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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on European Venture Capital Funds**

(Text with EEA relevance)

{SEC(2011) 1515 final}

{SEC(2011) 1516 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

Compared with competing global centres of high-tech and innovation, most notably the United States, the European venture capital industry is fragmented and dispersed. This fragmentation and dispersion leads to a statistically significant investor's reluctance to invest in venture capital fund: Some Member States have dedicated venture capital fund regimes with rules on portfolio composition, investment techniques and eligible investment target. However, most Member States do not have such specific venture capital fund regimes, they rather apply general rules on company law and prospectus obligations to the activities of all fund managers who wish to offer 'private placements' of venture capital in their jurisdictions.

As a consequence of regulatory fragmentation, potential 'venture capital' investors such as wealthy individuals, pension funds or insurance companies find it difficult and costly to embark on channelling some of their investments toward venture capital. Regulatory fragmentation also impedes specialised venture capital funds from raising significant amount of capital from abroad.

Closely linked to the problem described above is the issue whether Europe dedicates insufficient funds toward the financing of innovative start-up industries. While the United States, in the period from 2003-2010, channelled approximately € 131 billion into VCFs, European VCFs only managed to raise €28 billion in this period.

Potential investor's current preference is to prefer private equity over venture capital investments. In the reference period 2003-2010, funds dedicated to venture capital amounted to €64 billion out of a total of €437 billion invested in the wider field of private equity. Venture capital thus accounted for only 14.6% of the joint pool – with private equity accounting for 85.4%. Looking at this reference period on a yearly basis, monies raised by private equity every single year by far exceed those raised by venture capital.

As long as this bias in favour of private equity -- a sector that invests in mature companies and organises leveraged buy-outs -- persists, available funds are not channelled to equity finance to seed and start-up ventures that are at the make-or-break phase in their corporate development. The lack of financial resources that are currently directed towards venture capital is directly responsible for the sub-optimal size of the average European VCF.

The average size of a European venture capital fund is significantly beneath the optimal size for this type of funding instrument. While the average United States venture capital fund (VCF) assembles €130 million of assets under management, the average European VCF size is around €60 million.

In consequence, venture capital, at this stage, plays a minor role in the financing of SMEs. SMEs depend primarily on bank loans. Bank loans account for more than 80% of their finance, while only 2% of their finance is supplied by venture capital specialists. The corresponding figure for the United States is 14%.

These findings are particularly striking in light of the fact that many SMEs, since the financial crisis of 2008 and 2009, had to pay much higher interest rates for bank loans.<sup>1</sup> Moreover, as a consequence of the financial crisis of 2008 and 2009, the provision and extension of credit lines by banks to SMEs has decreased significantly, so SMEs' search and demand for other alternative sources of finance has become pressing.<sup>2</sup> Still, venture capital, for want of sufficient capital resources, has not been able to step into this obvious gap.

The absence of an efficient venture capital sector leads to European innovators and innovative business ventures punching below their commercial potential. This, in turn, is negative for Europe's global competitiveness. This point can be illustrated by comparing the relative importance of venture capital investments as a financing tool (expressed as a percentage of GDP) in a highly innovative market, such as the United States (0.14%), with the European average (0.03%).

This situation is also borne out when assessed from the perspective of the overall portfolio of venture capital funds managed by a particular fund manager. According to the latest figures available from the European Private Equity and Venture Capital Association (EVCA), 98% of European venture capital fund managers manage a portfolio of funds that would be beneath the € 500 million threshold of the Directive on Alternative Investment Fund Managers (AIFMD).<sup>3</sup>

Tackling these problems and supporting European entrepreneurs is therefore vital. A thriving European venture capital market is an objective of the overall Europe 2020 Strategy,<sup>4</sup> while the European Council of February 2011 called for the removal of remaining regulatory obstacles to cross border venture capital. As a follow up, the European Commission committed in the Single Market Act<sup>5</sup> (SMA) to ensure that by 2012 venture capital funds established in any Member State can raise capital and invest freely throughout the EU. A new framework for venture capital funds is also one of the key priorities of the SME action plan [insert reference] which aims at fostering the growth of SMEs by improving their access to finance. The communication of the Commission "A roadmap to stability and growth" adopted on 12 October 2011 also identified facilitating the access to venture capital as an important tool to boost growth within the EU and therefore calls for a fast track adoption of relevant proposals by the European Parliament and Council.<sup>6</sup>

The proposed Regulation addresses these problems. It introduced uniform requirements for the managers of collective investment undertakings that operate under the designation "European Venture Capital Fund". It introduces requirements as to the investment portfolio, investment techniques and eligible undertakings that a qualifying venture capital fund may

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<sup>1</sup> According to the latest European Central Bank (ECB) survey where more than 50% of the sampled euro area SMEs reported increases in interest rates charged by banks and overall tightening of credit standards for bank loans to SMEs.

<sup>2</sup> In the latest survey (09/2010 – 02/2011) carried out by the European Central Bank (ECB) and developed together with the European Commission on the access to finance of SMEs in the Euro area, around 15% of SMEs surveyed quoted "access to finance" as their most pressing problem and this has not changed compared to previous surveys. <http://www.ecb.europa.eu/pub/pdf/other/accesstofinancesmallmediumsizedenterprises201104en.pdf?b704f6b228e071bea9507d7569412805>

<sup>3</sup> Source: European Private Equity and Venture Capital Association (EVCA) estimates 2011.

<sup>4</sup> [http://ec.europa.eu/europe2020/index\\_en.htm](http://ec.europa.eu/europe2020/index_en.htm), 3 March 2010, and also recognised within the Innovation Union, [http://ec.europa.eu/research/innovation-union/index\\_en.cfm?pg=keydocs](http://ec.europa.eu/research/innovation-union/index_en.cfm?pg=keydocs) 6 October 2010.

<sup>5</sup> [http://ec.europa.eu/internal\\_market/smact/docs/20110413-communication\\_en.pdf](http://ec.europa.eu/internal_market/smact/docs/20110413-communication_en.pdf) 13 April 2011

<sup>6</sup> [http://ec.europa.eu/commission\\_2010-2014/president/news/speeches-statements/pdf/20111012communication\\_roadmap\\_en.pdf](http://ec.europa.eu/commission_2010-2014/president/news/speeches-statements/pdf/20111012communication_roadmap_en.pdf)

target. It also introduces uniform rules on which categories of investors a qualifying venture capital fund may target and on the internal organisation of the managers that market such qualifying funds. As managers of collective investment undertakings that operate under the designation "European Venture Capital Fund" will be subject to identical substantive rules across the EU, they will benefit from uniform requirements for registration and an EU-wide passport, which will help create a level playing field for all participants in the venture capital market.

Uniform rules for venture capital funds can also give an important impulse for the development of other areas of the regulation of venture capital investments. Prudential frameworks for insurance companies (Solvency II) and banks (Capital Requirements Regulation and Directive) treat venture capital investments as high risk for the purposes of calculating capital requirements. The Commission will assess the impacts of such requirements, in order to identify whether these capital requirements need changing in the medium or long term. Establishing an EU-wide framework for venture capital funds with a uniform set of rules on portfolio composition and operating conditions as envisaged by this Regulation may facilitate such an assessment.

As also highlighted in the SME action plan a common notion of a venture capital fund will be a good starting point for further exploring with Member States solutions to the tax problems which may hinder cross-border investments by such funds. The Commission will in 2012 complete its examination of the tax obstacles to cross-border venture capital investment with a view to presenting solutions in 2013 aimed at eliminating the obstacles while at the same time preventing tax avoidance and evasion. Such solutions – though independent from this Regulation – are an important compliment to it, in order to develop a fully functional market for venture capital funds and for SMEs within the EU. They would ensure efficient capital flows to qualifying venture capital funds and ultimately the qualifying portfolio undertakings in which the funds invest.

The proposed Regulation is complementary to the proposed Regulation on European Social Entrepreneurship Funds (EuSEFs). Both proposals aim to achieve different goals and both proposals, if adopted, will coexist as autonomous legal acts in mutual independence.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

### **2.1. Consultation with interested parties**

Work on venture capital dates back to 1998 when the importance of creating a well functioning risk capital market,<sup>7</sup> with venture capital as an essential part, was already recognised in the Commission Communication on the Risk Capital Action Plan (RCAP).<sup>8</sup> Since then the Commission gathered further evidence through dedicated workshops, consultations and expert groups, addressing the existing legal, regulatory and tax barriers that prevent an optimal functioning of venture capital markets.

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<sup>7</sup> Risk capital cover three types of financing: (i) informal investment by business angels, (ii) venture capital and (iii) stock markets specialized in SMEs and high growth companies.

<sup>8</sup> RCAP Final report 2003: [http://ec.europa.eu/internal\\_market/securities/riskcapital/index\\_en.htm](http://ec.europa.eu/internal_market/securities/riskcapital/index_en.htm)

On 15 June 2011, the Commission services launched a public consultation<sup>9</sup> on the core elements of a possible European framework for venture capital funds, which closed on 10 August 2011. Forty eight answers have been received which can be consulted on the following website [http://ec.europa.eu/internal\\_market/consultations/2011/venture\\_capital\\_en.htm](http://ec.europa.eu/internal_market/consultations/2011/venture_capital_en.htm).

## **2.2. Impact assessment**

In line with its policy on "better regulation", the Commission conducted an impact assessment of policy alternatives. These alternatives contain a wide range of possible options:

- Introduce a new venture capital passport within Directive 2011/61/EC (AIFMD)
- Lower or abolish the thresholds of the AIFMD
- Create special rules for venture capital as part of the implementing provisions of AIFM-D ('level 2')
- Create a venture capital passport as a stand-alone legal instrument
- Create an administrative network to enforce mutual recognition of national rules governing venture capital or 'private placements'.

All these options were analysed against the general objectives, namely to make European SMEs more competitive in a global market place, but also against the more specific and operational objectives of this initiative: (i) to establish a European notion of "venture capital fund" (ii) to create a European system promoting the cross border fund raising of venture capital funds, (iii) to create a common regulatory approach governing such funds, including the creation of a network for regulatory cooperation in supervising such investment funds.

The impacts including the costs and benefits on venture capital fund managers, SMEs, society, overall economy, environment and the global context were also analysed. Such analysis concluded in favour of the creation of a venture capital passport as a stand alone instrument. The impact of the preferred option is expected to benefit venture capital fund managers by improving their operating conditions in the EU which shall then lead to compliance and administrative cost reductions and opening up new fund-raising opportunities. This shall result in more business opportunities and more funding being channelled to young and innovative SMEs which shall in turn boost the competitiveness and growth of the European Economy.

The comments by the Impact Assessment Board expressed in their opinion of 11 November have been taken into account. In particular, the analysis of the problems has been strengthened by explaining how far low levels of cross-border venture capital fundraising can be attributed to the fragmentation of rules in the EU. The options have been better linked back to the specific problems identified and the analysis of their impacts has been deepened. Finally, monitoring and compliance arrangements have been further clarified.

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<sup>9</sup> [http://ec.europa.eu/internal\\_market/investment/venture\\_capital\\_en.htm](http://ec.europa.eu/internal_market/investment/venture_capital_en.htm)

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. Legal basis**

The proposal is based on Article 114 TFEU as the most appropriate legal base in this field. The proposal aims principally at improving the reliability and legal certainty of marketing activities undertaken by operators using the designation "European Venture Capital Fund". In pursuing this aim, the proposal introduces uniform standards concerning the portfolio composition of "European Venture Capital Funds", the investment instruments that such funds may use, and the investment targets that are eligible for funding from collective investment funds that operate under the designation "European Venture Capital Fund".

The proposal also introduces uniform rules on the categories of investors that are considered as eligible to invest in "European Venture Capital Funds". A Regulation is considered to be the most appropriate legal instrument to introduce uniform requirements directed to all participants in the venture capital market - venture capital investors, venture capital funds and the target companies of venture capital financing. A Regulation is also considered the most appropriate instrument to create uniform rules on who can be a venture capital investor, on who can use the designation "European Venture Capital Fund" and on the types of undertakings that can receive funding from such qualifying funds. Finally, a Regulation is considered to be the most appropriate instrument to ensure that all participants are subject to uniform requirements regarding the subscription to "European Venture Capital Funds" and the investment strategies pursued and investment tools used by "European Venture Capital Funds".

#### **3.2. Subsidiarity and proportionality**

The proposal essentially aims at creating a trusted, safe and legally stable marketing environment for the marketing of European venture capital funds. The determination of the essential characteristics of a European venture capital fund, in terms of its portfolio composition, investment tools, investment targets and eligible investor groups, can not be left to the discretion of the Member States as this would give rise to different and inconsistent application of these defining requirements throughout the EU. Uniform definitions and operating requirements therefore must play a central role in establishing a set of common rules for the European market for EU venture capital funds and their managers. Furthermore, all collective investment fund managers operating in this market using the designation "European Venture Capital Fund" must be subject to the same organisational and conduct of business requirements.

In respect of the registration and supervision of the managers of "European Venture Capital Funds" the proposal aims at striking a balance between the need for effective supervision of European venture capital funds, the interest of the competent national authorities where such funds are either domiciled or offered to the eligible categories of investors and the coordinating role of ESMA. In order to create a seamless process for supervision, the competent authority in the Member State where the manager of the qualifying "European Venture Capital Fund" is domiciled will verify the registration documents submitted by the applicant manager and, after having assessed whether the applicant provides sufficient guarantee of its ability to comply with the requirements of the Regulation, will register the applicant. In supervising the registered manager, the competent authority that has registered the manager will cooperate with the competent authorities in those Member States where the

qualifying fund is marketed. ESMA will maintain a central database listing all registered managers that are eligible to use the designation European venture capital fund.

As regards proportionality, the proposal strikes the appropriate balance between the public interest of promoting the development of more liquid venture capital markets and the cost efficiency of the measures proposed. In providing for a simple registration system, the proposal has taken full account of the need to balance safety and reliability associated with the use of the designation "European Venture Capital Fund" with the efficient operation of the venture capital market and the cost for its various stakeholders.

### **3.3. Compliance with Articles 290 and 291 TFEU**

On 23 September 2009, the Commission adopted proposals for Regulations establishing EBA, EIOPA, and ESMA. In this respect the Commission wishes to recall the Statements in relation to Articles 290 and 291 TFEU it made at the adoption of the Regulations establishing the European Supervisory Authorities according to which: "As regards the process for the adoption of regulatory standards, the Commission emphasises the unique character of the financial services sector, following from the Lamfalussy structure and explicitly recognised in Declaration 39 to the TFEU. However, the Commission has serious doubts whether the restrictions on its role when adopting delegated acts and implementing measures are in line with Articles 290 and 291 TFEU."

### **3.4. Presentation of the Proposal**

#### *Article 1 - Scope*

Article 1 delineates the scope of the envisaged Regulation. The Article makes clear that the designation "European Venture Capital Fund" shall be reserved to those fund managers that comply with a set of uniform quality criteria that apply to the marketing of their qualifying venture capital funds across the Union. In this respect, Article 1 underscores the aim to set out a uniform concept of what constitutes a qualifying venture capital fund. This concept is developed in order to ensure the smooth marketing of such funds across the Union.

#### *Article 2 - Scope of application*

Article 2 specifies that this Regulation applies to managers of collective investment undertakings as defined in Article 3 (b) of this Regulation, provided that these managers are established in the Union and registered with the competent authority of their home Member State in accordance with Directive 2011/61/EC and that they manage portfolios of qualifying venture capital funds, whose assets under management in total do not exceed a threshold of EUR 500 million.

#### *Article 3 - Definitions*

Article 3 contains essential definitions delineating the scope of application for the proposed Regulation. Key concepts such as the qualifying venture capital fund, the qualifying investment tools and the qualifying investment targets are defined. Essentially, these definitions aim to draw a clear demarcation line between the notion of a qualifying venture capital fund and other funds that engage in other, less specialised, investment strategies, for example private equity.

In line with the aim of precisely circumscribing the qualifying funds in relation to which a venture capital fund manager shall benefit from the rights under this Regulation, [Article 3, paragraph \(a\)](#) stipulates that a qualifying venture capital fund shall be a fund that dedicates at least 70 percent of its aggregate capital contributions and uncalled committed capital to investments in small and medium sized enterprises (SME) that issue equity or quasi equity instruments directly to the venture capital investor ("investment targets"). This implies that e.g. operational expenses to be charged to the qualifying venture capital fund as may be agreed with investors, must be borne out of the remaining 30 percent of committed capital contributions.

It is important to clarify that the venture capital fund has to acquire these instruments directly from the issuing SME. Direct acquisition is an essential safeguard as it aims to differentiate qualifying venture capital funds from the broader category of private equity funds (which trade in issued securities on secondary markets). Article 3 contains further definitions necessary for the application of the proposed Regulation.

#### *Article 4 – Use of the designation "European Venture Capital fund"*

[Article 4](#) contains the key principle that only funds that comply with the uniform criteria laid down by this Regulation are eligible to use the designation "European venture capital fund" to market qualifying venture capital funds across the Union.

#### *Article 5 – Portfolio composition*

[Article 5](#) contains detailed provision on the portfolio composition that characterises a European Venture Capital Fund. In this respect, Article 5 contains uniform rules on the investment targets for qualifying venture capital funds, eligible investment tools, rules on the limits by which a qualifying venture capital fund can increase its exposure. In order to allow qualifying venture capital funds a certain degree of flexibility in their investment and liquidity management, secondary trading would be permitted up to the maximum threshold not exceeding 30 percent of aggregate capital contributions and uncalled capital investments.

#### *Article 6 – Eligible investors*

[Article 6](#) contains detailed provisions on the investors eligible to invest in qualifying venture capital funds: according to this Article, the qualifying funds may only be marketed to investors recognised as professional investors in Directive 2004/39/EC. Marketing to other investors such as certain high-net worth individuals is only allowed if they commit a minimum 'ticket' of EUR 100 000 to the fund and if certain procedures are followed by the fund manager so that the fund manager is reasonably assured that these other investors are capable of making their own investment decisions and understanding the risks involved.

#### *Article 7 – Rules of conduct and avoidance of conflicts of interest*

[Article 7](#) contains general principles governing the behaviour of a qualifying venture capital manager, notably in the conduct of its activities and its relationship to investors.

#### *Article 8 – Conflicts of interest*

[Article 8](#) contains rules for the handling of conflicts of interest by the venture capital manager. These rules also require the manager to have the necessary organisational and administrative arrangements in place to ensure a proper handling of conflicts of interest.



### *Article 9 – Other organisational requirements*

Article 9 requires that a venture capital fund manager maintains adequate human and technical resources as well as sufficient own funds as are necessary for the proper management of qualifying venture capital funds.

### *Article 10 – Valuation*

Article 10 addresses the valuation of the assets of a qualifying venture capital fund. Rules on this should be laid down in the statutory documents of each qualifying venture capital fund.

### *Article 11 - Annual report*

Article 11 contains rules on annual reports venture capital fund managers should prepare in relation to the qualifying venture capital funds they manage. The report shall describe the composition of the portfolio of the fund and the activities of the past year.

### *Article 12 - Disclosure to investors*

Article 12 contains the key disclosure requirements that are incumbent on a venture capital fund manager in relation to the qualifying venture capital funds. Most importantly, these requirements set out pre-contractual disclosure obligations related to the qualifying fund's investment strategy and objectives, 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. This also includes information about how the remuneration of the venture capital fund manager is calculated.

### *Article 13 – Supervision*

Article 13 in order to ensure that the competent authority of the home Member State will be able to supervise compliance of the venture capital fund manager with the uniform requirements set out in the Regulation, the venture capital fund manager shall inform the competent authority of its intention to market qualifying venture capital funds under the designation "European Venture Capital Fund." The manager shall also provide the necessary information including about the arrangements to comply with this Regulation and the funds he intends to market. Once the competent authority is satisfied that the required information is complete and that the arrangements are suitable to comply with the requirements set out in this Regulation, it shall register the venture capital fund manager. This registration shall be valid across the entire Union and allows the venture capital fund manager to market qualifying venture capital funds under the designation "European Venture Capital Funds".

### *Article 14 – Update of information on qualifying venture capital funds*

Article 14 contains rules on circumstances when information supplied to the competent authority in the home Member State needs to be updated.

### *Article 15 - Cross-border notifications*

Article 15 describes the cross-border notification process between the competent supervisory authorities that is triggered by the registration of the venture capital fund manager.

### *Article 16 – ESMA database*

Article 16 entrusts ESMA with the task to maintain a central database listing all qualifying venture capital funds that are registered across the Union.

*Article 17 – Supervision by competent authority*

Article 17 stipulates that the competent authority of the home Member State supervises the requirements of this Regulation.

*Article 18 – Supervisory powers*

Article 18 specifies a list of supervisory powers that competent authorities shall have at their disposal to ensure compliance with the uniform criteria contained in the Regulation.

*Article 19 – Sanctions*

Article 19 contains provisions on sanctions to ensure proper enforcement of the requirements of this Regulation.

*Article 20 – Breach of key provisions*

Article 20 specifies that the breach of key provisions of this Regulation such as on portfolio composition, the eligible investors and the use of the designation "European Venture Capital Fund" should be sanctioned by the prohibition of the use of the designation and the removal of the venture capital fund manager of the register.

*Article 21 – Supervisory cooperation*

Article 21 contains rules on the exchange of supervisory information between the competent authorities in the home and host Member States and ESMA.

*Article 22 - Professional secrecy*

Article 22 contains provisions on the requisite level of professional secrecy that should apply to all relevant national authorities and to the European Securities and Markets Regulator (ESMA).

*Article 23 – Conditions for empowerment*

Article 23 sets out the conditions under which the Commission is empowered to adopt delegated acts.

*Article 24 - Review*

Article 24 contains clauses on the review of the proposed Regulation and possible Commission proposals to modify the latter.

#### **4. BUDGETARY IMPLICATION**

There are no budgetary implications.

Proposal for a

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**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,<sup>10</sup>

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

Having regard to the opinion of the European Central Bank,<sup>11</sup>

Having regard to the opinion of the European Economic and Social Committee,<sup>12</sup>

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (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 these undertakings with valuable expertise and knowledge, business contacts, brand-equity and strategic advice. By providing finance and advice to these undertakings, venture capital funds stimulates economic growth, contribute to the creation of jobs, boost innovative undertakings, increase their investment in research and development and foster entrepreneurship, innovation and competitiveness in the Union.
- (2) It is necessary to lay down a common framework of rules regarding the use of the designation "European Venture Capital Fund", 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

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<sup>10</sup> OJ C , , p. .

<sup>11</sup> OJ C ...p...

<sup>12</sup> OJ C , , p. .

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 "European Venture Capital Fund". 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 "European Venture Capital Fund". 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.
- (5) In order to clarify the relationship between this Regulation and 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),<sup>13</sup> 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.<sup>14</sup> Furthermore, it should only apply to managers who manage portfolios of qualifying venture capital funds whose assets under management in total do not exceed a

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<sup>13</sup> OJ L 302, 17.11.2009, p. 32.

<sup>14</sup> OJ L 174, 1.7.2011, p.1.

threshold of EUR 500 million. In order to make the calculation of this threshold operational, 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 specifying the calculation of this threshold. When exercising this empowerment, the Commission should, in order to ensure consistency in rules on collective investment undertakings, take into account measures adopted by the Commission in accordance with point (a) of Article 3 (6) of Directive 2011/61/EC.

- (6) Where managers of collective investment undertakings do not wish to use the designation "European Venture Capital Fund", 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 private equity.
- (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 their focus on providing capital to small undertakings in the initial stages of their corporate existence, the designation "European Venture Capital Fund" should be restricted only to those funds that dedicate at least 70 percent of their aggregate capital contributions and uncalled committed capital to investments in such undertakings in the form of equity or quasi equity instruments.
- (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 restrict qualifying venture capital funds to making investments only 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, secondary trading should be permitted up to a maximum threshold not exceeding 30 percent of aggregate capital contributions and uncalled capital investments. Short term holdings of cash and cash equivalents should not be taken into account when calculating this limit.
- (11) In order to ensure that the designation "European Venture Capital Fund" 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 "European Venture Capital Fund" 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 so as to ensure that such funds concentrate, in their investment activities, on supporting qualifying portfolio companies, borrowing or leverage at the level of the fund should not be permitted. However, in order to permit the fund to cover extraordinary liquidity needs that might arise between the call of committed capital from investors and the actual reception of the capital in its accounts, short-term borrowing should be allowed.
- (14) In order to ensure that qualifying venture capital funds are marketed to investors who have the knowledge, experience and capacity to take on 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 in general 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.<sup>15</sup> This category includes venture capital fund managers who themselves invest into venture capital funds. However, in order to have a sufficiently broad investor base for investment into 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.
- (15) To ensure that only venture capital fund managers who fulfil uniform quality criteria as regards their behaviour in the market use the designation "European Venture Capital Fund", 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.
- (16) In order to ensure the integrity of the designation "European Venture Capital Fund" 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 as well as sufficient own funds for the 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 statutory documents of qualifying venture capital funds should contain rules on the valuation of assets. This should ensure the integrity and transparency of the valuation.

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<sup>15</sup> OJ L 145, 30.4.2004, p. 1.

- (18) In order to ensure that venture capital fund managers which make use of the designation "European Venture Capital Funds" 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 "European Venture Capital Fund" 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 "European Venture Capital Fund" 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.
- (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 Securities and Markets Authority (ESMA) should be entrusted with maintaining a central database listing all qualifying venture capital funds that are registered in accordance with this Regulation.
- (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.
- (25) In order to ensure proper enforcement, this Regulation should contain sanctions 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.<sup>16</sup> ESMA should be entrusted with drafting implementing technical standards for the format and method of the notification procedure in Article 15.
- (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 specifying the methods to be used for calculating and monitoring the threshold as referred to in this Regulation, and specifying 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.
- (31) 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. On the basis of the review, the Commission should submit a report to the European Parliament and the Council accompanied, if appropriate, by legislative changes.
- (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

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<sup>16</sup> OJ L 331, 15.12.2010, p. 84.



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<sup>17</sup> 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,<sup>18</sup> 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.
- (36) The objective of this Regulation, notably to ensure uniform requirements apply to the marketing of qualifying venture capital funds, cannot be sufficiently achieved by the Member States. The Union may therefore 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 provides for 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 "European Venture Capital Fund" with the efficient operation of the venture capital market and the cost for its various stakeholders. In doing so, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

## **CHAPTER I**

### **SUBJECT MATTER, SCOPE AND DEFINITIONS**

#### *Article 1*

This Regulation lays down uniform requirements for those managers of collective investment undertakings who wish to use the designation "European Venture Capital Fund" and the conditions for the marketing of collective investment undertakings under this designation in the Union, 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

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<sup>17</sup> OJ L 281 , 23.11.1995 p. 31.

<sup>18</sup> OJ L 8, 12.1.2001, p. 1.

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 who are established in the Union and 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/EC, provided that those managers manage portfolios of qualifying venture capital funds, whose assets under management in total do not exceed a threshold of EUR 500 million or, in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of the entry into force of this Regulation.
2. In calculating the threshold referred to in paragraph 1 managers of collective investment undertakings who manage funds other than qualifying venture capital funds will not need to aggregate the assets managed in those other funds.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 23 specifying the methods for calculating the threshold referred to in paragraph 1 of this Article and for monitoring compliance on an ongoing basis with this threshold.

#### *Article 3*

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

- (a) 'qualifying venture capital fund' means a collective investment undertaking that invests at least 70 percent of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments;
- (b) 'collective investment undertaking' means an undertaking which raises capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors and which does not require authorisation pursuant to Article 5 of Directive 2009/65/EC;
- (c) 'qualifying investments' means equity or quasi equity instruments that are
  - (i) issued by a qualifying portfolio undertaking and acquired directly by the qualifying venture capital fund from the qualifying portfolio undertaking, or
  - (ii) issued by a qualifying portfolio undertaking in exchange for an equity security issued by the qualifying portfolio undertaking, or
  - (iii) 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;

- (d) 'qualifying portfolio undertaking' means an undertaking that, at the time of an investment by the qualifying venture capital fund, is not listed on a regulated market as defined in point (14) of Article 4 (1) of Directive 2004/39/EC which employs fewer than 250 persons, and either has an annual turnover not exceeding EUR 50 million, or an annual balance sheet total not exceeding EUR 43 million, and which is not itself a collective investment undertaking;
- (e) 'equity' means ownership interest in an undertaking, represented by the shares or other form of participation in the capital of the qualifying portfolio undertaking, issued to the investors;
- (f) 'quasi-equity' means any instrument, whose return is predominantly based on the profits or losses of the qualifying portfolio undertaking and which is unsecured in the event of default;
- (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 a person is obligated 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 or has its registered office;
- (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.

## **CHAPTER II**

### **CONDITIONS FOR THE USE OF THE DESIGNATION "EUROPEAN VENTURE CAPITAL FUND"**

#### *Article 4*

Venture capital fund managers who comply with the requirements set out in this Chapter shall be entitled to use the designation "European venture capital fund" 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; short term holdings in cash and cash equivalents shall not be taken into account for calculating this limit.
2. The venture capital fund manager shall not borrow, issue debt obligations, provide guarantees, at the level of the qualifying venture capital fund, nor employ at the level of the qualifying venture capital fund any method by which the exposure of the fund will be increased, whether through borrowing of cash or securities, the engagement into derivative positions or by any other means.
3. The prohibition set out in paragraph 2 shall not apply to borrowing for a non-renewable term of no longer than 120 calendar days to provide liquidity between a call for and receipt of committed capital from investors.

### *Article 6*

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 invest 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;
- (c) the venture capital fund manager undertakes an assessment of the expertise, experience and knowledge of the investor, without presuming that the investor has the market knowledge and experience of those listed in Section I of Annex II of Directive 2004/39/EC;
- (d) the venture capital fund manager is reasonably assured, in light of the nature of the commitment or investment envisaged, that the investor is capable of making his own investment decisions and understanding the risks involved and that a commitment of this kind is appropriate for such an investor;
- (e) the venture capital fund manager confirms in writing that he has undertaken the assessment referred to in point (c) and that the conditions set out in point (d) are fulfilled.

### *Article 7*

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

- (a) act with due skill, care and diligence 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.

#### *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, 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.
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 are expected to 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.

#### *Article 10*

Rules for the valuation of assets shall be laid down in the statutory documents of the qualifying venture capital fund.

#### *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 contain the audited financial accounts for the qualifying venture capital fund. It 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 additional disclosures amongst themselves.
2. Where the venture capital fund manager is required to make public an annual financial report in accordance with Directive 2004/109/EC of the European Parliament and Council<sup>19</sup> 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 an additional part of the annual financial report.

#### *Article 12*

1. Venture capital fund managers shall inform their investors at least about the following elements prior to their investment decision:

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<sup>19</sup> OJ L 390, 31.12.2004, p. 38.

- (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;
  - (b) a description of the investment strategy and objectives of the qualifying venture capital fund, including a description of the types of the qualifying portfolio undertakings and other assets in which the qualifying venture capital fund may invest, the techniques it may employ, and 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 fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
  - (g) where available, the historical performance of the qualifying venture capital fund;
  - (h) a description of the procedures by which the qualifying venture capital fund may change its investment strategy or investment policy, or both.
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<sup>20</sup> 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 "European Venture Capital Fund" 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:

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<sup>20</sup> OJ L 345, 31.12.2003, p. 64.

- (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;
  - (d) a list of Member States where the venture capital fund manager intends to market each qualifying venture capital fund.
2. The competent authority of the home Member State shall only register the venture capital fund manager if it is satisfied that
- (a) the information required under paragraph 1 is complete and
  - (b) the arrangements notified according to point (c) of paragraph 1 are suitable in order to comply with the requirements of Chapter II.
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 "European Venture Capital Funds" 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 competent authority of the home Member State shall notify the fact that the venture capital fund manager is registered 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 [insert date].
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.

#### *Article 17*

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

#### *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;
- (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 measures and sanctions applicable to breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The measures and sanctions provided for shall be effective, proportionate and dissuasive.
2. By [24 months after entry into force of this Regulation] 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 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) fails to market the qualifying venture capital fund to eligible investors in breach of Article 6;
  - (c) fails to register with the competent authority of their home Member State in breach of the requirements of Article 13.
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) prohibit the use of the designation "European Venture Capital Fund" for the marketing of one or more qualifying venture capital funds of the venture capital fund manager;
  - (b) 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) of the removal of the venture capital fund manager 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 "European Venture Capital Funds" in the Union expires with immediate effect from the date of the decision of the competent authority referred to in points (a) or (b) of paragraph 2.

#### *Article 21*

1. Competent authorities and ESMA shall cooperate with each other whenever necessary for the purpose of carrying out their respective duties under this Regulation.
2. They shall exchange all information and documentation necessary to identify and remedy breaches to 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.

## **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 paragraph 3 of Article 2 and paragraph 5 of Article 8 shall be conferred on the Commission for a period of four years from the date of entering into force of this Regulation. 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 paragraph 3 of Article 2 and paragraph 5 of Article 8 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 paragraph 3 of Article 2 or paragraph 5 of Article 8 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two 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 two months at the initiative of the European Parliament or the Council.

#### *Article 24*

1. At the latest four years after the date of application of this Regulation, the Commission shall review this Regulation. 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 "European Venture Capital Fund" has been used by venture capital fund managers in different Member States, whether domestically or on a cross border basis;
  - (b) the scope of this Regulation, including the threshold of EUR 500 million.
2. 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 paragraph 3 of Article 2 and paragraph 5 of Article 8, 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 Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*