

EUROPEAN COMMISSION  
Internal Market and Services DG

FINANCIAL SERVICES POLICY AND FINANCIAL MARKETS  
**Asset Management**

**- FEEDBACK STATEMENT –**

**SUMMARY OF RESPONSES TO PUBLIC  
CONSULTATION ON THE NEW EUROPEAN  
REGIME FOR VENTURE CAPITAL**

## GENERAL REMARKS ON CONSULTATION PROCEDURE AND FEEDBACK:

The issues on which the Commission invited views and evidence included:

- **Venture capital investment strategy:** The forthcoming proposal on venture capital funds will aim to cover venture capital and no other strategies of private equity. In light of this, the consultation invited views on how best to capture venture capital strategies. The proposal would in addition focus on funds that invest the majority of their assets in SMEs. The consultation therefore also sought views on the definition of eligible portfolio composition, in terms of types of financing and eligible target companies. It also asked whether the proposed measure should specify the legal forms that the venture capital funds might adopt.
- **European legislative framework:** The consultation invited views on whether the new regime for venture capital should be based on voluntary registration. It also invited views on the notification procedures and it asked whether the introduction of a third country regime would be beneficial.
- **Operating conditions:** The consultation invited views on the introduction of rules on organisation and conflicts of interest, based on existing EU rules.
- **Impact on Alternative Investment Fund Managers Directive 2011/61/EU (AIFMD)<sup>1</sup>:** The consultation invited views on the interaction between the new regime for venture capital and AIFMD. It also asked whether a stand-alone initiative for all venture capital funds would be a suitable approach.
- **Eligible investors:** The consultation invited views on whether the new regime on venture capital should be restricted to professional investors (as defined in Directive 2004/39/EU on Markets in Financial Instruments<sup>2</sup> (MiFID) or whether it should include other categories of sophisticated investors.

The deadline for responses to this consultation paper was 10 August 2011. Forty eight answers have been received: 38 from organisations, including representative bodies from across the banking and securities sectors, asset managers and investors' representatives, 2 from citizens and 8 from public authorities.

Responses to the consultation highlighted the following messages:

- A new European regime for venture capital would facilitate the cross border activities of these funds. However, it should be flexible to avoid creating unnecessary new burdens to the industry.
- Venture capital funds need flexibility regarding the forms of financing that venture capital managers may be willing to use. However, in order to fully meet the EU

---

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

<sup>2</sup>OJ L 145, 30.4.2004, p. 61

policy goals, a significant proportion of respondents support a view that a venture capital fund should invest as a minimum 50% of its assets in SMEs .

- The majority of venture capital funds are small funds with limited human and infrastructure resources. The rules on organisation and conflicts of interest should therefore be principle based and proportionate.
- Many categories of venture capital funds' investors (e.g. business angels, family offices, and wealthy individuals) fall outside of the MIFID definition of professional investors. The new regime should include these categories in the scope of eligible investors.

## I. OVERVIEW OF RESPONSES TO THE CONSULTATION

The consultation was launched on 15<sup>th</sup> June 2011 and closed on 10 August 2011. Responses were invited from all interested parties including representatives from venture capital fund industry, asset management organisations, European public authorities and citizens.

Forty eight answers to the consultation were received from a wide range of organisations and professional representatives, citizens and national and European public authorities.

Figure 1 provides a general presentation of the spread of the responses received, from organisations, public authorities and citizens.

<b>PUBLIC AUTHORITY</b>	8
<b>CITIZEN</b>	2
<b>ORGANIZATION</b>	38
<b>Total</b>	48

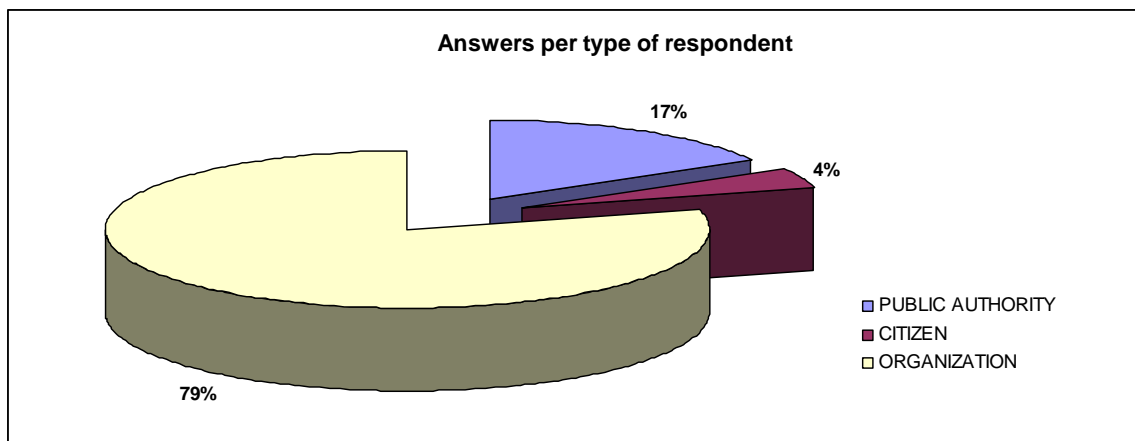


Figure 2 provides a more detailed presentation of the status of organisational respondents, broken down into six categories: asset management (i.e. asset managers and asset management association), banking and securities industries, insurance association, lawyers, investor associations and other professional associations.

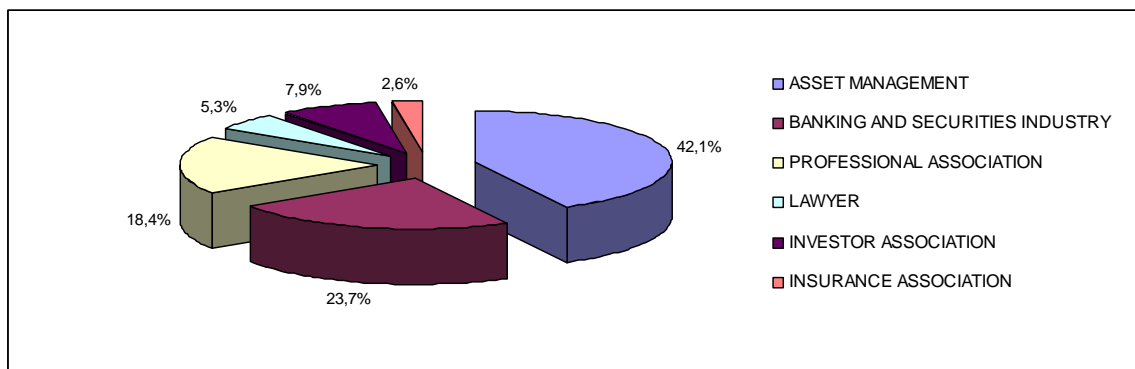
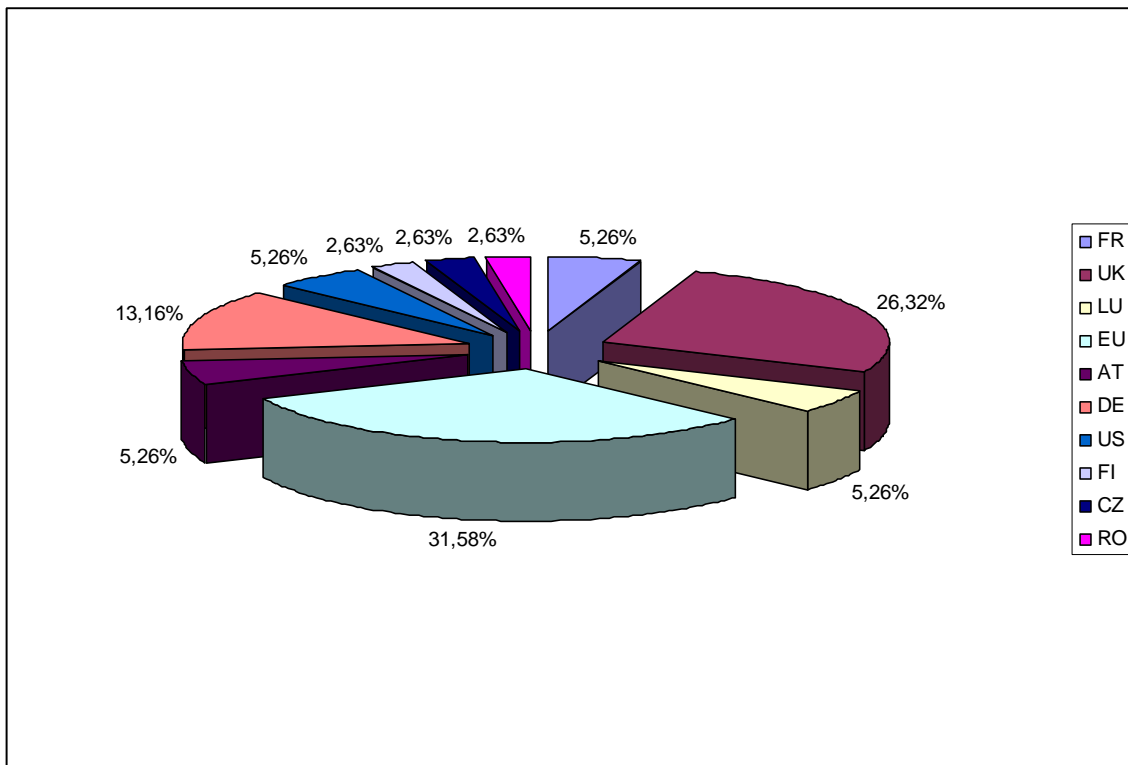


Figure 3 lists the thirty eight answers received from organisations according to their nationality:



## **2. DETAILED ANALYSIS OF RESPONSES:**

The feedback statement presents a summary of responses to each of the eighteen questions raised in the consultation paper. The tables provide a quick overview of the respondents' opinions. These opinions have been categorized into 'yes/no' categories of answers whenever possible. Some respondents have also provided qualitative commentary to supplement or nuance their 'yes /no' answers.

## QUESTION 1

*Do you think that encouraging Member States to a process of mutual recognition of venture capital funds could facilitate the cross-border activity of Venture Capital Funds (VCF)?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
Yes	21	44%	2	1	9	9	18
No	3	6%	1	0	0	2	2

Most respondents expressed that mutual recognition could be a possible solution to remove obstacles to cross border activity of venture capital funds:

- (a) In terms of fundraising: the current fragmented framework has a negative impact on fundraising and leads to substantive additional cost. A mutual recognition of venture capital funds could help to facilitate the registration process.
- (b) In terms of investing: it could reduce administrative constraints for the fund manager and may help to remove the double taxation issue.

However, many respondents, including European Private Equity and Venture Capital Association (EVVCA), highlight that the main hurdle preventing venture capital manager from carrying on cross-border activities relates to fundraising and not to investing. Venture capital fund managers are facing several difficulties to attract international investors. Indeed, in order to operate across borders, they need to go through a cumbersome and costly process (identification of the suitable regime for potential investors, creation of complex parallel structures, registration and regulation processes...).

## QUESTION 2

*Do you believe that the main impediment preventing cross-border venture capital fundraising and investments is the absence of a passport for activities under the AIFMD thresholds or the fact that the AIFMD is not tailored to venture capital in general?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
The absence of a passport for activities under the AIFMD thresholds	12	25%	2	0	5	5	10
The fact that the AIFMD is not tailored to venture capital in general	9	19%	0	0	5	4	9
Regulatory barriers (including double taxation issues and understanding and complying with local regulations)	23	47%	4	1	9	9	18

As mentioned above, many respondents, including industry organizations and public authorities acknowledge that raising funds across borders is more challenging than investing across border. There is a logistical and cost issue of having to raise funds country by country, without a passport. The main issues for VCF operating cross-border are related to the cost of structuring funds as well as the requirement to receive authorization in multiple jurisdictions, thereby increasing operating costs.

Seeking for international investors usually induces excessive costs, such as legal advice in order to comply with different private placement regimes in Member states.

The majority of respondents agree that AIFMD does not provide any passport regime suitable for small VCFs. And, the “opt-in” approach contained in the AIFMD would impose an excessive cost burden to VCFs and their managers. The adherence to the full set of provisions under the Directive would be unduly cumbersome and too expensive with regards to the operating costs of small funds.

On the other hand, if no such passport is available for smaller VCFs, there is a risk of discrimination between larger funds that benefit from the passport and are able to reach a broad investor base and the non-benefiting smaller funds. Moreover, many institutional investors may exclude non-AIFMD compliant funds from their investment scope, and this could significantly impair such funds fundraising ability.

However many respondents mention that it is quite difficult to currently have a clear assessment on the impact of the lack of a passport for activities under the AIFMD ( AIFMD passport will only become available to EU managers in mid-2013, the final date of the transposition period of the Level 1) .

**QUESTION 3:**

*Do you believe that an initiative on cross-border operations of venture capital could contribute to eliminating the cross-border tax problems encountered or could facilitate tax incentives?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
NO	14	29%	3	0	4	7	11
YES. It could contribute to eliminating the cross border tax problems.	10	21%	0	1	5	4	9
YES. It could facilitate tax initiatives.	2	4%	0	0	0	2	2

Many respondents don't believe that an initiative on cross border operations of venture capital will contribute to eliminating cross border tax problems. They argue that cross-border operations of other investment products have failed to eliminate or even reduce the double taxation of investment income inside the EU and the tax discrimination of EU investors based on their country of residence. Furthermore, national tax systems vary greatly and are of an extremely complex nature.



One respondent stated that the diversity of fiscal regimes of Member States is strictly related to persisting differences in financial instruments across Member States. For this reason, a harmonized fiscal regime cannot be easily achieved as long as substantial differences in the financial instruments exist across Member States. In addition, they don't believe that a passport for venture capital operators should be linked to targeted tax incentives. This should remain a matter for national governments.

Against this, 10 respondents supported that this initiative would help to tackle tax hurdles. Incorporating a definition of a venture capital fund and manager in an EU directive may help in making progress on getting Member States to cooperate in relation to the taxation problems, and would lead to a common classification of venture capital funds for tax purposes across the EU.

#### QUESTION 4

*Do you agree with a regime based on voluntary registration & simple notification procedure? Do you consider such a voluntary regime to have any major cost implications for the key stake?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
YES	23	47%	3	1	9	10	19
YES. However AM companies should be authorised and not simply registered in order to benefit from the passport.	3	6%	2	0	1	0	1
Costs depend on requirements	20	41%	2	1	6	11	17
Registration should be made with national Authority	20	41%	5	0	9	6	15
Registration should be made with ESMA	3	6%	1	1	0	1	1

The majority of the respondents believe that the new European regime for VCFs should be flexible to avoid any additional burden to the industry. Most respondents, including public authorities and industry organisations, agree to have a regime based on voluntary registration. It gives venture capital fund managers the freedom to decide, depending on their fundraising strategy, whether they want to use an EU-wide marketing passport or to comply with their national private placement regimes.

According to EVCA, while many small VCFs managers want to broaden their investor base and pursue an international fundraising strategy, many others are domestic and rely on national markets. Nearly 45% of all small funds raised by small funds' managers in the period 2007-2010 received capital commitments from domestic investors only. This can be explained by their limited technical and human resources, or by the fact that they choose to be dedicated to their regional communities both for fund raising and for investing.

Many respondents agree that the cost savings on a European passport depend on the new regime requirements. To make the EU passport attractive for fund managers, the

key here is to keeping the information requirements to “register” simple, relevant and not cost-bearing. Generally speaking, since the European passport would allow the venture capital fund manager to act across the EU without being required to be locally authorized, it would reduce in particular:

- (1) Set-up and management costs of parallel investment structures.
- (2) Legal work and legal advisory costs.
- (3) Additional advisory fees on capital raising in different markets.

It is difficult to quantify the potential cost savings as it will depend on several factors including the number of countries a small funds' manager would look to market into and their private placement regimes.

However, some respondents noted that the costs related to a legal advisory on different national private placement regimes may amount to EUR 500 to EUR 1,000 per jurisdiction (i.e. EUR 13,500 to EUR 27,000 for the European Union) , if it is only an update of a pre-existing documentation (i.e. where no in-depth advice is required) These costs will be significantly higher in particular (i) if first time advice is sought from a local law firm with only limited experience in the field or (ii) if specific advice, e.g. a legal opinion, on the specific fund structure is sought or (iii) where domestic legislation has substantially changed compared to previous fund raisings.

A large majority of respondents favour a registration with the authority of the home member state of the manager. They argued that this option is much simpler as the relationship between the competent authority and these venture capital firms already exist. ESMA could consolidate a list of Managers duly approved by national authorities of the Member States.

## QUESTION 5

*Do you believe that the new regime on venture capital funds should be restricted to professional investors?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
NO	27	56%	6	0	11	10	21
YES	4	8%	1	1	2	0	2

Most respondents agree on that the new regime shouldn't be restricted to professional investors. The MIFID definition of professional investors would exclude many categories of institutional and individual investors who are currently part of venture capital investor base.

Investors in venture capital funds are typically institutional investors as well as family offices and certain types of individuals. Individual investors may include:

- (1) Entrepreneurs, family offices and other so called "angel investors" (many of which are entrepreneurs themselves), who have traditionally constituted an important source of "intelligent capital" to the small fund sector;
- (2) Members of management teams running companies in which the fund invests;
- (3) Industry sector experts (where the fund has a sector focus);
- (4) Venture and enterprise capital experts which would include both venture and enterprise capital executives and other professionals connected with the industry;
- (5) Finance sector experts; and
- (6) Wealthy individuals.

The majority of these categories would fall outside of the definition of professional investor. Indeed, Professional client as currently defined under MiFID is designed to identify individuals who regularly trade in listed securities or are experts in the trading of listed securities (and derivatives based on these securities). This definition is not coherent with venture capital investment which is a long term investment and can not be characterized by short-term, high-volume transactions. Any proposed restrictions would have a negative impact on the amounts invested in venture capital funds or would dissuade small and mid sized venture capital funds from opting into the new regime.

However, those respondents in favour of access to these categories of institutional or individual investors (described above) are aware that the investment in venture capital funds implies a high level of risk and recognise any such access should be accompanied by strong regulatory safeguards. They provide the following suggestions:

- (1) Individual investors that require protection when investing may be defined both by minimum thresholds and by an assessment of their ability to appraise risks involved in the investment.
- (2) The New regime should adopt the same approach as AIFMD

## QUESTION 6

---

*Do you agree with the need to require an annual report for each fund?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
Yes. Annual report should include the annual financial accounts. Financial information should be audited.	16	33%	3	1	6	6	12
Yes. However, the audit of financial information should be a matter to be agreed between the investor and the fund manager.	8	17%	1	0	4	3	7
Yes. However, Any blanket requirements on the reporting of such funds would add to the burdens of an SME investment regime.	5	10%	0	0	2	3	5

Most respondents agree that the regime should require fund managers to provide at least an annual report. However, the contents of such reports may vary according to investor requirements and domestic law. The future EU regime shouldn't be prescriptive about their contents or their form and shouldn't prohibit fund managers from preparing reports on a more frequent basis.

Many respondents favour that the financial information should be audited and consider it as a minimum requirement in terms of transparency to investors. They argue that it is already a standard practice in venture capital market and institutional investors generally demand an external audit to be made.

8 respondents were of the view that the obligation to audit financial information would pose an additional financial burden to venture capital funds without any justified transparency benefit. Therefore, it should consequently be left to the fund managers and their investors' discretion.

## QUESTION 7

---

*Do you think there is a need to specify any operating condition for venture capital entities?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
NO	8	17%	1	0	2	5	7
YES. Venture capital entities should comply with rules of conduct. Rules of conducts should be partly aligned with those applicable to AIFMs under the AIFM Directive.	15	31%	5	0	7	3	10
YES. However, organizational requirements should take into account that VC funds are small with little human and infrastructure resources.	10	21%	4	0	4	2	6

8 respondents believe that the new regime shouldn't specify any operating rules to venture capital fund managers. The new regime should impose as few burdens as possible on them. In support of this, it is argued that venture capital investment aims exclusively at sophisticated and professional investors. Hence, there is no need for a legislative code of conduct (these rules should be negotiated between the managers and their investors). Moreover, imposing specific organisational requirements would stifle the activity and increase costs.

However, the majority of respondents are convinced that there is a need to specify the operating conditions for venture capital entities in the legislative proposal. They agree that these requirements should be principles-based and depend on whether venture capital funds are marketed to retail investors.

15 respondents agree that venture capital entities should comply with rules of conduct when dealing with their investors. These rules could be aligned with those applicable under the AIFM Directive. Many respondents believe that rules set out under article 12 of the AIFM Directive enable a high-level of investor's protection without binding venture capital managers in a way that would be detrimental to the effectiveness of decisions-making.

Many respondents underline that most venture capital fund managers are small with little human and infrastructure resources. They should be subject to organizational requirements that are proportionate to their size.

## QUESTION 8

*Do you believe that VC funds should be allowed to adopt any of the legal forms traditionally used in Member States?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
YES	24	50%	6	0	11	7	18
NO. The legislative proposal should specify the legal forms VC funds might adopt	3	6%	0	1	0	2	2

Most respondents underline that there are a broad variety of legal forms within the EU member states that any harmonization seems almost impossible. Venture capital fund managers should be able to choose the most appropriate legal form available. This choice depends on investors' preferences, local regulatory regime and tax treatments (i.e. transparent or non-transparent). Fund managers need the freedom of choice with regard to the form of the vehicle in order to identify to the most suitable structure.

## QUESTION 9

*Do you think it is worth specifying any investment rules for venture capital funds?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
NO	13	27%	0	0	5	8	13
YES. Venture capital funds should invest more than 50% in SMEs.	16	33%	6	0	8	2	10

In order to fully meet the EU policy goals, the European passport would benefit funds investing in SMEs. A significant proportion of respondents support the definition of a compulsory investment percentage of assets that the venture capital fund should invest in SMEs. A threshold of 50% (calculated at the time of initial investment) ensures that the majority of VC funds' total assets is going to companies that are SMEs and enables venture capital managers to diversify their portfolios by investing in larger businesses.

Against this, few respondents argue that investment criteria are defined by close negotiation with the funds' investors and are based on a number of different factors (e.g. VC manager experience in different sectors and stages, return target...). Setting additional investment rules by law or regulation would artificially restrict a fund manager's ability to maximise returns. Furthermore, adding a new eligibility rule would lead to a situation where many funds of strategic importance would choose not to opt in to the new framework and consequently reduced impact of the new legislation.

## QUESTION 10

*Should the temporary nature of the venture capital investment activity in SMEs constitute a criterion that should be reflected?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
YES	4	8%	2	0	0	2	2
NO	19	40%	4	1	8	6	14

The majority doesn't consider the temporary nature of the venture capital investment activity in SMEs as a relevant criterion for the design of the future EU venture capital regime. The timing of both entry and exit from the capital of the SME should be a venture capital manager's decision and it usually depends on different factors, including market opportunities and local tax regimes. However, they agree on that the investment in a typical venture capital fund is generally done on a long-term basis and some respondents suggested excluding trading-related activities, as well as any type of investment whose return result from successive short-term profits, from the scope of the new regime.

## QUESTION 11

*Are there any other means of finance that venture capital funds provide to SMEs that should be reflected (e.g. loans)?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
YES	18	37%	4	1	8	5	13
NO	1	2%	0	0	1	0	1

Almost all respondents consider that VCFs need flexibility regarding the forms of financing that venture capital managers may be willing to use. To date, investment in SMEs is made through various types of instruments. The investment will often take the form of an equity portion, together with quasi-equity contributions, loans, and even options. Defining the relevant type of financing depends on the need of SMEs and the taxation regime. Venture capital fund manager will choose the appropriate instrument with a view to ensuring that returns will not be adversely impacted by taxation at the level of the investment vehicles.

There are many occasions in the life of SMEs when alternative funding to equity is used:

- (1) At the start or formation of SMEs, typically venture capitalists will employ convertible debt instruments.
- (2) Between financings, inside investors typically would bridge a company via loans until investment from a new investor can be secured.
- (3) Some VCFs provide finance for portfolio companies by means of a combination of equity and high-yield debt. A VCF may provide a portfolio company with a contingent loan which might be repayable at a premium if the portfolio company were 'successful' but might not be repayable if the company failed to reach

certain targets. Further, some VCFs provide bridging finance in the form of a simple loan or a convertible security to portfolio companies.

## QUESTION 12

*Do you think that there is a need to specify that the manager should be actively involved in the development, growth and success of the SME?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
YES	5	10%	1	0	4	0	4
<i>NO. the passive investment in an SME should also be considered by the proposal as venture capital investment</i>	14	29%	3	1	4	6	10

All respondents believe that venture capital funding is not a passive funding and it requires some form of further involvement by the venture capital fund in the target business. Venture capital fund managers do not just invest capital; they also provide valuable know-how to help the SME develop. In particular, they bring strategic and operative advice and specialist sector knowledge.

Whereas such involvement does not mean that the VCF will run the business of the underlying target, the venture capital fund may play an important and active advisory, mentoring or consulting role.

Nonetheless, the degree of involvement depends on the type of investment and on the targeted SME. Most respondents feel that it would be challenging to have a rationale definition of “active involvement” which takes into account all the various situations what the investees are facing during their life-cycle.

## QUESTION 13

*Do you agree that the special rules on venture capital should only apply when funds invest in the seed, start-up and expansion stages of SMEs?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
YES	12	25%	4	1	3	4	7
NO	10	21%	1	0	5	4	9

Many respondents (including EVCA) recommend that there are no limits in terms of which stages of investment can be made by venture capital funds. They believe that these restrictions may result in funds having to avoid some investments that could be valuable to SMEs because they do not clearly fall within the reach of the definition of seed, start-up, and expansion stage. For example,



- (1) Excluding replacement capital may have an adverse effect since venture capital funds often provide replacement capital and expansion capital at the same time.
- (2) Venture capital can be ideal for a number of SMEs that are in a restructuring phase. This is particularly true in the life science sector where if a product fails in late stage development, a significant restructuring is required. Venture capital firms need the flexibility to be able to consider investment in all of these types of situations associated with SMEs.

On the other hand, 12 respondents (including 4 public authorities) expressed that limiting the investments to the seed, star-up and expansion stages of SMEs is essential to prevent abuse of the passport scheme.

#### QUESTION 14

---

*Do you agree that venture capital funds do not/should not use leverage?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
YES	7	15%	3	0	2	2	4
NO	11	23%	1	1	4	5	9

Most respondents agree on the fact that it is not a standard to use leverage in venture capital transactions. However, they specify that leverage may be used in fundraising and also if debt instruments are used.

As an example, if a lending institution is willing to participate in particular transaction as a debt provider a venture capital fund should not be prohibited to use leverage in such transaction.

#### QUESTION 15

---

*Do you agree with the list of entities described below as not being proper investment targets for venture capital funds?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions received	Public authorities	Citizens	Organisations		
					Total	Industry organisations	Other organisations
YES	7	15%	1	1	5	3	2
NO. It's too restrictive.	15	31%	2	0	13	7	6

In the context of the implementing provisions of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the SEC proposed a definition of a “qualifying portfolio companies” (SMEs financed by venture capital funds).

The SEC excluded from the scope of the “qualifying portfolio companies”, the entities that meet one of the following criteria:

- (1) It is publicly traded (or controlled by a publicly traded company).
- (2) It borrows or issues debt obligations, directly or indirectly, in connection with the private fund’s investment in the portfolio company.

- (3) It redeems, exchanges or repurchases the securities of the company, or distributes to pre-existing security holders cash or other company assets, directly or indirectly, in connection with the private fund's investment in such company.
- (4) It is itself a fund.

Many respondents disagree with the list of entities described as not being proper investments targets for venture capital funds. They believe that investment activity indirectly targeted at SMEs (i.e. through a fund of fund) should be included in the scope of the new regime.

Other respondents argue that it would not serve the aim of facilitating financing to SMEs to prohibit the funds regulated under the regime to invest in companies listed on a regulated market. If such company qualifies as an SME and is having difficulty raising funds in the capital markets, the legislative proposal should not deter investment in such a company through an overly restrictive definition.

Further, listing portfolio companies on a stock exchange via an IPO provides an important route to exit for small funds; in such case the fund will retain certain amount of shares in the listed company that may only be sold after a certain lock-up period.

Listing new shares in a portfolio company at a stock exchange can also be an instrument to secure further development and growth without constituting an exit of the fund from the relevant portfolio company.

#### QUESTION 16

*Do you think that the EU should draw inspiration from the criteria set by the SEC to define the target companies of the venture capital funds?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
YES	4	8%	2	0	1	1	2
NO	13	27%	2	1	6	4	10

The majority of respondents believe that the criteria set by the SEC can be used for orientation but have to be adapted to the European needs. It should be taken into account that venture capital market is much more developed in the US than in Europe. Therefore, European regime needs to offer more flexibility and the scope of permitted investments should be much broader.

#### QUESTION 17

*Would a third country regime be beneficial?*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
NO	5	10%	3	0	2	0	2
YES	15	31%	2	1	7	5	12

Many respondents agree that third country regime would be beneficial. European commission can draw inspiration from AIFMD to design an appropriate regime for third country venture capital funds.

However, some respondents, including 3 public authorities, agree that funds from non-member countries should not be given an EU-passport.

## QUESTION 18

*Which option do you support?*

- (1) *Exemption from the AIFMD only those managers that are below the threshold of the AIFMD.*
- (2) *Exemption from the scope of the AIFMD the managers that fall under the new venture capital regime even if they trespass the thresholds of AIFMD.*
- (3) *Creation a lighter regime for venture capital fund managers within the AIFMD itself.*

Opinions expressed:	Number of opinions expressed	% over the total number of contributions	Public authorities	Citizens	Organisations		
					Industry	Other	Total
(1) Exemption for entities below the AIFMD threshold	10	21%	3	0	4	3	7
(2) Exemption independently from the AIFMD threshold	13	27%	1	1	4	7	11
(3) Creation a lighter regime for venture capital fund managers within the AIFM Directive itself.	6	13%	2	0	3	1	4

The majority of respondents believe that a new European regime for venture capital should be introduced as a standalone initiative. The AIFMD was designed for a rather different market segment. Simply modifying the Directive would lead to a situation where many of the original (non-fitting) concepts would be maintained. Respondents feel that such approach would be incomplete and wouldn't properly address the issue. The specific needs of the venture capital industry can be more efficiently dealt with under a standalone initiative. This approach would, in addition, give time to appropriately consult with various stakeholders without being caught by the AIFMD own deadlines

Many respondents, including 3 public authorities and EVCA, believe that the right approach is to exempt from the AIFMD those fund managers below the AIFMD threshold.

- (1) This approach would encompass the majority of the venture capital business in Europe, and, the existing threshold could make it easier to draw a line between venture capital and other private equity funds.
- (2) Moreover, including managers that exceed the threshold would require a more extensive modification of the AIFMD, as it would certainly re-open the discussion with respect to the scope of the AIFMD in general. This would necessarily imply an extension of its transposition period. As a consequence, uncertainty for market participants would most likely increase.

Furthermore, 7 respondents expressed that the arguments raised for the exclusion of VCFs from the scope of AIFMD would be also valid for other strategies.

The European Commission stated in the consultation paper that VCFs do not pose systemic risk or create investor protection concerns because they are focused solely on professional markets. Therefore, it would seem to be disproportionate to require venture capital fund managers to fully comply with AIFMD requirements in exchange for the passport. However, some respondents argue that the same findings are also true for other types of funds (e.g. open-ended real estate funds).

\* \* \*