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*****I**

DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council
on European Venture Capital Funds
(COM(2011)0860 – C7-0490/2011 – 2011/0417(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Philippe Lamberts

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on European Venture Capital Funds
(COM(2011)0860 – C7-0490/2011 – 2011/0417(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0860),
 - having regard to Article 294(2) and Article 114(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0490/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of ...¹,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on the Internal Market and Consumer Protection and of the Committee on Legal Affairs (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ Not yet published in the Official Journal.

Amendment 1
Proposal for a regulation
Recital 7

Text proposed by the Commission

(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.

Amendment

(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 ***or real estate investments***.

Or. en

Amendment 2
Proposal for a regulation
Recital 8

Text proposed by the Commission

(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***.

Amendment

(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 ***qualifying venture capital funds are*** those funds that ***invest*** at least 70 % of their aggregate capital contributions and uncalled committed capital in such undertakings.

Or. en

Amendment 3
Proposal for a regulation
Recital 10

Text proposed by the Commission

(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.

Amendment

(10) In order to allow venture capital fund managers a certain degree of flexibility in the investment and liquidity management of their qualifying venture capital funds, trading, **such as in shares or participations in non-qualifying portfolio undertakings**, should be permitted up to a maximum threshold not exceeding 30 % of aggregate capital contributions and uncalled capital investments. Holdings of cash and cash equivalents should not be taken into account when calculating this limit.

Or. en

Amendment 4
Proposal for a regulation
Recital 14

Text proposed by the Commission

(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

Amendment

(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. 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.

and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC. 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.

Furthermore, investments made by the executives of a venture capital fund manager should be possible when investing in the qualifying venture capital fund that they manage.

Or. en

Amendment 5
Proposal for a regulation
Recital 29

Text proposed by 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

Amendment

(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. ESMA should be entrusted with drafting implementing technical standards for the format **and method** of the notification **procedure** in *Article 15*.

716/2009/EC and repealing Commission Decision 2009/77/EC. ESMA should be entrusted with drafting implementing technical standards for the format of the notification **referred to** in *this Regulation*.

Or. en

Amendment 6
Proposal for a regulation
Recital 30

Text proposed by the Commission

(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.

Amendment

(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. ***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.***

Or. en

Amendment 7
Proposal for a regulation
Recital 31

Text proposed by the Commission

Amendment

(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.

deleted

Or. en

Justification

The substance of current Recital 31 should be moved into Recital 30 as the last sentence, because it is an integral part of the standard recital on delegated acts.

**Amendment 8
Proposal for a regulation
Recital 32 a (new)**

Text proposed by the Commission

Amendment

(32a) It is necessary to ensure that the Commission proceed with a regular assessment of the effectiveness of public schemes that are deployed in the Union to support the venture capital market.

Or. en

**Amendment 9
Proposal for a regulation
Recital 32 b (new)**

Text proposed by the Commission

Amendment

(32b) In order to ensure that State aid rules governing Member State support for European venture capital funds effectively foster innovation while safeguarding fair competition, close coordination between the Commissioner for Research, Innovation and Science and

the Commissioner for Competition is of particular importance.

Or. en

Amendment 10
Proposal for a regulation
Recital 32 c (new)

Text proposed by the Commission

Amendment

(32c) It is necessary to recognise venture capital investments in green technologies as a major driver of the transformation of the Union economy, given the objective of making the Union a global leader in energy and resource efficiency. The Commission should therefore present, by the end of 2012, a report identifying appropriate legal avenues with the view of providing regulatory incentives to attract venture capital for green technologies.

Or. en

Amendment 11
Proposal for a regulation
Article 3 – point a

Text proposed by the Commission

Amendment

(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;

(a) ‘qualifying venture capital fund’ means a collective investment undertaking **with a closed-end structure** that invests at least 70 % of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments **and the head office of which is established in the territory of a Member State**;

Or. en

Justification

European venture capital funds should be closed-ended in order to ensure that their shares are not redeemable for cash or securities until they liquidate. They should also be located in the Union, as a means to effectively prevent the establishment of venture capital funds managed by an EU manager in tax havens for tax-avoidance or regulatory arbitrage purposes.

Amendment 12 **Proposal for a regulation** **Article 3 – point c**

Text proposed by the Commission

(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;

Amendment

(c) ‘qualifying investments’ means ***either of the following instruments:***

(i) equity or quasi equity instruments that are

– issued by a qualifying portfolio undertaking and acquired directly by the qualifying venture capital fund from the qualifying portfolio undertaking,

– issued by a qualifying portfolio undertaking in exchange for an equity security issued by the qualifying portfolio undertaking, *or*

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

(ii) units or shares of one or more other qualifying venture capital funds;

Or. en

Justification

The European venture capital market fund-raising environment should be strengthened, by including in 'qualifying investments' not only equity and quasi equity instruments, but also shares or units in other EVCFs. This acknowledges the growing importance of corporate venture investments in other EVCFs.

Amendment 13
Proposal for a regulation
Article 3 – point d

Text proposed by the Commission

(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;

Amendment

(d) ‘qualifying portfolio undertaking’ means an undertaking that:

(i) is not listed on a regulated market within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC at the time of an investment by the qualifying venture capital fund,

(ii) has been established for less than five years,

(iii) employs fewer than 250 persons,

(iv) either has an annual turnover not exceeding EUR 50 million, or an annual balance sheet total not exceeding EUR 43 million,

(v) is not itself a collective investment undertaking,

(vi) other than European venture capital funds and financial technology providers, is not a financial product or service provider,

(vii) is not established in a third country in which there are no or nominal taxes, a lack of effective exchange of information with foreign tax authorities, a lack of transparency in legislative, judicial or administrative provisions, or no requirement for a substantive local

presence, or which promotes itself as an offshore financial centre;

Or. en

Justification

It is important to ensure that qualifying portfolio undertakings are below five years of age, in order to reduce the risk of any misappropriation of the venture capital passport, such as the financing of more mature and high-growth businesses. Furthermore, financial product or service providers should not be regarded as a 'qualifying portfolio undertaking' under this Regulation. Finally, this Regulation should prevent European venture capital funds from investing in undertakings that are located in tax havens, as a means to avoid paying taxes or to circumvent legal requirements;

Amendment 14
Proposal for a regulation
Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. ESMA shall develop draft regulatory technical standards to specify the definitions of "financial product or service provider" and "financial technology provider" referred to in point (d)(vi) of paragraph 1.

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

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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

Or. en

Amendment 15

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

1. The venture capital fund 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.

Amendment

1. The venture capital fund 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. Holdings in cash and cash equivalents shall not be taken into account for calculating this limit.

Or. en

Amendment 16

Proposal for a regulation Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Paragraph 1 shall not apply to the investments made by executives of a venture capital fund manager when investing in the qualifying venture capital funds that they manage.

Or. en

Amendment 17

Proposal for a regulation Article 9 a (new)

Text proposed by the Commission

Amendment

***Article 9a
Safeguarding employees' rights***

Venture capital fund managers shall recognise the rights and duties of the employment contracts of the employees from their majority-owned undertakings, in accordance with the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses¹.

OJ L 82, 22.3.2001, p. 16.

Or. en

Justification

The proposed Regulation should ensure that the rights of the employees from undertakings directly controlled by European venture capital fund managers should be safeguarded, in accordance with the Council directive 2001/23/EC.

Amendment 18
Proposal for a regulation
Article 9 b (new)

Text proposed by the Commission

Amendment

Article 9b

Disclosure in case of acquisition of control

Article 28 of Directive 2011/61/EU shall apply to European venture capital funds managers.

Or. en

Amendment 19
Proposal for a regulation
Article 10 – paragraphs 1 a and 1 b (new)

Text proposed by the Commission

Amendment

The valuation procedures used shall ensure that the assets are valued, and the asset value is calculated, at least annually. Valuations shall be carried out any time when there is a significant increase or decrease of the capital by the qualifying venture capital fund.

The Commission shall be empowered to adopt delegated acts in accordance with Article 23 concerning the clarification of the valuation procedures that are to be used to ensure that the assets of the European venture capital funds are correctly valued.

Or. en

**Amendment 20
Proposal for a regulation
Article 10 a (new)**

Text proposed by the Commission

Amendment

Article 10a

Depositary

1. For each European venture capital fund it manages, the manager shall ensure that a single depositary is appointed in accordance with Article 21 of the Directive 2011/61/EU. The depositary shall be subject to the provisions of Article 21 of Directive 2011/61/EU.

2. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards to specify the function of the European venture capital fund depositary.

ESMA shall submit those draft regulatory technical standards to the Commission by

... *.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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

Or. en

Justification

The appointment of a depositary, which is responsible for ensuring the safe-keeping of assets, the monitoring of the cash flow and the oversight functions, is a core element of the investor protection scheme. The UCITS directive requires the appointment of a depositary for collective investment undertakings. This principle has also been integrated in the AIFM directive. In order to ensure the continuity of the Community framework, a depositary should also be appointed for the EVCFS.

Amendment 21
Proposal for a regulation
Article 12 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 22
Proposal for a regulation
Article 12 – paragraph 1 – point b

Text proposed by the Commission

(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;

Amendment

(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 ***non-qualifying investments*** which the qualifying venture capital fund may ***make***, the techniques it may employ, and any applicable investment restrictions;

Or. en

Amendment 23
Proposal for a regulation
Article 12 – paragraph 1 – point e

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 24
Proposal for a regulation
Article 12 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Point (b) shall apply mutatis mutandis to qualifying venture capital funds that invest in other qualifying venture capital funds.

Or. en

Amendment 25
Proposal for a regulation
Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Venture capital fund managers shall provide ESMA with the information referred to in paragraph 1 in accordance with a standardised format. ESMA shall develop draft implementing technical standards to specify that standardised format.

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

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

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

Or. en

Amendment 26
Proposal for a regulation
Article 15 – paragraph 4

Text proposed by the Commission

Amendment

4. ESMA shall submit those draft implementing technical standards to the Commission by *[insert date]*.

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

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

Or. en

Amendment 27
Proposal for a regulation
Article 16

Text proposed by the Commission

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.

Amendment

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. ***The central database shall contain all the information required under Article 12(1).***

Or. en

Amendment 28
Proposal for a regulation
Article 21 – paragraph 1

Text proposed by the Commission

1. Competent authorities ***and ESMA*** shall cooperate with ***each other whenever necessary*** for the ***purpose of carrying out their respective duties*** under this Regulation.

Amendment

1. ***The*** competent authorities shall cooperate with ***ESMA*** for the ***purposes*** of this Regulation ***in accordance with Regulation (EU) No 1095/2010.***

Or. en

Amendment 29
Proposal for a regulation
Article 21 – paragraph 2

Text proposed by the Commission

2. ***They*** shall exchange all information and documentation necessary to identify and remedy breaches ***to*** this Regulation.

Amendment

2. ***The competent authorities*** shall, ***without delay, provide ESMA with all the information necessary to carry out its duties in accordance with Regulation (EU) No 1095/2010. In particular, ESMA and the competent authorities shall*** exchange all information and documentation necessary to identify and

remedy breaches *of* this Regulation.

Or. en

Amendment 30
Proposal for a regulation
Article 23 – paragraph 5

Text proposed by the Commission

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.

Amendment

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 **three** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **three** months at the initiative of the European Parliament or the Council.

Or. en

Justification

ECON uses generally the 3 plus 3 months deadline for objections to delegated acts.

Amendment 31
Proposal for a regulation
Article 23 a (new)

Text proposed by the Commission

Amendment

Article 23a

Staff and resources of ESMA

By ...*, ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and

submit a report to the European Parliament, the Council and the Commission.

** OJ please insert date: 12 months after the entry into force of this Regulation.*

Or. en

Amendment 32
Proposal for a regulation
Article 24 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the impact of this Regulation on the venture capital market, and on the contribution to the Union industrial leadership and societal challenges set out in Annex I, Parts II and III respectively of the Regulation (EU) No .../... of the European Parliament and the Council of ... establishing Horizon 2020 - The Framework Programme for Research and innovation (2014-2020);

Or. en

Amendment 33
Proposal for a regulation
Article 24 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 34
Proposal for a regulation
Article 24 – paragraph 1 – point b c (new)

Text proposed by the Commission

Amendment

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

Or. en

EXPLANATORY STATEMENT

The current context

Business innovation not only creates value and jobs, but is also vital to ensure the social and ecological transformation of society. Yet, the EU endures a persistent deficit in this field. This mainly stems from the fact that the EU has currently too few innovative small and medium-sized enterprises (ISMEs).

It remains indeed difficult for European ISMEs to get the funding they need to start and grow their business. In particular, banks are often reluctant to finance innovative early stage SMEs that combine multiple disadvantages, such as high risk profile, small scale, untried business models, and low returns.

There is therefore a need to provide alternative sources of finance to ISMEs. In this respect, venture capital funds can play a critical role in closing the funding gap for investment innovation. They provide indeed equity or quasi equity funding to start-up firms and small businesses with perceived long-term growth potential, typically to finance their early market development. Contrary to private equity funds (which mainly focus on buyouts), venture capital funds invest in companies on a long-term basis, alongside entrepreneurs.

Empirical evidence highlights however that the EU venture capital market remains largely underdeveloped compared to the US. Continental European venture capital funds are indeed substantially smaller than US funds and make fewer investments in fewer firms with less money per firm. Furthermore, while their US counterparts are more willing to invest in seed stage investments, European venture capital's equity activity tends to focus on later stage, which - while a safer option - provides less scope for outperformance.

The fragmentation in the EU venture capital market is certainly one of the main causes of the poor venture performance in Europe. The industry has indeed not reached a critical mass because it is constrained to operate across a number of Member States countries with different legal and regulatory regimes, which makes cross-border investment more difficult. Your Rapporteur believes therefore that the establishment of an integrated and fluid venture capital market in Europe could resolutely improve the venture performance in Europe and, accordingly, foster the development of young highly innovative European companies.

The content of the proposal

Your Rapporteur welcomes the proposal for a Regulation on European venture capital funds, as it sets a uniform "single rule book" for the marketing of venture capital funds.

By doing so, the new framework will allow European venture capital funds to raise capital and invest freely within the EU, through the establishment of a trusted, safe and legally stable marketing environment.

More precisely, the proposal:

- Introduces a clear definition of a "European Venture Capital Fund", which includes

the following essential requirements: (i) it dedicates at least 70 percent of its aggregate capital contributions in SMEs; (ii) it has assets under management in total that do not exceed a threshold of EUR 500 million; (iii) it provides equity or quasi-equity finance to these SMEs (i.e. 'fresh capital'); and (iv) it does not use leverage (i.e. the fund does not invest more capital than that committed by investors so is not indebted). Short-term borrowing should only be allowed to permit the fund to cover extraordinary liquidity needs;

- Establishes uniform rules on the categories of investors that are considered as eligible to invest in "European Venture Capital Funds. The qualifying funds may only be marketed to investors recognised as professional investors in Directive 2004/39/EC and certain other traditional venture capital investors (such as high net-worth individuals or business angels);
- Provides all managers of qualifying venture capital funds with uniform requirements for registration as well as a EU-wide marketing passport, which will allow access to eligible investors across the EU and help create a level playing field for all participants in the venture capital market;
- Introduces minimum transparency, organisational and conduct of business requirements that must be complied by the manager;

The Rapporteur's position

While supporting the key elements of the proposal on venture capital, your Rapporteur introduces several amendments to the proposed Regulation.

A first set of amendments concern the definition of a 'qualifying venture capital fund' (Article 3, point (a)). Your Rapporteur considers indeed that VC funds should be closed-ended in order to ensure that their shares are not redeemable for cash or securities until they liquidate. Such provision would indeed ensure that European venture capital funds are protected against sudden rash of redemptions by fund holders. Furthermore, your Rapporteur believes that EVCFs should be located in the Union, as a means to effectively prevent the establishment of funds managed by an EU manager in tax havens for tax-avoidance or regulatory arbitrage purposes.

Your Rapporteur intends to strengthen the EVCFs fund-raising environment, by including in 'qualifying investments' not only equity and quasi equity instruments, but also shares or units in other EVCFs (Article 3, point (b)). By doing so, your Rapporteur also intends to acknowledge the growing importance of corporate venture investments in other EVCFs.

Your Rapporteur also introduces several amendments to the definition of a 'qualifying portfolio undertaking' under the EVCFs Regulation (Article 3, point (d)). A first amending proposal consist in excluding from a 'qualifying portfolio undertaking' any financial product or service providers, with the exception of European venture capital funds and financial technology providers. Your Rapporteur also proposes to prohibit the localisation of a 'qualifying portfolio undertaking' in a tax havens or any secrecy jurisdictions, in order to reduce tax evasion opportunities. A third amending proposal aims at ensuring that qualifying portfolio undertakings are below five years of age, in order to reduce the risk of any

misappropriation of the venture capital passport, such as the financing of more mature and high-growth businesses.

In accordance with the Council directive 2001/23/EC, your Rapporteur recalls that the proposed Regulation should also ensure that the rights of the employees from undertakings directly controlled by European venture capital fund managers should be safeguarded.

Finally, your Rapporteur also believes that, for each EVCF it manages, the manager shall ensure that a single depositary - responsible for the safe-keeping of assets and the oversight functions - is appointed. Such a provision would ensure the continuity of the existing Community framework, given that both the UCITS and AIFM directives require the mandatory appointment of a depositary for collective investment undertakings and alternative investment funds.