European Commission
Enterprise and Industry

Summary report

Cross-border venture capital in the European Union

European Commission work on removing obstacles

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European Commission
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Cross-border venture capital in the European Union

Summary report of the European Commission work on removing obstacles

The purpose of this report is to provide a summary of the ***policy work*** *in the period from 2005 to 2009 on removing obstacles to cross-border venture capital.*

In pursuing this work to facilitate cross-border venture capital operations in the EU, the Commission consulted national and industry experts, exchanged views with researchers and economists, reviewed industry reports and research papers, and invited national experts to provide input.

The main policy document produced was the Commission Communication "Removing obstacles to cross-border investments by venture capital funds" of December 2007. Based on this Communication, the Competitiveness Council, the European Parliament and the Economic and Social Committee issued conclusions agreeing with the goal and inviting a political commitment towards a more integrated venture capital market in Europe. The Communication was based on the outcome of the various consultations and identified mutual recognition of venture capital funds as the way forward in the short term. However, this process has not yet contributed to a reduction of the fragmentation of venture capital markets in the EU and has not brought the expected short term results.

The work on removing obstacles to cross-border venture capital is ***an ongoing process****. In summarising the Commission policy work and measures taken by some Member States by mid 2009, this report also refers to the* ***ongoing legislative process*** *on the Commission proposal for a Directive on alternative investment fund managers as well as reviews the conclusions of a recent expert group on overcoming the identified* ***direct tax obstacles*** *when investing across borders.*

Given the effects of the financial crisis and the associated economic uncertainty, a well-functioning venture capital market can help to mitigate the effects of the crisis and tackle the barriers to innovation. Venture capital funds are a valuable source of finance for innovative firms with a high growth potential. Please note that the full picture of the Commission's policy on innovation, analysis of progress achieved and remaining gaps is outlined in the recent Communication on Reviewing Community innovation policy in a changing world, which is to be followed in spring 2010 by a European Innovation Plan.

More information:

For further information please contact:

Ulla Hudina-Kmetic
Financing innovation and SMEs
Directorate General for Enterprise and Industry
European Commission
Email: entr-finance-sme@ec.europa.eu
http://ec.europa.eu/enterprise/policies/finance/risk-capital/venture-capital/index_en.htm

1. Introduction – importance of venture capital for financing of innovative SMEs

Innovative small and medium-sized enterprises (SMEs) can only grow if they have proper access to funds, particularly venture capital (VC) financing. This is not always the case in the EU, where entrepreneurs and small firms often find it difficult to get the funding they need to start and grow their business. Financing innovative early stage SMEs is namely considered by many finance providers as a risky activity due to uncertain market demands, high transaction costs and low returns. The current financial crisis, a more difficult access to bank finance and rapidly deteriorating European economy have further highlighted the need of an adequate equity source in SMEs.

In short, while finding finance is one of the greatest challenges facing SMEs, venture capital market in Europe still has a long way to go to exploit the opportunities it could offer to innovative SMEs in search for external sources of finance. Although venture capital is suitable only for a small fraction of businesses, mostly for innovative and growth-oriented businesses, more underfunded firms could find investors if the European venture capital markets were developed, more active and also better performing compared to the US.

2. The issue - fragmentation of the European venture capital market

The fragmentation of the European Union's venture capital markets along national lines seriously limits the overall supply of early-stage capital for innovative SMEs. There are currently 27 different operating environments, the stage of development and maturity of VC markets varies and there are different conditions along with divergent national approaches, which adversely affect both cross-border fundraising and investing in innovative SMEs.

While operating across multiple borders is possible, it has become increasingly complex, costly and smaller VC funds thus tend to avoid operating outside their home jurisdictions. In smaller Member States and in jurisdictions where the VC market is new, funds face problems reaching the critical mass to spread their portfolio risk and cover their costs. Facilitating cross-border operations could help VC funds to overcome these hurdles, specialise, diversify their portfolio, increase the overall supply of early-stage capital and deploy their investments towards high-growth companies all over Europe.

Some Member States have more developed venture capital markets with functioning fund structures, while some other Member States still need to enable framework conditions. A single venture capital fund structure based on harmonisation could be the optimal solution, though having consulted industry and national experts this solution seemed not to be possible in the short-term.

There are naturally arguments against cross-border investments. Some established and functioning VC markets and some VC funds might have no need to consider cross-border deals, as they have sufficient deal flow locally and perform well. Such funds provide local solutions for firms seeking equity and if there are no bottlenecks in the investment cycle that would limit later investments and exits, these funds might not need to entertain any thoughts to make investments outside their jurisdictions.

Given the complexity of issues at stake, involving legal and taxation regulation, the Commission has joined forces with the Member States to help create cross-border venture capital funds, stimulate cross-border operations and to work together towards a more integrated European venture capital market. While no significant results have been achieved yet, **there is a need to continue with this work in a partnership approach with and between Member States and relevant stakeholders** – *as explained in this summary report*.

3. Commission has been promoting private equity and venture capital markets

In recognising the strong entrepreneurial and innovation impetus provided by equity funding and at the same time extending the benefits of the single European market, the Commission has consistently built a legislative framework and taken supportive actions to further develop and deepen the European venture capital market:

- The Risk Capital Action Plan (RCAP) provided for building the legal framework in 1998-2003; it was a driver towards completing the single market in risk capital, and looked at policies focusing on early-stage financing. As part of the final report in 2003, the Commission indicated the need to review the merits and possibilities of a single fund structure and to ensure that the potential of the single financial market would be efficiently used, including further progress in functioning of venture capital markets.

- The Commission has addressed the equity gap directly through the financial instruments: from 2001-2006 with the Multiannual Programme for Enterprises and Entrepreneurship, and from 2007-2013 with the Competitiveness and Innovation Framework Programme (CIP)[1], which provides €1.1bn for SMEs, both for equity investments and for guaranteed loans for innovation and growth. The programme is implemented by the European Investment Fund (EIF) on behalf of the Commission. The EIF typically provides 15-20% of the funds raised by the VC funds in which it invests, often acting as a cornerstone investor. As at 23.11.2009, the EIF has invested in 16 VC funds under the CIP mandate but in total (all EIF VC mandates taken together) it had investments in about 300 VC funds (with an estimated leverage effect of €23bn supporting over 3000 high growth and innovative SMEs) and thus plays an important role in developing the EU venture capital market.

- Directorate General for Enterprise and Industry organised in June 2005 a workshop on the merits and possibilities of a European fund structure[2] that gathered together a wide range of stakeholders and industry practitioners. The workshop participants argued for simplifying the regulatory requirements for fund structures so that investors would not have to spend excessive time on analysing various requirements for establishing a fund in non-home jurisdictions. The experts concluded that a pan-European fund structure might be a solution in a long-term perspective, whereas in the short term, there was an urgent need for a mutual recognition at various levels.

- In the Communication of June 2006 on "*Financing SME growth – Adding European Value*"[3], the Commission outlined a set of measures to help innovative SMEs by improving access to finance, in particular at the early stages. Making cross-border investments in venture capital easier was one of the key goals and the Commission called for concrete and pragmatic steps to overcome the existing legal, regulatory and tax barriers and the Member States were asked to engage with the issue.

- To explore problems identified by stakeholders and ways to enhance the European framework for investment funds, Directorate General for Internal Market organised in July 2006 an Expert group on private equity funds[4]. This group concluded that

[1] For more information on CIP, 2007-2013: http://ec.europa.eu/cip/index_en.htm
[2] Workshop Report, June 2005: http://ec.europa.eu/enterprise/entrepreneurship/financing/docs/efs_report.pdf
[3] Commission Communication of 29 June 2006 is available in all Union languages at: http://ec.europa.eu/enterprise/entrepreneurship/financing/publications_documents.htm
[4] Report on PE, July 2006: http://ec.europa.eu/internal_market/investment/docs/other_docs/reports/equity_en.pdf

different national approaches to regulation and the resulting legal fragmentation caused high operating and administrative costs for investment funds operating across borders. Small or medium-sized funds were penalised more than big ones and were deterred from developing cross-border operations. Especially fund structuring and selling funds across borders should be improved at the European level. The group recommended that Member States should treat private equity funds in the same way as public equity investments and that private equity funds should be taxed solely in investors' home country. Mutual recognition of fiscally transparent fund structures and a common understanding of a 'private placement' might be a solution for this.

- The Commission published in November 2006 White Paper on Enhancing the Single Market Framework for Investment Funds[5] that in addition to inputs collected from public consultations in 2006-2008 and a high-level conference in February 2009[6] subsequently fed into the Commission proposal for a Directive on Alternative Investment Managers (*explained below, p.8*).

- A particular attention was paid to the development of cross-border venture capital operations and to reducing the fragmentation of the European venture capital market in the context of an extensive consultation with national and industry experts in 2006-2007, organised by Directorate General Enterprise and Industry. In the expert group report[7] on removing obstacles to cross-border investments by venture capital funds from March 2007, experts recommended that apart from exchanging good practices and improving coordination between the Member States, the most reasonable way to progress in the short term would be the mutual recognition of the existing national frameworks on venture capital funds. National and industry experts suggested that Member States could take steps towards recognising venture capital funds, which are registered and operate in other jurisdictions in order to allow these funds to operate across borders without having to go through separate registration and regulation processes or to invest through complex parallel structures. While the group recognised that it was up to the Member States to decide what would be the most suitable for them, there was a broad understanding that the findings would be taken into consideration in the Commission's reporting on the Council's request. Based on this and further policy deliberations, the Commission issued in 2007 a Communication on cross-border venture capital funds (*as explained below, p.5*).

- The Commission undertook a substantial analysis of national frameworks for non-harmonised funds, including venture capital funds, and of barriers to cross-border private placement and options to overcoming them. Further to a public consultation and two workshops organised by the Directorate General for Internal Market in 2007-2008[8], with the Impact Assessment report on Private Placement published in July 2008[9], the Commission suggested that there was a prima facie case for action at EU level, however pending further preparatory work. These conclusions subsequently also fed into the Commission proposal for a Directive on Alternative Investment Managers (*as explained below, p.8*).

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5 White Paper, Executive Summary to the Impact Assessment, SEC(2006)1452, 15.11.2006 http://ec.europa.eu/internal_market/investment/docs/legal_texts/whitepaper/executive_summary_en.pdf

6 EU Commission Open Hearing on Hedge Funds and Private Equity, 26.2.2009 http://ec.europa.eu/internal_market/investment/docs/conference/summary_en.pdf

7 http://ec.europa.eu/enterprise/newsroom/cf/document.cfm?action=display&doc_id=1094&userservice_id=1&request.id=0

8 Work on private placement: http://ec.europa.eu/internal_market/investment/private_placement_en.htm

9 Executive summary of the Impact Assessment Report on Private Placement, SEC(2008)2341, 17.7.2008: http://ec.europa.eu/internal_market/investment/docs/legal_texts/summary_ia_private-placement_en.pdf

- Direct tax obstacles to cross-border operations of venture capital funds were analysed with another expert group in 2007-2009, organised by the Commission Directorate General for Taxation and Customs Union (*explained below, p.9).*

4. Main policy conclusions of the European institutions in 2007-2009

Based on the mentioned expert group report on cross-border obstacles from March 2007 and further policy deliberations, the Commission issued in December 2007 a Communication on *"Removing obstacles to cross-border investments by venture capital funds"*[10]*.* The Commission advocated a broad partnership with and between Member States to work towards mutual recognition of the national frameworks for venture capital funds and to create a common understanding of the features of venture capital funds and qualified investors. The Commission invited the Member States to overcome the regulatory and tax obstacles by reviewing existing legislation or by adopting new laws. The aim has been to give all venture capital funds the opportunity to specialise and diversify, including smaller specialist funds. Especially smaller countries and those with a developing venture capital market and industry were invited to adopt or amend their legislation. With this Communication, the Commission announced that it would report on progress made in 2009.

The Competitiveness Council of December 2006 and November 2007 had invited the Commission to report on obstacles to cross-border investments by venture capital funds and speed up action to facilitate the creation of a truly European venture capital market, respectively. The Commission followed this request and the short-term approach of the mutual recognition as proposed by the 2007 Commission Communication was endorsed by the Competitiveness Council of May 2008[11]: the Council, *among others*, "recognised that working increasingly towards a common understanding of the key features of VC funds and their investors was crucial and that the mutual recognition of national frameworks was a promising initial step towards the gradual creation of an EU-wide framework, resulting in lower operating costs, higher legal certainty, less administrative complexities and shorter procedures. The Council considered furthermore that Member States shared certain common basic requirements for operating in VC funds, building upon mutually acceptable levels of supervision and trust, and invited Member States to make progress towards a mutual recognition of national frameworks and work together with the Commission". The Competitiveness Council of December 2008[12], *inter alia*, "recalled the need for Member States and the Commission to reduce the present fragmentation of the venture-capital market by facilitating cross-border investments."

Moreover, the European Parliament[13] requested in September 2008, *inter alia*, "the Commission to implement policy proposals set out in the Commission Communication" and recommended that "the Commission should propose legislation to provide a harmonised EU-wide framework for venture capital and private equity, and particularly so as to ensure cross-border access to such capital for the SME sector in line with the Lisbon Agenda".

The European Economic and Social Committee also issued its opinion supporting the Commission Communication and policy to facilitate venture capital activities across borders.

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[10] Commission Communication, Removing Obstacles to cross-border investments, COM(2007)853, 21.12.2007: http://ec.europa.eu/enterprise/newsroom/cf/itemlongdetail.cfm?item_id=2033

[11] Council Conclusions, A fresh impetus for competitiveness and innovation, 29 May 2008 (page 4-5): http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/intm/100715.pdf

[12] Council Conclusions, "Think Small First – A Small Business Act for Europe", 1 December 2008 (page 4): http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/intm/104403.pdf

[13] EP Resolution, Annex – Recommendation 1 on VC sector and SMEs (23 September 2008): http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0425+0+DOC+XML+V0//EN

5. Encouraging Member States in the mutual recognition process

In assisting the Member States in this process of mutual recognition and in exploring additional supporting arguments to those presented with the 2007 Communication, the Commission services of Directorate General for Enterprise and Industry launched in November 2008 a debate with researchers and economists[14]. Researchers' independent findings[15] and underlying research evidence were meant to bring additional suggestions to the Member States in taking measures towards the mutual recognition process. In general, researchers concluded that although many of tax and legal factors influencing cross-border flows would be difficult to change in the short term, the removal of legal uncertainty and the improvement of the informational basis for investment decisions could be easier to address in the short term and could pave the way for an integrated venture capital market through mutual recognition and eventually a harmonised pan-European fund structure.

In accordance with the mentioned 2008 Council Conclusions, the Commission continued the work together with the Member States and the industry. Directorate General for Enterprise and Industry organised two workshops in July - December 2008 and launched a debate on measures that Member States have taken or plan to take to accommodate the mutual recognition principle in their respective venture capital legislation. Hence national experts have been sending inputs to the following questions:

(1) What have been recent new/draft pieces of legislation, regulatory changes, and plans for modifications of national framework for VC funds in your country? (2) Further to the Council Conclusions of 29 May 2008, what will be next possible steps that your country could take in the short-term towards a mutual recognition of national framework for VC funds? (3) Has your country/ministry prepared a roadmap to encompass the Council's invitation to take steps towards the mutual recognition of national VC frameworks? (4) Are you consulting/working together with the representatives of the VC industry in your country? (5) Have the regulatory authorities of your country been cooperating with the respective authorities in other EU countries?

In collecting inputs from the national experts - a complete overview of inputs received from the Member States is annexed to this report[16], the following Member States have taken some measures in improving the situation, although not necessarily yet resulting in a removal of obstacles to cross-border venture capital:

- Finland: the law from 2006 made VC funds tax transparent so that they are taxed in the country of a management company, yet with two restrictions: (a) in case of tax treaty countries, a problem of a permanent establishment arises (it is being studied to find ways that no permanent establishment would need to take place in case of a direct VC investment from abroad); (b) whereas in case of non-tax treaty countries, a legislative change of 2006 law would be needed in order to avoid restrictions.
- Germany: several pieces of legislation impacting the PE/VC industry have been recently enacted (i.e. a new law on the Modernisation of the Framework Conditions for Venture Capital and Equity Investments introduces a new Act on the Promotion of Venture Capital Participations and amends the Act concerning Equity Investment Companies; the law is complemented by the Risk Limitation Act), which do not aim at facilitating cross-border VC.

[14] Workshop conclusions were summarised by Prof. Markku Maula (Helsinki University of Technology); other workshop participants and/or contributors were, in alphabetical order: Prof. Laura Bottazzi (Bocconi University - IGIER, CEPR), Prof. Marco Da Rin (Tilburg University, CentER), Patrizia Gioiosa (Di Tanno e Associati), Prof. Markku Maula (Helsinki University of Technology), Dr. Thomas Meyer (Deutsche Bank Research), and Prof. Mike Wright (Nottingham University Business School).

[15] Researchers' recommendations, November 2008: http://ec.europa.eu/enterprise/policies/finance/files/summary_report_vc_workshops_2008.pdf

[16] Inputs received from the Member States are presented in annex (cut-off date March 2009, last workshop).

- Italy: there have been some discussions between the Italian Venture Capital Association and the Bank of Italy on ways how to accommodate the mutual recognition of foreign VC funds.
- United Kingdom: the regulatory environment has been attracting foreign investors to set up Limited Partnerships as tax transparent funds in the UK; the government remains supportive of the principle of mutual recognition and has proposed that the Commission would need to assess practical implications and not let the Member States to sort it out bilaterally.
- Denmark: there have been no new legislative changes given that the country offers a fairly obstacles-free VC cross-border environment and has been attracting most of VC funds in the Nordic region to be registered as a Limited Partnership in Denmark (neither Danish nor foreign investors are taxed on the income; except of withholding tax).
- Sweden: while the Swedish government supports the Commission work on cross-border venture capital, any possible legislative changes are subject to ongoing discussions, also to those of the Nordic Council of Ministers.
- Poland: the authorities have been studying reasons for the equity gap and the less viable PE/VC investors in Poland and preparing a new piece of legislation on PE/VC, in which ways on facilitating cross-border VC investments could be analysed.
- Slovenia: a new law regulating venture capital companies has entered into force; enabling tax advantages on capital gains, though for nationally established funds only.
- Estonia: a definition on venture capital funds was amended in late 2007; the authorities remain open to possible changes of legislation to enable cross-border VC operations.

Moreover, on an initiative from the Nordic Council, the Nordic Innovation Centre proposed some solutions[17] to improve the conditions for the Nordic venture capital market and issued national recommendations regarding obstacles in each Nordic country along with overall Nordic recommendations for a more integrated Nordic market: funds established as limited partnerships should be tax transparent; no VAT should be imposed on the management company of the fund and foreign funds should not be taxed. Since these recommendations were issued, efforts have been made by several Nordic countries to improve regulatory and tax environment (i.e. Finland - as explained above). Another recent Nordic Innovation Centre report[18] is further addressing changes needed to promote a well functioning seed stage - in which the supply of venture capital has been scattered, to create publicly-funded schemes, to increase Nordic cooperation and to constitute a common seed market of a size that could have venture capital players in different stages with critical mass and global competitiveness. This report calls to formulate policies with the aim of removing obstacles to cross-border investments in venture capital funds and thereby promoting a long-term, well functioning and self-sustainable venture capital market; the report continues to urge to make the Nordic venture capital market more attractive to the private sector and particular to institutional investors worldwide with a necessary and continued public support.

> While changes at the European level are taking time, the Nordic approach could bring competitive advantages and would strengthen the Nordic market within the European venture capital market. If successful, other groups of Member States might, *for example*, follow the Nordic countries in creating a more integrated cross-border VC market.

[17] Nordic Innovation Centre, Obstacles to Nordic Venture Capital Funds: Promoting a Nordic venture capital market, Updated 2009: http://www.nordicinnovation.net/_img/obstacles_to_nordic_venture_captal_funds_web.pdf
[18] Nordic Innovation Centre, Challenges and Initiatives for the Nordic Seed Stage: Promoting a common Nordic seed capital market, June 2009: http://www.nordicinnovation.net/prosjekt.cfm?Id=3-4415-308

6. Other ongoing work, concerning the venture capital markets

The Commission has been further improving SMEs' access to finance and framework conditions for financing innovation by reducing fragmentation and building a more active EU venture capital market also in the context of the Small Business Act of June 2008[19] and with the Community Lisbon Programme 2008-2010[20].

Moreover, the European Commission proposed in May 2009 a Directive on Alternative Investment Fund Managers (AIFM)[21] with the objective to create a comprehensive and effective regulatory and supervisory framework for AIFMs at the European level. The Commission proposed this piece of legislation in order to enable Member States to improve the macro-prudential oversight of the sector and to take coordinated action as necessary to ensure the proper functioning of financial markets. The proposal is meant to help to overcome gaps and inconsistencies in existing regulatory frameworks at national level and to provide a secure basis for the development of the internal market. While alternative funds were not the cause of the financial crisis and private equity funds in particular did not contribute to increase macro-prudential risks, the Commission proposed with this Directive an all-encompassing approach, also including private equity and venture capital fund managers. For the reasons of proportionality the proposal does, however, foresee two *de minimis* exemptions: authorisation requirements are to be waived for managing entities below a threshold of €100 million; and a threshold of €500 million is to be applied for AIFMs managing only alternative investment funds that are not leveraged and do not grant investors redemption rights during a period of five years following the date of constitution of each fund.

Further to the Commission AIFM proposal, the industry[22] has been arguing that the legislative proposal does not take into account differences between different types of funds and that undifferentiated provisions would result in private equity and venture capital fund managers being burdened. The industry calls for increasing the *de minimis* thresholds applicable to small funds (while stressing that VC funds may become subject to the rules regardless of the thresholds), more tailored provisions for capital requirements, independent valuations, depositary or custody functions and in relation to third countries operations.

On the AIFM proposal, the European Central Bank[23] has supported the intention to provide a harmonised regulatory and supervisory framework in the EU and also asked for a more tailored provisions that would better reflect differences between different alternative funds.

Given the **ongoing legislative process** of the proposed AIFM Directive, which is currently being discussed among the Member States in the Council and also in the European Parliament, further regulatory revisions of the proposal are expected and it remains to be seen once the final provisions are stipulated how they will affect venture capital fund and managers and funds' cross-border operations.

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[19] Commission Communication, Think Small First – A Small Business Act for Europe, SEC(2008)394, 25.6.2008: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0394:EN:NOT

[20] Commission Communication, Community Lisbon Programme 2008-2010, COM(2007)804, 11.12.2007: http://ec.europa.eu/growthandjobs/pdf/european-dimension-200712-annual-progress-report/200712-annual-report-community-programme_en.pdf

[21] Commission Proposal for a Directive on Alternative Investment Fund Managers, COM(2009)114, 30.4.2009: http://ec.europa.eu/internal_market/investment/docs/alternative_investments/fund_managers_proposal_en.pdf

[22] The European Private Equity and Venture Capital Industry Response to the Proposed Directive on AIFM, EVCA, 26.6.2009: http://www.evca.eu/uploadedFiles/News1/News_Items/2009-06-26-ResponsepaperAIFM.pdf

[23] Opinion of the ECB, 16.10.2009: http://www.ecb.int/ecb/legal/pdf/en_con_2009_81_f_sign.pdf

Moreover, the Commission has created an expert group consisting of national and industry experts to analyse the taxation obstacles to cross border VC investment. The group has almost finalized its work and a report is likely to be published in the coming months.

As a follow-up of the Broad-based Innovation Strategy[24], in which, *among others*, it was urged for removing barriers to the availability of venture capital in the Internal Market, the Commission analysed the recognition of barriers and evolution of innovation policy development in the last few years at national and Community level. In line with this, the September 2009 Communication on Reviewing Community innovation policy in a changing world[25] together with a public consultation on future EU innovation policy[26] will be the building blocks of the next innovation policy that is to be announced in the forthcoming European Innovation Plan[27].

In pursuing an effective innovation policy, the Commission will continue to build a sustainable funding system for financing innovation with both policy actions and financial instruments (the latter in cooperation with the European Investment Bank Group[28]. In transforming the European venture capital and business angels' landscape, remaining challenges are to be addressed to strengthen the performance of venture capital funds and current challenging exit environment: policy should focus on better leveraging private sector early-stage finance, appropriate conditions for cross-border operations, public-private partnerships and for the emergence of larger and pan-European venture capital funds are to be created, options to improve the exit markets are to be reviewed and cross-border financing programmes are to be strengthened[29].

[24] Progress report on the Broad-based Innovation Strategy, February 2009: http://ec.europa.eu/enterprise/policies/innovation/files/broad_based_innovation_strategy_background__february_2009_en.pdf
[25] Commission Communication, Reviewing Community innovation policy in a changing world, COM(2009)442, 2.9.2009: http://ec.europa.eu/enterprise/policies/innovation/files/com(2009)442final_en.pdf
[26] Public consultation: http://ec.europa.eu/enterprise/policies/innovation/future-policy/index_en.htm
[27] The European Council called in December 2008 for a new Plan for Innovation. Further to the September 2009 Communication and a public consultation, the Commission will present European Innovation Act in spring 2010.
[28] The EIB Group consists of the European Investment Bank (EIB) and European Investment Fund (EIF).
[29] Commission Staff Working Document, Financing Innovation and SMEs, 2.9.2009: http://ec.europa.eu/enterprise/policies/innovation/files/swd_financing_innovation.pdf

7. State of play, conclusions

In general, the European venture capital markets remain fragmented and their potential is not yet fully exploited. Venture capital funds and their management companies still have to deal with a separate registration and different tax treatments when investing across borders in the EU and these regulatory barriers impede funds to specialise, diversify, grow and reach economies of scale. Cross-border problems have even worsened for the funds due to the impact of the financial crisis on fundraising and investing both locally and across borders.

Given the complexity of issues at stake, involving legal and taxation matters, promoting mutual recognition of national frameworks has been **an initial effort** to create an EU-wide framework for venture capital investments: the Commission had consulted the national and industry experts on measures they had considered to be possible in the short-term, based on which it proposed the mutual recognition of venture capital funds with its 2007 Communication. While the 2008 Council agreed with the proposed approach, in practice most of the Member States have **not yet taken significant measures that would make fundraising and investing across borders easier for venture capital funds**.

Having undertaken a substantial analytical work, collected inputs from public consultations, proposed policy actions and legislative measures in 2005-2009, barriers to cross-border operations of venture capital funds remain in the EU. This summary report is acknowledging that the short term approach of mutual recognition has not yet resulted in a removal of regulatory and tax obstacles and has not reduced fragmentation along national lines.

8. Follow-on with tackling the obstacles to cross-border venture capital in the EU

Continuous efforts on attracting more investors and enabling more venture capital funds to invest in innovative firms, as well as policies on stabilising and harmonising the regulatory and tax framework at the Member States and Community level, are to be enhanced with measures to counteract the impacts of the financial crisis and support innovative firms with a high growth potential to more easily access adequate equity in the EU.

- Therefore, the Commission recognises an imminent need to **strengthen the partnership with and between Member States** and to work in a close cooperation with all relevant stakeholders in building a sustainable European venture capital market.

- Moreover, the Commission will in spring 2010 present a new **European Innovation Plan**, encompassing all conditions for sustainable development, including policy actions on financing innovation and **measures to transform venture capital landscape**.

- In parallel, the Commission will continue to update the Enterprise Finance Index and to monitor the development of national equity environments.

ANNEX - summary questionnaire with Member States' inputs – cut-off date March 2009

(Questions below were asked during the workshops on cross-border VC on 2nd and 10th July 2008, 8th December 2008 and 31st March 2009)

1. What have been recent new/draft pieces of legislation, regulatory changes, and plans for modifications of national framework for venture capital funds in your country ?	
Austria	In 2007, a special regulation concerning taxation of capital gains from investments in venture capital funds investing primarily in Austria was adopted to fit into the state aid regulation for risk capital measurements.
Belgium	There have been neither major developments nor legislative changes in respect to VC taken in 2008.
Bulgaria	In 2008, the Bulgarian Development Bank Act was adopted. According to this Act a Fund for Capital Investments will start operating in 2009: the Fund will be a subsidiary of the Bank that shall hold at least 51% in the capital of the Fund. Shareholders in the Fund may be local, foreign and international financial and credit institutions. Bulgaria offers a fairly obstacle-free tax environment to VC funds: • 10% corporate tax since 2007 (34.3% in 1999); • 0% corporate tax in 138 municipalities with unemployment rate higher than the average level; • 0% capital gains tax - income from transactions on capital market (incl.public trade of shares on stock exchange and private placement) is not taxed; • 5% dividend tax as from 1st January 2008; • social security burden reduced by 6 percentage points in 2006 and by further 3 percentage points as from October 2007; • 10% "flat tax" for incomes of physical persons since 2008; The only regulatory restriction might concern local insurance companies and pension funds that cannot invest in VC funds.
Cyprus	*n.a.*
Czech Republic	*n.a.*
Denmark	- No new/specific VC regulation has been introduced in Denmark. - Generally speaking, Denmark offers a fairly obstacles-free VC cross-border environment. Danish Limited Partnerships can be used as vehicles for VC funds since neither Danish nor foreign investors will be taxed on the income derived from the Limited Partnership in Denmark. Only dividend distributions to investors will be subject to Danish tax (withholding tax), a rule which applies no matter if the investment in a Danish company is made by Danish or a foreign Limited Partnership. Furthermore, the Danish Limited Partnership's structure is very similar to the structure that foreign investors are used to from Anglo-Saxan based funds. - As Denmark offers a fairly obstacle-free VC and VC cross-border environment it is uncertain if any short-term initiatives will be taken. In a medium-term perspective, though, some initiatives may be taken as a Danish stakeholder/expert committee has been established with the mandate to analyse the Danish market for VC-capital and other risk-capital. The committee is expected to deliver its recommendations in Spring 2009. - However, a new relevant piece of legislation was already adopted in Spring 2008, which does not directly aim at VC funds but may affect VC funds and cross-border investments. The bill seeks to avoid asymmetric taxation by obstructing the use of US check-the-box elections for Danish transparent entities by reclassifying such entities into non-transparent corporations for Danish tax purposes. The bill will potentially affect the Danish tax classification of a number of Danish transparent entities and branches, which are treated as non-transparent by their foreign owners. Danish tax-transparent entities and branches will be reclassified and treated as non-transparent for Danish tax-purposes if (i) more than 50% of the votes or capital interest in the Danish entity/branch are held directly by foreign investors, *and* (ii) such foreign investors are tax residents in a foreign country which *either* considers the Danish entity/branch to be non-transparent *or* has not entered into a double taxation treaty with the Danish tax authorities. - Notwithstanding the above, VC funds which meet certain specific requirements will not be subject to reclassification, such requirements include a certain diversity at the investor level of the VC fund, that the VC fund only holds assets in the form of shares or certain securities, that the VC fund aims at acquiring companies for the purpose of participating in the management of such companies, and that the VC fund only makes investments in companies under a certain size.
Estonia	- In general, venture capital funds (or private equity funds) can be established in Estonia as a corporate entity (company) or according to the Investment Funds Act as an investment fund. On the one hand, no special rules compared to the ordinary set-up or running of the company have been stipulated. On the other hand, financial supervision of venture capital funds is implemented and specific investor protection rules have to be followed. Financial supervision in Estonia is conducted by the Estonian Financial Supervision Authority. In the Investment Funds Act, a venture capital fund is defined in paragraph 254. Definition of a venture capital fund was amended in October 2007, mainly on the request from the market participants. A venture capital fund is an investment fund with assets invested mostly (at least 60%) to the non-listed equities, debt instruments or to other venture capital funds. In addition, an initial investment of a venture capital fund must be at least 10 000 EUR or units of a venture capital fund can be provided only to professional investors. The main difference between venture capital fund and a "regular" investment fund is that for the first one regulatory standards are not so high what aims to simplify the establishment of venture capital funds. Nevertheless only a few venture capital funds have been established to this day. - Although there is no exact statistics on investment funds acting in a form of corporate entity, it is apparent that volumes of these entities are greater than of those which are established under the Investment Funds Act. That is because until recently the main investors for venture capital funds have been professional investors, whereas investment funds, which are under financial supervision, are meant mainly for the retail investors.

	In order to ensure promotion of the Estonian venture capital market, the Parliament established the Estonian Development Fund (EDF) – it is a risk capital management company and fund in the same legal entity, which aims to implement venture capital measures in Estonia. EDF performs risk capital investments with private investors into early stage companies. EDF will invest in SMEs with high growth potential and investee's definition of EDF's Act § 35 (1), which are registered and economically active in Estonia. The qualifying SME-s must be a non-listed one. At least 30% of the investment will be made by independent private investors. EDF investments will not exceed 70% of the total investment. EDF is entitled to make investments in enterprises only with private investors (by involving private capital) and on *pari passu* terms, expecting the private investor to acquire participation or own participation by making a monetary contribution to the voting stock of an enterprise. - - Participation of the EDF, acquired as a result of an investment, must not be less than 10 percent and more than 49 percent of the share capital of the investee. To ensure profit-driven character of the investment, EDF investments will be made in economically viable SMEs, based on business plans for each investment containing details of the product, sales and profitability development and establishing the ex ante viability of the project and a clear and realistic exit strategy for each investment. The EDF will not invest if private co-investor doesn't invest. The purpose of the Estonian Development Fund is not to compete directly with commercial fund management companies, but to assist Estonia in implementing its initiatives and measures. Despite its public origin, EDF is established on fully commercial principles and is using best practices of private equity industry.
Finland	The law from 2006 made VC funds tax transparent so that they are taxed in the country of a management company, yet with two restrictions: (a) in case of tax treaty countries, a problem of a permanent establishment arises (both Ministry of Trade and Industry and Ministry of Finance are studying ways how to solve that no permanent establishment would need to take place in case of a direct VC investment from abroad); (b) whereas in case of non-tax treaty countries, a legislative change of 2006 law would be needed in order to avoid restrictions. Problems are being studied also in the context of the Nordic Council of Ministers.
France	*n.a.*
Germany	The German legislator has enacted several pieces of legislation impacting the Private Equity and Venture Capital Industry. On the one hand, the recently published law on the Modernisation of the Framework Conditions for Venture Capital and Equity Investments introduces a new Act on the Promotion of Venture Capital Participations and amends the Act concerning Equity Investment Companies. On the other hand, the Risk Limitation Act, which entered into force on the same day, is supposed to complement the law on the Modernisation of the Framework Conditions for Venture Capital and Equity Investments, counteracting undesirable developments in areas in which financial investors operate by increasing transparency.
Greece	The Greek legal framework for venture capital funds consists of the following Laws: (a.) Law 2992/ 2002 "Measures for the re-enforcement of the financial market and the development of entrepreneurship". (It refers to a type of venture capital funds called A.K.E.S.). (b.) Law 2843/ 2000 "Establishment of the New Economy Development Fund". (It refers to TANEO S.A.). (c.) Law 2367/ 1995 "New financial institutions". (It refers to a type of venture capital funds called E.K.E.S.).
Hungary	After the Government decision, the Hungarian National Development Agency has been working on implementing the JEREMIE initiative. Program documentation had been approved by the Commission, and open call for Venture Capital Program was launched in February 2009. It is expected that both, foreign venture capital and foreign management capacity will be involved in this program. Selected venture capital fund management companies started with operations in Q2 2009.
Ireland	There have been no recent pieces of legislation etc., however a proposal to reduce capital gains tax on carried interest is being examined at present but no progress has been made and none is envisaged in the immediate future given that it was not included in the recent budget.
Italy	In order to develop venture capital investment activity in Italy, some measures have been approved by the Italian Government in summer 2008 through the Legislative Decree of July 25th, 2008 number 112, and the relative conversion Act number 133 of August 6th, 2008. The government stated in Article 3 a tax exemption for investors in start up companies that are compliant with the following characteristics: - the companies must be funded in the last seven years; - the minimum holding period of the investor must be at least of three years; - the capital gain coming from the divestment must be reinvested in another start up within two years. Another interesting provision to promote the venture capital market in Italy is contained in Article 4 that authorizes the "Cassa Depositi e Prestiti" to promote a fund of fund dedicated to the investment in specialized funds (i.e. high tech funds, regional funds, infrastructure funds, …).
Lithuania	A new law on Collective Investment Undertakings that was approved on 25th October 2007 came into force on the 1st March 2008. Further, relevant amendments on regulations of the activity of Managing Companies have been prepared by the Security Depository and approved by the Parliament
Latvia	In Latvia, ther is no specific regulation of VC industry, and there are currently no plans to introduce it.
Luxembourg	*n.a.*
Malta	*n.a..*
Netherlands	*n.a.*
Poland	- In 2008, the Ministry of Economy initiated a government initiative aiming at reducing the existing legislative obstacles on the market of raising capital by entrepreneurs, especially by SMEs. Initiative results from the fact that seed and start-up investments are outside the focus of most PE/VC funds in Poland. SMEs have very limited access to equity funding. Equity gap results from relatively high cost of preparing and monitoring of small projects as compared to those large

	ones. Additionally, small projects usually carry higher risks that further discourage PE/VC from investing. Moreover, a share of domestic PE/VC in the whole capital supply in Poland is still marginal. Greater part of capital supply in the field of PE/VC investments comes from institutions located outside Poland. It is thus necessary to identify what are the main factors that discourage PE/VC from locating and starting their operations from Poland. The government initiative should therefore clarify what should be done to encourage PE/VC investors to increase their activity in Poland. Within the first stage of this initiative, the Ministry of Economy gathered information on PE/VC legislation in other EU countries. In this context, PE/VC institutions in Poland were asked to fill in our survey on functionality of current legislation environment. Next step will be to analyze all this information and to prepare an expert evaluation of PE/VC regulations in the Polish law. In the second stage of this initiative (in the fourth quarter of 2008, a working group of experts was established in order to create new pieces of legislation on PE/VC. - In July 2005, the Polish government established National Capital Fund (NCF) – a holding fund financed mainly by the state budget, EU structural funds and sources from foreign institutions. NCF was established in order to reduce the equity gap persistent on the Polish market. Therefore NCF invests in VC funds targeting SMEs. NCF is expected to cooperate with more than 20 PE/VC institutions by year 2015. Thus it should allow them to provide investment capital to at least 184 SMEs. In order to encourage PE/VC to invest into SMEs, NCF offers benefits that significantly reduce investment risk bared by private investors. Polish authorities have been preparing some modifications in this field in order to make cooperation of NCF and PE/VC players more effective and to stimulate PE/VC investments in SMEs.
Portugal	While a package of measures to counterbalance the effects on the financial markets has been prepared, no specific measures have been taken in relation to venture capital. Portuguese VC market is relatively small and VC funds have been dependent on local funding only. A fund of funds has been established with the EIF. Concerning the mutual recognition, no measures have been taken yet by the Portuguese authorities to enable an easier fluctuation of VC across borders.
Romania	*n.a.*
Slovakia	*n.a.*
Slovenia	- The Government of the Republic of Slovenia adopted a new Law on venture capital companies end of 2007. This law has provided a framework for a legal status of companies that perform venture capital investments as venture capital companies (NB. in this Law, VC entities are called VC companies). At the same time, tax legislation was amended in Corporate Income Tax Act and Personal Income Tax Act, so that venture capital companies have some tax advantages on capital gains made with venture capital investments. Given that the Law on venture capital companies allows some tax advantages, it was notified and approved by the European Commission in accordance the Community Guidelines on State Aid to Promote Risk Capital Investments in SMEs) as a state aid scheme for the whole Slovenian VC market in June 2008 (from that date the tax advantages are in force). - In parallel, the Slovene Enterprise Fund started with activities to establish a public venture capital company – First Venture Capital Company, Ltd., which is obliged to invest in SMEs only in a partnership with some other domestic and foreign private VC companies or some other private investors. Further to the notification and approval of the state aid scheme by the European Commission in December 2008, certain necessary procedures have been implemented at the national level (with some delays though due to negotiations for the supplementary budget in 2009). Given that the Slovenian VC market is still rather undeveloped, the Slovenian authorities hope that this structure could be beneficial for the VC market growth, especially in the time of the current crisis where companies are facing even more difficulties in accessing finance.
Spain	The Government has not proposed any new piece of legislation. A reform/a legislative act was adopted in 2005 has been supported by the VC industry in Spain. VC environment is in general attractive. The Spanish government supports the cross-border VC and the mutual recognition approach; however, it is necessary to ensure investors' protection at the same time. No new pieces of legislation have been elaborated in Spain. Law 25/2005, regulating Venture capital entities and their management companies, established a much more attractive and flexible environment for VC funds. The objectives aimed by this Law were to: (1) Improve legal security, by including in Law 25/2005 all relevant aspects concerning venture capital firms in an orderly manner; (2) Make the administrative regime more flexible; (3) Make investment rules more flexible. Besides, the fiscal regime for Venture capital entities is very favourable: (a) In case of constitution or increase in capital, VC entities are exempted to pay the tax usually imposed on this kind of operations (Impuesto sobre actos jurídicos documentados); (b) There is a 100% double taxation deduction on dividends received by VC entities; (c) Capital gains generated by the VC entity are 99% exempted from the corporation tax, as long as the disinvestment that has generated this capital gain occurs between the 2nd and 15th year; (d) There is a 100% double taxation deduction on dividends or reserves implicit in the stocks selling price, if they are received by legal persons which are resident in Spain; (e) Non-resident shareholders do not pay taxes on Spain for dividends or capital gains. Law 25/2005 has been widely supported by the VC industry in Spain.
Sweden	No legislation with direct regard to venture capital funds has been recently decided. In 2006, the Swedish Government abolished the wealth tax for private individuals. In June 2008, the Swedish Government proposed to the Parliament to amend the legislation regarding precedence right for corporate mortgage. A new corporate mortgage was planed for January 2009, covering most personal property in businesses. New legislation for precedence / priority right for "personal property" (lös egendom) for corporate mortgage.
United Kingdom	HMG has consulted on the Enterprise Investment Scheme (EIS) to help identify opportunities to improve the practical operation of the scheme for investors, investee companies and advisers. Views were taken amongst other things on areas of awareness of the scheme, rules relating to the investee companies and investors and processes. HMG is considering these along with further consultation with industry bodies to plan, develop and assess the viability of potential changes (a HMT summary of responses on EIS consultation is available in the supplementary section of PBR 2008).

2. Further to the Council Conclusoons of 29 May 2008, what will be next possible steps that your country could take in the short-term towards a mutual recognition of national framework for VC funds?	
Austria	There are no specific steps foreseen, as Austria has signed tax treaties with most European countries to avoid double taxation for dividends and capital gains in transparent VC-funds.
Belgium	*see answer 1*
Bulgaria	*see answer 1*
Cyprus	*n.a.*
Czech Republic	*n.a.*
Denmark	No specific steps have been taken, as Denmark, generally speaking, offers a fairly obstacle-free VC cross-border environment; cf. the above answer ad 1. The principle might, however, be discussed as part of the work of the above mentioned Danish stakeholder/expert committee.
Estonia	There are no changes planned in the short-term. However, regulations of the investment fund industry are continuously being analyzed, including the bottlenecks regarding venture capital funds. In case of a necessity/relevance, we are prepared to change the legislation.
Finland	*see answer 1,* This subject is being discussed also with the Nordic Council of Ministers.
France	*n.a.*
Germany	National expert did not have any information on further projects.
Greece	A review of the legislation on VC is needed, so that the obstacles towards mutual recognition could be identified and removed. In addition, a common definition of VC on a European level should be decided in order to achieve common understanding. Finally, some measures on tax transparency could help the effort towards a mutual recognition.
Hungary	There are no changes planned in the short-term. Policy makers, like Ministry of Economics and Development, will analyse the performance of the Jeremie market players and will decide upon that if a policy change would be necessary.
Ireland	Ireland needs to establish whether or not there are any significant barriers to entry for VCs interested in investing in Ireland. At present a number of international VCs readily invest in Irish companies and we have not been advised that there are any barriers prohibiting such investment. No roadmap for mutual recognition of national VC frameworks has been prepared mainly due to the existing flexible investment environment.
Italy	After the Council Conclusions of May 29th, 2008, the Italian Private Equity and Venture Capital Association (AIFI) received an informal letter from Banca d'Italia in which they expressed their opinions on the mutual recognition for VC funds: - On the side of the fund, they consider interesting the proposal to authorize a fund registered in its home jurisdiction to collect capital and to invest in other Member States through a mechanism of mutual recognition. - They also consider positive the promotion of a regime of private placement that is coherent with the White Book of the EU Commission. - On the side of the management company, they believe that the obligation for a management company to have a permanent establishment in the country in which it wants to operate could represent a constraint. This obligation could be removed under the condition that the management company will be authorized and supervised in the country of origin. On the contrary, they consider an issue that needs deep discussions at EU level the possibility to create funds in third countries that can be managed at cross-border level. - Finally, on tax transparency of vehicles, they agree on all the initiatives that aim to increase the transparency of VC funds. It is considered also important to avoid all forms of double taxation or mechanisms that could represent an obstacle to the development of the industry. Finally, they consider important to discuss the issue of taxation at EU level in order to overcome the differences of regimes that are in charge now.
Lithuania	The new law (on Collective Investment Undertakings; see answer 1) and related regulations already allow managing companies established in the EU Member States to provide financial services without establishment of a local branch in Lithuania – only an approval of such activity is needed by the Security Depository.
Latvia	Taking into account answer to the 1st question, there is no need for such actions.
Luxembourg	*n.a.*
Malta	*n.a.*
Netherlands	*n.a.*
Poland	- Poland agreed that creating conditions for reducing the fragmentation of the European venture capital across the single market could contribute to overcome the equity gap. For Poland, the problem of equity gap is especially evident among SMEs. While working on the mentioned initiative (see answer 1) to reduce existing legislative obstacles on the market of raising capital by entrepreneurs, Polish authorities will also try to identify what can be done within PE/VC domestic legislation

	to boost cross-border VC investments; and the authorities will follow steps made at European level that can reduce cross-border obstacles for PE/VC investments. At the beginning of 2009, after having conducted an analysis of regulatory barriers in gaining a capital by entrepreneurs in Poland, the Ministry of Economy created a new report ("Think Small First" Report). First part of the analysis is related to law regulations of capital market, especially for VC/PE funds. Barriers were identified in the context of SMEs. The analysis and report serve as a theoretical basis for further works on abolition/reducing of legal barriers for SMEs activity. Report provides a complex analysis of investment *instrumentarium* for PE/VC, legal aspects of finishing of PE/VC investments and other aspects (connected with possibilities for financing PE/VC by pension funds, investment funds or insurance firms). Last but not least, this report was initiated by demands of "*de lege ferenda"* for extension of possibility PE/VC investments in the Polish economy. Conclusions from the Report might become a base for the Government activity to create better conditions for economic activity of SMEs.
Portugal	*see answer 1*
Romania	*n.a.*
Slovakia	*n.a.*
Slovenia	The Government of the Republic of Slovenia has adopted the Law on venture capital companies in accordance with the remarks of the European Commission concerning risk capital guidelines. For Slovenia with a relatively small VC market, enabling and allowing cross-border VC flows is very important. Therefore, the Slovenian Ministry of Economy is planning to upgrade the existing law with some more substantive and procedural elements in order to follow the mutual recognition and harmonising the legal framework.
Spain	Spain strongly supports cross-border venture capital operations. We believe that mutual recognition is an appropriate approach to improve the situation in the European venture capital market, which is essential to economic recovery. The best way to achieve this goal is through the common understanding of the basic features of venture capital entities and operations. Thus, it is essential that further steps be taken towards the harmonisation of basic rules and definitions.
Sweden	No proposed legislation in Sweden. The subject is however up to discussion in forum such as the Nordic Council of Ministers. The Swedish government supports the Commission work on cross-border VC.
United Kingdom	UK Government remains supportive of the principle of mutual recognition; and proposes to consider the lead from the 29 May Council Conclusions which flags up that Member States are already sharing common basic requirements and invites them to make progress towards mutually recognised frameworks. It goes on to talk about the Commission and Member States working together on a Europe wide view to overcome obstacles including how mutual recognition would work in practice - bearing in mind variance of Member State's tax, legislative and regulatory frameworks. UK Government envisages the Commission leading this work and the first step being a Commission assessment of the practical implications of mutual recognition. Then Member States can have informed discussions based on this initial assessment. [The Commission's questions presented here seem to be working on quite a different basis - i.e. member states sorting out bilaterally].

3. Has your country/ministry prepared a roadmap to encompass the Council's invitation to take steps towards the mutual recognition of national VC frameworks?	
Austria	As tax matters are regulated for transparent VC-funds, no formal roadmap has been adopted so far.
Belgium	*see answer 1*
Bulgaria	*see answer 1*
Cyprus	*n.a.*
Czech Republic	*n.a.*
Denmark	No formal roadmap has been prepared, *see also answer 1.*
Estonia	- In principle, the Ministry of Finance of Estonia has supported creation of a cross-border framework also for venture capital funds, including mutual recognition (as also written in the Estonian response to the Commission Green Paper on the Enhancement of the EU Framework for Investment Funds). In Estonia, requirements arising from the EU directive on UCITS funds are basically expanded also to venture capital funds (mainly related to the investor protection matters). - Concerning tax benefits, in Estonia venture capital is not promoted by fiscal exceptions given that that the Estonian tax framework is already quite advantageous in these economic matters. In Estonia, there are also no exceptions in tax conditions but fund investments are not taxed. Venture capital funds are taxed on the same grounds as other investment funds. Actually taxation of investors depends on a legal form of the investment fund. Investment fund established as a joint stock company is subject to corporate income tax upon distribution of its profits (just as any other corporate entity). There is no additional taxation for investors that are natural persons. As regards investment fund established as joint stock company, taxation does not depend on their residence. Whereas a common fund (contractual type of investment fund) itself is not taxable; taxation takes place as taxation of capital gain of the investor only when units of the fund are redeemed; in addition, there is no taxation of such gains in case of non-resident investors (except for real estate investment funds).
Finland	*see answer 1and 2*

France	*n.a.*
Germany	National expert did not have any information on further projects.
Greece	While there is no official roadmap, the Greek government officials have stressed the importance of investments and entrepreneurship for the development of the Greek economy.
Hungary	No specific roadmap has been prepared so far.
Ireland	Ireland needs to establish whether or not there are any significant barriers to entry for VCs interested in investing in Ireland. At present a number of international VCs readily invest in Irish companies and we have not been advised that there are any barriers prohibiting such investment. No roadmap for mutual recognition of national VC frameworks has been prepared mainly due to the existing flexible investment environment.
Italy	Representatives of the Italian Private Equity and Venture Capital Association (AIFI) did not know (ref. date: in July 2008) if a defined roadmap to encompass Council's invitations has already been defined from the Italian Ministry.
Lithuania	As the first calls for expression of interest to implement financial instruments under the JEREMIE initiative took place in 2009, it is expected that experience to attract private investors and management companies not only from Lithuania but also from other EU Member States would show what kind of actions should be taken first, what amendments of the regulations are needed towards mutual recognition of national VC framework.
Latvia	Taking into account answer to the 1st question, there is no need for such actions.
Luxembourg	*n.a.*
Malta	*n.a.*
Netherlands	*n.a.*
Poland	Yes, the Ministry of Economy focuses on Council's invitation to take steps towards the mutual recognition of national VC frameworks while working on above-mentioned initiative (see answers 1 and 2) to reduce the existing legislative obstacles on the market of raising capital by entrepreneurs. A process of creating conditions for reducing fragmentation of European venture capital across the single market will be taken into account by the Ministry of Economy while preparing domestic regulations on this matter.
Portugal	*see answer 1*
Romania	*n.a.*
Slovakia	*n.a.*
Slovenia	Given that venture capital market is emerging in Slovenia, no specific steps have been made yet towards the mutual recognition of national venture capital frameworks. Nevertheless, the Slovenian Government strongly supports common understanding of the key features of venture capital funds and their investors across the EU and in this respect plans to upgrade the existing legal framework.
Spain	No roadmap has been prepared. The Government is still analysing the effects that Law 25/2005 has had on the industry, since the opportunities it created have not yet been fully seized by VC entities. However, in coherence with the answer to question number 2, Spain will be willing to take further steps to mutual recognition of national VC frameworks, as long as progress is made in the harmonisation of basic rules and definitions.
Sweden	There is no concrete roadmap while there is awareness that it is necessary to facilitate cross-border investments; e.g. tax situation for limited partnerships in Sweden.
United Kingdom	No. UK Government awaits progress on the practical issue so that European wide guidance can inform the process of preparing that roadmap and believes the onus is on the Commission to lead this.

4. Are you at the ministry consulting/working together with the representatives of teh venture capital industry in your country?	
Austria	The Austrian venture capital industry is represented by the Austrian Venture Capital Organisation (AVCO). AVCO is consulted from time to time in VC-related issues and is heard in the legislative process (as other stake holders are).
Belgium	*n.a.*
Bulgaria	*n.a.*
Cyprus	*n.a.*
Czech Republic	*n.a.*
Denmark	The Danish government and Danish VC investors consult each other from time to time and VC investors are heard in legislative hearing processes, typically through the Danish Venture Capital and Private Equity Association (DVCA). Also, the above mentioned Danish stakeholder/expert committee (see answer 1 and 2) has created a formal forum for dialogue.
Estonia	On the national level, the Estonian Ministry is working closely together with market participants and relevant professional unions. As mentioned in answer 2, change in definition of a venture capital fund was largely initiated by the market participants."
Finland	*n.a.*
France	*n.a.*
Germany	Yes. German national expert has a long-standing relationship with the German Private Equity and Venture Capital Association (BVK).
Greece	The Greek state cooperates with the representatives of VC industry in Greece. More specifically, the state established TANEO S.A., in order to promote the raising of VC funds and generally, investments on innovative and small companies in Greece.
Hungary	Yes, there is a consultancy involved on a regular basis in order to better understand operations and consider their views when making policies in the JEREMIE Venture Capital program.
Ireland	Yes, Enterprise Ireland is actively working with practically all of the VCs in Ireland and have invested approximately €300m as fund-of-funds. At the Enterprise Ireland, they are also in regular contact with the representative VC body ie. the Irish Venture Capital Association (IVCA).
Italy	Following its mission, the Italian Private Equity and Venture Capital Association (AIFI) keeps good contacts with the representatives of the venture capital activity in Italy. An internal "Venture Capital Committee" has been constituted to discuss legislative dispositions to promote venture capital. Particularly, in the last year AIFI launched a roundtable with all VC institutions (Ministry of Research, Universities, Incubators, Scientific Parks Public Research Institutes and Venture Capital Investors). More in detail, the activity founds its foundations in the awareness that the financial actors are specialized in specific phases of the life of a company but, overall, the system lacks of coordination among the actors so that is difficult for a company to pass by multiple rounds of financing and to grow fast.
Lithuania	Several surveys on SME financing needs and also JEREMIE gap analysis were prepared in the last four years and the results of these surveys were presented to private actors of the VC industry. Further, also consultations on a structure of possible instruments under the JEREMIE initiative were concluded.
Latvia	Yes, quite actively. A representative from the Ministry is a member of the Advisory Boards of three active Latvian Venture Capital funds as well as representing the Latvian Guarantee Agency at the Latvian Venture Capital Association.
Luxembourg	*n.a.*
Malta	*n.a.*
Netherlands	*n.a.*
Poland	Yes, at the Ministry, we are consulting the Polish Private Equity Association (PPEA), which gathers private equity/venture capital investors active in Poland (34 full members - private equity/venture capital management firms - and 33 associate members - consulting companies cooperating with the PE/VC industry).
Portugal	*n.a.*
Romania	*n.a.*
Slovakia	*n.a.*
Slovenia	- As mentioned in answer 1, the Slovene Enterprise Fund is in the process of establishing a subsidiary company First Venture Capital Company, Ltd,. This initiative of setting up a public venture capital fund has been taken in order to encourage further development of the venture capital market in Slovenia, also through public-private- partnerships when investing in SMEs. In this respect, First Venture Capital Company Ltd will invest in SMEs only in a partnership with a private VC company or other private investors. Moreover, in accordance with the Risk Capital Guidelines, at least 30 % of the funding of the investments must be provided by private investors. - Yes, Slovene Enterprise Fund, has been co-operating with representatives of the venture capital industry in Slovenia.

	- In order to upgrade the existing legal framework also the input from the VC industry experts will be essential.
Spain	During the elaboration of the Law 25/2005 (see answer 1), there was a narrow cooperation between the regulator, the supervisor and the industry. As a result, a flexible framework was established, fulfilling the expectations of the industry. ASCRI, the main VC association in Spain has not presented any new proposal ever since.
Sweden	Yes, there is a dialogue regarding these matters.
United Kingdom	=>Not on specific issues of mutual recognition. => The UK Government maintains a healthy dialogue with the venture capital industry. This is achieved in several ways: - Through our discussions with the British Venture Capital Association, through our own arms length body Capital for Enterprise Limited - who manage publicly funded equity support programmes, including a third round of bidding for Enterprise Capital and a proposal to develop a new innovation finance fund to attract private sector venture capital in to early stage high tech sectors. - Through discussions with the Regional Development Agencies and their finance bodies to understand the strategic fit between national instruments and their equity investment funds supported by ERDF structural funds. - Through bilaterals with a range of fund managers, and through our relationship with the British Business Angel Association.

5. Have the regulatory authorities of your country been cooperating with the respective authorities in other EU countries?	
Austria	No formalised cooperation regarding VC investments has been established between Austrian regulatory authorities and regulatory authorities in other EU countries.
Belgium	*n.a.*
Bulgaria	*n.a.*
Cyprus	*n.a.*
Czech Republic	*n.a.*
Denmark	No formalised cooperation regarding VC investments has been established between Danish regulatory authorities and regulatory authorities in other EU countries, except for the explorations through the Nordic Council of Ministers.
Estonia	Regarding venture capital funds, international cooperation of the ministry has not been that intense as consultations with the European Venture Capital Association and Finnish Venture Capital Association have been more common. We have mainly made an examination of other countries' legislation, in particular of those countries where fund industry has developed extremely well (i.e. Luxembourg, Ireland). There have been also minor consultations with other countries' authorities regarding the developments at the EU level.
Finland	*n.a.*
France	*n.a.*
Germany	Yes, they are cooperating. However, cooperation amongst Germany ministries could be optimized. Thus, cooperation with other EU countries may be suboptimal since not reflecting the views of all relevant ministries.
Greece	No available data.
Hungary	Yes, there is cooperation with many EU Member States. However, in this particular topic no cooperation has been initiated.
Ireland	Yes, there has been consultation with other countries, particularly the UK, in relation to MIFID.
Italy	The Italian Private Equity and Venture Capital Association (AIFI) has always promoted the sharing of information on the policies adopted by other national authorities aimed to develop the venture capital activity. This has been done by sending to the Italian regulatory authorities papers on foreign initiatives in order to share best practices. As an association, at AIFI, they are not aware of initiatives and contacts between Government authorities at national level.
Lithuania	The first public initiatives to facilitate VC investments in Lithuania are implemented under the JEREMIE initiative. The management of JEREMIE funds is with the European Investment Fund (agreement between Lithuanian Managing Authority, Ministry of Economy and EIF was signed on 1st October 2008). In total EUR 80 million will be allocated form the Structural Funds for this initiative. To facilitate establishment and activity of Business Angels, VC and Start-up funds in Lithuania, 36.5 percent of the JEREMIE funds are foreseen to co-finance business angels' investments, seed, start-up and expansion VC fund (leveraged with private investments) and to be managed by private management companies.
Latvia	Taking into account answer to the 1st question, there is no need for such actions.
Luxembourg	*n.a.*

Malta	*n.a.*
Netherlands	*n.a.*
Poland	The Polish Ministry is cooperating with the representatives/experts form Germany. Information we gathered on PE/VC legislation in other EU countries were provided to us by Polish officials operating in other EU countries, but we plan to establish indirect cooperation with authorities in the other EU countries in the near future as we think stronger cooperation would promote exchange of good practices and would provide us with more detailed and fresh data on PE/VC markets in other EU countries
Portugal	*n.a.*
Romania	*n.a.*
Slovakia	*n.a.*
Slovenia	Yes, for example, in the process of setting up the public VC company (First Venture Capital Company, Ltd), the Slovene Enterprise Fund signed a co-operation and assistance contract with a Dutch VC fund. At the end of 2008 the first SEE venture capital workshop was organised in Slovenia by one of Slovenian VC Company and EVCA (Georges Noël, Director, Venture Capital Platform).
Spain	The Spanish supervisor cooperates actively in the Task Force on private equity created within the IOSCO Technical Committee. In 2007, this Task Force was mandated to conduct a preliminary review of private equity markets. The outcome of this analysis was the identification of seven issues relating to private equity markets, which could potentially pose risks to the financial markets. Further to this study, the Task Force is now focusing its efforts on two pieces of work: a survey on the complexity and leverage of capital structures employed in leveraged buyout transactions across relevant IOSCO jurisdictions; and an analysis on conflicts of interest which arise during the course of private equity business and the controls utilised across relevant IOSCO member states which aim to provide appropriate levels of investor protection. Such a narrow cooperation has not taken place with regard to mutual recognition, because the industry has not shown interest in venture capital cross-border operations.
Sweden	To be confirmed.
United Kingdom	HMT are actively represented in the appropriate working groups and have indicated their willingness to engage in appropriate bilaterals across EU Member States.

Source: National experts' answers (a summary of inputs received by end of March 2009)

Disclaimer:

This summary table contains only the main points and arguments that national experts sent to the Commission in the period from July 2008-March 2009. The views expressed by the national experts do not necessarily reflect the official position of the Member States they represented. The role of the Commission staff was to facilitate discussions and contribute to put together this summary table.

Consequently, the summary table should not be constructed as reflecting the position of the Commission and its services. Neither the Commission nor any person acting on behalf of the Commission is responsible for the use, which might be made of the information contained herein.