered in accordance with this Regulation.
- (38) Where the competent authority of the host Member State has clear and demonstrable grounds for believing that a manager of a qualifying venture capital fund is acting in breach of this Regulation within its territory, it should promptly inform the competent authority of the home Member State, which should take appropriate measures.

¹ OJ L 331, 15.12.2010, p. 84.

- (39) If a manager of a qualifying venture capital fund persists in acting in a manner that is clearly in conflict with this Regulation 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 take measures within a reasonable timeframe, the competent authority of the host Member State should be able, after informing the competent authority of the home Member State, to take all the appropriate measures 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.
- (40) In order to ensure the effective supervision of the uniform criteria established in this Regulation, this Regulation contains a list of supervisory powers that competent authorities must have at their disposal.
- (41) In order to ensure proper enforcement, this Regulation contains administrative penalties and other 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 'EuVECA' only by managers of qualifying venture capital funds that are registered in accordance with this Regulation. A breach of those key provisions should entail, where appropriate, the prohibition of the use of the designation and the removal of the manager concerned from the register.
- (42) Supervisory information should be exchanged between the competent authorities in the home and host Member States and ESMA.

- (43) 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.
- (44) In order to specify the requirements set out in this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the types of conflicts of interests managers of qualifying venture capital funds 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.
- (45) 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.
- (46) The Commission should be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010. ESMA should be entrusted with drafting implementing technical standards for the format of the notification referred to in this Regulation.

- (47) Within four years of the date of application of this Regulation, the Commission should conduct a review of this Regulation in order to assess 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 to the Council accompanied, if appropriate, by legislative proposals.
- (48) Furthermore, within four years of the date of application of this Regulation, the Commission should start a review of the interaction between this Regulation and other rules on collective investment undertakings and their managers, in particular those of Directive 2011/61/EU. In particular, that review should address the scope of this Regulation assessing whether it is necessary to extend the scope to allow 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 to the Council accompanied, if appropriate, by legislative proposals.
- (49) In the context of that 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 the designation 'EuVECA' to other Union programmes, such as Horizon 2020, which also seek to support innovation in the Union.

- (50) In light of the Commission Communication on an Action Plan to improve to access to finance for SMEs, and the Commission Communication of 6 October 2010 entitled 'European 2020 Flagship Initiative: Innovation Union', 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 SMEs. When reviewing this Regulation, the Commission should assess its impact on progress towards that objective.
- (51) 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, to the Council and to the Commission.
- (52) The European Investment Fund (EIF) invests, inter alia, 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 qualifying venture capital funds.
- (53) 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 freedom to conduct a business (Article 16).

- (54) Directive 95/46/EC 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 data¹ 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 (EC) 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 Community institutions and bodies and on the free movement of such data², 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.
- (55) This Regulation should be without prejudice to the application of State aid rules to qualifying venture capital funds.

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 8, 12.1.2001, p. 1.

(56) 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 managers of qualifying venture capital funds, thereby facilitating the marketing of qualifying venture capital funds throughout the Union, while 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 managers of collective investment undertakings that wish to use the designation 'EuVECA' in relation to the marketing of qualifying venture capital funds in the Union, thereby contributing to the smooth functioning of the internal market.

It also 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 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 (a) of Article 3 that meet the following conditions:
 - (a) their assets under management in total do not exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU;

- (b) they are established in the Union;
- (c) they 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; and
- (d) they manage portfolios of qualifying venture capital funds.

2. Where the total assets under management of managers of qualifying venture capital funds registered in accordance with Article 14 subsequently exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU, and where those managers are therefore subject to authorisation in accordance with Article 6 of that Directive, they may continue to use the designation 'EuVECA' in relation to the marketing of qualifying venture capital funds in the Union, provided that, at all times in relation to the qualifying venture capital funds that they manage, they:

- (a) comply with the requirements laid down in Directive 2011/61/EU; and
- (b) continue to comply with Articles 3 and 5 and points (c) and (i) of Article 13(1) of this Regulation.

3. Where managers of qualifying venture capital funds are external managers and are registered in accordance with Article 14, they may additionally manage undertakings for collective investment in transferable securities (UCITS), subject to authorisation under Directive 2009/65/EC.

Article 3

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

- (a) 'collective investment undertaking' means an AIF as defined in point (a) of Article 4(1) of Directive 2011/61/EU;
- (b) 'qualifying venture capital fund' means a collective investment undertaking that:
 - (i) intends to invest at least 70 % of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents, within a time frame laid down in its rules or instruments of incorporation;
 - (ii) does not use more than 30 % of its aggregate capital contributions and uncalled committed capital for the acquisition of assets other than qualifying investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents;
 - (iii) is established within the territory of a Member State;
- (c) 'manager of a qualifying venture capital fund' means a legal person the regular business of which is managing at least one qualifying venture capital fund;

- (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 points (14) and (15) of Article 4(1) of Directive 2004/39/EC,
 - employs fewer than 250 persons, and
 - has an annual turnover not exceeding EUR 50 million or an annual balance sheet 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 as defined in Article 4(1) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions¹,
 - an investment firm as defined in Article 4(1) of Directive 2004/39/EC,
 - an insurance undertaking as defined in Article 13(1) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)²,

¹ OJ L 177, 30.6.2006, p. 1.

² OJ L 335, 17.12.2009, p. 1.

- a financial holding company as defined in Article 4(19) of Directive 2006/48/EC, or
 - a mixed-activity holding company as defined in Article 4(20) of Directive 2006/48/EC;
- (iv) is established within the territory 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 the Financial Action Task Force on Anti-Money Laundering and Terrorist Financing,
 - has signed an agreement with the home Member State of the manager of a qualifying venture capital fund and with each other Member State in which the units or shares of the qualifying venture capital fund are intended to be marketed to ensure 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) '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,

- a qualifying portfolio undertaking in exchange for an equity security issued by the qualifying portfolio undertaking, or
 - 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 % 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 % of their aggregate capital contributions and uncalled committed capital in qualifying venture capital funds;
- (f) 'relevant costs' means all fees, charges and expenses which are directly or indirectly borne by investors and which are agreed between the manager of a qualifying venture capital fund and the investors therein;

- (g) '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;
- (h) '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;
- (i) 'marketing' means a direct or indirect offering or placement at the initiative of the manager of a qualifying venture capital fund, or on its behalf, of units or shares of a venture capital fund it manages to or with investors domiciled or with a registered office in the Union;
- (j) '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, or to make capital contributions to, that fund;
- (k) 'home Member State' means the Member State where the manager of a qualifying venture capital fund 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;
- (l) 'host Member State' means the Member State, other than the home Member State, where the manager of a qualifying venture capital fund markets qualifying venture capital funds in accordance with this Regulation;

- (m) '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 falling within the scope of this Regulation.

In regard to point (c) 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 does not appoint an external manager, the qualifying venture capital fund itself shall be registered as the manager of a qualifying venture capital fund in accordance with Article 14. A qualifying venture capital fund that is registered as an internal manager of a qualifying venture capital fund shall not be registered as an external manager of a qualifying venture capital fund of other collective investment undertakings.

CHAPTER II

CONDITIONS FOR THE USE OF THE DESIGNATION 'EuVECA'

Article 4

Managers of qualifying venture capital funds that 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. Managers of qualifying venture capital funds shall ensure that, when acquiring assets other than qualifying investments, no more than 30 % of the fund's aggregate capital contributions and uncalled committed capital is used for the acquisition of such assets. The 30 % threshold 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 that threshold as cash and cash equivalents are not to be considered as investments.
2. Managers of qualifying venture capital funds shall 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.
3. Managers of qualifying venture capital funds 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. Managers of qualifying venture capital funds 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 which 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 that:
 - (a) commit to investing a minimum of EUR 100 000; and
 - (b) 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 manager of a qualifying venture capital fund when investing in the qualifying venture capital funds that they manage.

Article 7

Managers of qualifying venture capital funds shall, in relation to the qualifying venture capital funds they manage:

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

- (b) apply appropriate policies and procedures for preventing malpractices that can reasonably be expected to affect the interests of the investors and the qualifying portfolio undertakings;
- (c) conduct their business activities in such a way as to promote the best interests of the qualifying venture capital funds they manage, the investors therein 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 in which they invest;
- (f) treat their investors fairly;
- (g) ensure that no investor obtains preferential treatment, unless such preferential treatment is disclosed in the rules or instruments of incorporation of the qualifying venture capital fund.

Article 8

1. Where a manager of a qualifying venture capital fund delegates functions to third parties, the manager's liability towards the qualifying venture capital fund or the investors therein shall remain unaffected. The manager shall not delegate functions to the extent that, in essence, it can no longer be considered to be the manager of a qualifying venture capital fund and to the extent that it becomes a letter-box entity.

2. Any delegation of functions under paragraph 1 shall not undermine the effectiveness of supervision of the manager of a qualifying venture capital fund, and, in particular, shall not prevent that manager from acting, or the qualifying venture capital fund from being managed, in the best interests of the investors therein.

Article 9

1. Managers of qualifying venture capital funds 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 the investors therein and to ensure that the qualifying venture capital funds they manage are fairly treated.
2. Managers of qualifying venture capital funds shall identify in particular those conflicts of interest that may arise between:
 - (a) managers of qualifying venture capital funds, persons who effectively conduct the business of those managers, employees of, or any person who directly or indirectly controls or is controlled by, those managers, and the qualifying venture capital fund managed by those managers, or the investors therein;
 - (b) the qualifying venture capital fund or the investors therein, and another qualifying venture capital fund managed by the same manager, or the investors therein;

- (c) the qualifying venture capital fund or the investors therein, and a collective investment undertaking or UCITS managed by the same manager, or the investors therein.
- 3. Managers of qualifying venture capital funds 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 a manager of a qualifying venture capital fund 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. A manager of a qualifying venture capital fund shall disclose in clear terms 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 25 specifying:
 - (a) the types of conflicts of interest referred to in paragraph 2 of this Article;
 - (b) the steps that managers of qualifying venture capital funds must take, in terms of structures and organisational and administrative procedures in order to identify, prevent, manage, monitor and disclose conflicts of interest.

Article 10

1. At all times, managers of qualifying venture capital funds shall have sufficient own funds and shall use adequate and appropriate human and technical resources as necessary for the proper management of the qualifying venture capital funds that they manage.
2. At all times, managers of qualifying venture capital funds shall ensure that they are able to justify the sufficiency of their own funds to maintain operational continuity and disclose their reasoning as to why those funds are sufficient as specified in Article 13.

Article 11

1. 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.
2. The valuation procedures used shall ensure that the assets are valued properly and that the asset value is calculated at least annually.

Article 12

1. Managers of qualifying venture capital funds shall make available an annual report to the competent authority of the home Member State for each qualifying venture capital fund that they manage, by six 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 previous year. It shall also disclose the profits earned by the qualifying venture capital fund at the end of its life and, where applicable, the profits distributed during its life. It shall contain the audited financial accounts for the qualifying venture capital fund.

The annual report shall be produced in accordance with existing reporting standards and the terms agreed between the managers of qualifying venture capital funds and the investors. Managers of qualifying venture capital funds shall provide the report to investors on request. Managers of qualifying venture capital funds and investors may agree to make additional disclosures to each other.

2. An audit of the qualifying venture capital fund shall be conducted at least annually. The audit shall confirm that money and assets are held in the name of the qualifying venture capital fund and that the manager of a qualifying venture capital fund has established and maintained adequate records and checks in respect of the use of any mandate or control over the money and assets of the qualifying venture capital fund and the investors therein.

3. Where the manager of a qualifying venture capital fund is required to make public an annual financial report in accordance with Article 4 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers the securities of which are admitted to trading on a regulated market¹ in relation to the qualifying venture capital fund, the information referred to in paragraph 1 may be provided separately or as an additional part of the annual financial report.

Article 13

1. Managers of qualifying venture capital funds shall, in relation to the qualifying venture capital funds that they manage, inform their investors, prior to the investment decision of the latter, in a clear and understandable manner, of the following:
- (a) the identity of that manager and any other service providers contracted by that manager in relation to their management of the qualifying venture capital funds, and a description of their duties;
 - (b) the amount of own funds available to that manager and a detailed statement as to why that manager considers that amount to be sufficient for maintaining the adequate human and technical resources necessary for the proper management of its qualifying venture capital funds;

¹ OJ L 390, 31.12.2004, p. 38.

- (c) 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;
 - (iii) the types of qualifying portfolio undertakings in which any other qualifying venture capital fund, as referred to in point (ii), intends to invest;
 - (iv) the non-qualifying investments which it intends to make;
 - (v) the techniques that it intends to employ, and
 - (vi) any applicable investment restrictions;
- (d) 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;
- (e) 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;
- (f) a description of how the remuneration of the manager of a qualifying venture capital fund is calculated;

- (g) a description of all relevant costs and of the maximum amounts thereof;
 - (h) where available, the historical financial performance of the qualifying venture capital fund;
 - (i) the business support services and the other support activities provided by the manager of a qualifying venture capital fund or arranged through third parties in order to facilitate the development, growth or in some other respect the ongoing 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;
 - (j) a description of the procedures by which the qualifying venture capital fund may change its investment strategy or investment policy, or both.
2. 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.
3. 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 trading¹, 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 separately or as a part of the prospectus.

¹ OJ L 345, 31.12.2003, p. 64.

CHAPTER III

SUPERVISION AND ADMINISTRATIVE COOPERATION

Article 14

1. Managers of qualifying venture capital funds that 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 their 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, the units or shares of which are to be marketed and their investment strategies;
 - (c) information on the arrangements made for complying with the requirements of Chapter II;
 - (d) a list of Member States where the manager of a qualifying venture capital fund intends to market each qualifying venture capital fund;
 - (e) a list of Member States where the manager of a qualifying venture capital fund has established, or intends to establish, qualifying venture capital funds.

2. The competent authority of the home Member State shall only register the manager of a qualifying venture capital fund if the following conditions are met:
- (a) the persons who effectively conduct the business of managing qualifying venture capital funds are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the manager of a qualifying venture capital fund;
 - (b) the information required under paragraph 1 is complete;
 - (c) the arrangements notified according to point (c) of paragraph 1 are suitable for complying with the requirements of Chapter II;
 - (d) the list notified under point (e) of paragraph 1 of this Article reveals that all of the qualifying venture capital funds are established in accordance with point (iii) of point (b) of Article 3.
3. Registration under this Article shall be valid in the entire territory of the Union and shall allow managers of qualifying venture capital funds to market qualifying venture capital funds under the designation 'EuVECA' throughout the Union.

Article 15

Managers of qualifying venture capital funds shall inform the competent authority of the home Member State where they intend to market:

- (a) a new qualifying venture capital fund; or
- (b) an existing qualifying venture capital fund in a Member State not mentioned in the list referred to in point (d) of Article 14(1).

Article 16

1. Immediately after the registration of a manager of a qualifying venture capital fund, 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 a manager of a qualifying venture capital fund intends to market qualifying venture capital funds, the competent authority of the home Member State shall notify the Member States indicated in accordance with point (d) of Article 14(1) and ESMA, accordingly.
2. The host Member States indicated in accordance with point (d) of Article 14(1) shall not impose, on the manager of a qualifying venture capital fund registered in accordance with Article 14, 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 notification under this Article.
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 17

ESMA shall maintain a central database, publicly accessible on the internet, listing all managers of qualifying venture capital funds registered in accordance with Article 14, and the qualifying venture capital funds that they market, as well as the countries in which those funds are marketed.

Article 18

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

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

2. Where there are clear and demonstrable grounds that lead the competent authority of the host Member State to believe that the manager of a qualifying venture capital fund is in breach of this Regulation within its territory, it shall promptly inform the competent authority of the home Member State accordingly. The competent authority of the home Member State shall take appropriate measures.
3. If the manager of a qualifying venture capital fund persists in acting in a manner that is clearly in breach of this Regulation despite measures taken by the competent authority of the home Member State or because that competent authority has failed to take measures within reasonable time, the competent authority of the host Member State, may, after informing the competent authority of the home Member State, take all the appropriate measures in order to protect investors, including prohibiting the manager of a qualifying venture capital fund from carrying out any further marketing of its qualifying venture capital funds within the territory of the host Member State.

Article 19

Competent authorities shall, in accordance 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 manager of a qualifying venture capital fund to provide information without delay;

- (c) require information from any person related to the activities of the manager of a qualifying venture capital fund or of the qualifying venture capital fund;
- (d) carry out on-site inspections with or without prior announcement;
- (e) take appropriate measures to ensure that a manager of a qualifying venture capital fund continues to comply with this Regulation;
- (f) issue an order to ensure that a manager of a qualifying venture capital fund complies with this Regulation and desists from a repetition of any conduct that may consist of a breach of this Regulation.

Article 20

1. Member States shall lay down the rules on administrative penalties and other measures applicable to breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The administrative penalties and other measures provided for shall be effective, proportionate and dissuasive.
2. By ...^{*} the Member States shall notify the Commission and ESMA of the rules referred to in paragraph 1. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

^{*} OJ: Please insert date: 24 months after the date of entry into force of this Regulation.

Article 21

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 manager of a qualifying venture capital fund:
 - (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' but is not registered in accordance with Article 14;
 - (d) uses the designation 'EuVECA' for the marketing of funds which are not established in accordance with point (iii) of point (b) of Article 3;
 - (e) has obtained registration through false statements or any other irregular means in breach of Article 14;
 - (f) fails to act honestly, fairly or with due skill, care or diligence, in conducting their business, in breach of point (a) of Article 7;
 - (g) fails to apply appropriate policies and procedures for preventing malpractices, in breach of point (b) of Article 7;

- (h) repeatedly fails to comply with the requirements under Article 12 regarding the annual report;
 - (i) repeatedly fails to comply with the obligation to inform investors in accordance with Article 13.
- 2. In the cases referred to in paragraph 1 the competent authority of the home Member State shall, as appropriate:
 - (a) take measures to ensure that the manager of a qualifying venture capital fund concerned complies with Articles 5 and 6, points (a) and (b) of Article 7 and Articles 12, 13 and 14;
 - (b) prohibit the use of the designation 'EuVECA' and remove the manager of a qualifying venture capital fund concerned from the register.
- 3. The competent authority of the home Member State shall inform the competent authorities of the host Member States in accordance with point (d) of Article 14(1) and ESMA, without delay, of the removal of the manager of a qualifying venture capital fund from the register referred to in point (b) of paragraph 2 of this Article.
- 4. The right to market one or more qualifying venture capital funds under the designation 'EuVECA' expires with immediate effect from the date of the decision of the competent authority referred to in point (b) of paragraph 2.

Article 22

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 23

1. All persons who work or who have worked for the competent authorities or for 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 managers of qualifying venture capital funds 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 managers of qualifying venture capital funds and qualifying venture capital funds.

3. Where competent authorities or 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 24

In the event 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 point (iii) of point (b) or to point (iv) of point (d) of Article 3 of this Regulation.

CHAPTER IV

TRANSITIONAL AND FINAL PROVISIONS

Article 25

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 9(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 9(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke 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 9(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 to 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.

^{*} OJ: please insert the date of entry into force of this Regulation.

Article 26

1. The Commission shall review this Regulation in accordance with paragraph 2. 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 managers of qualifying venture capital funds in different Member States, whether domestically or on a cross-border basis;
 - (b) the geographical and sectoral distribution of investments undertaken by qualifying venture capital funds;
 - (c) the appropriateness of the information requirements under Article 13, in particular whether they are sufficient to enable investors to take an informed investment decision;
 - (d) the use of the different qualifying investments by managers of qualifying venture capital funds and, in particular, whether there is a need to adjust the qualifying investments in this Regulation;
 - (e) the possibility of extending the marketing of qualifying venture capital funds to retail investors;

- (f) the effectiveness, proportionality and application of administrative penalties and other administrative measures provided for by Member States in accordance with this Regulation;
- (g) the impact of this Regulation on the venture capital market;
- (h) 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;
- (i) the appropriateness of complementing this Regulation with a depositary regime;
- (j) an evaluation of any barriers that may have impeded investment into funds using the designation 'EuVECA', including the impact on institutional investors of other Union law of a prudential nature.

2. The review referred to in paragraph 1 shall be conducted:

- (a) by 22 July 2017 as regards points (a) to (g), (i) and (j); and
- (b) by 22 July 2015 as regards point (h).

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

Article 27

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, in particular those laid down in Directive 2011/61/EU. That 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 of venture capital funds with assets under management that in total exceed the threshold provided for in Article 2(1) to become managers of qualifying venture capital funds 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 to the Council, accompanied, if appropriate, by a legislative proposal.

Article 28

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 9(5), which shall apply from ...*.

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

Done at ...

For the European Parliament
The President

For the Council
The President

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