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REMOVING OBSTACLES

Expert group report

on removing obstacles to cross-border investments by venture capital funds

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About this report

This report is based on the work of experts attending the expert group on "Removing obstacles to cross-border investments by venture capital funds", organised by Directorate-General for Enterprise and Industry of the European Commission.

This report contains only the main points and arguments that were presented in the three meetings of the expert group. 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 in the group was to facilitate discussions and contribute to put together the report. Consequently, the expert group report 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.

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Executive Summary

Innovative firms in Europe face significant problems in accessing the funding they need to start, grow and compete on global markets since there is an equity gap for small and medium-sized companies (SMEs) in their seed, start-up and expansion stages. European SMEs indeed turn mostly to banks to obtain external finance and only in limited cases to alternative sources of financing - such as venture capital funds, but the money they get is often not sufficient. In particular venture-backed investments could fill in the equity gap.

While venture capital funds have become increasingly important, this external source of funding still remains fragile. The venture capital sector in Europe does not fully benefit from a single market and it is also less efficient and profitable than in the United States. Markets that are fragmented along national lines make cross-border investments unnecessarily complicated for venture capital funds to invest outside their home country and indirectly hinder innovative SMEs to reach economies of scale and specialisation. The venture capital industry has been urging the removal of the existing obstacles to cross-border investments within Europe so that the sector could perform better and also exploit the opportunities that are available within European SMEs.

The Commission recognises the strong entrepreneurial and innovation impetus provided by equity funding, with a particular focus on venture capital funding. The Commission launched a debate with national experts and industry stakeholders to discuss the existing obstacles to cross-border investments and possible ways to remove them as well as to encourage the development of a truly European venture capital market for SMEs.

This report describes some characteristics of national frameworks regulating local venture capital markets and summarises difficulties that practitioners reported on. It highlights that many European venture capital funds are small, operate locally and do not have resources to extend their operations outside home jurisdictions. Therefore, conditions especially for smaller funds need to be improved, since 80% of all venture capital deals represent investments into SMEs. Expert group members agreed that it is not only the size of venture capital funds that matters, it is also the size of their deals and markets in which they operate.

In a diverse European Union with now 27 sets of operating conditions, the level of development of venture capital markets varies and so do the frameworks affecting them. The group discussed the national approaches on legal, regulatory and fiscal frameworks, the lacking common understanding and missing legal certainty. These widely varying frameworks are affecting both fundraising and investing, putting additional burden on cross-border operations. While the group recognised the importance of a dynamic venture capital industry, in particular the industry stakeholders stressed that the Member States need to assess all the possible supply and demand factors that may contribute to market failures.

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**.

Member States could take steps towards recognising venture capital funds, which are registered and operate in other jurisdictions. This would allow them to operate across borders without having to go through separate registration and regulation processes or to invest through complex parallel structures.

The expert group recognised that it was up to the Member States to decide what would be the most suitable for them. There is a broad understanding that deeper and more efficient European venture capital markets would unlock the innovation potential of Europeans and promote economic growth and competitiveness. The main findings of this report will be taken into consideration as various Commission services develop policy on venture capital in the European Union.

1. Introduction and context of the expert group

Innovative small and medium-sized enterprises (SMEs) can only grow if they have access to suitable forms of financing; this may often involve private equity (PE) and venture capital (VC) financing[1]. 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. And even if successful in obtaining external finance, the money they get is often too little. **Financing innovative SMEs** is considered by many finance providers as an unattractive activity due to high transaction costs and low returns given the risk incurred, especially at the early-stage.

However, the reluctance of investors to invest in higher risk areas, where the expected returns do not compensate for the higher risk, such as in SMEs, is not the only barrier restricting these small firms in search for funding. Fundamentally, government policies often do not sufficiently encourage investments in SMEs or create incentives for venture capital industry to invest more in small firms. As a result *it is too difficult to access equity capital in Europe*.

The success of the **Partnership for growth and jobs** depends largely on European SMEs that are the essential sources of innovation and job creation. Improved access to financing for innovative enterprises is one of the key ingredients in allowing SMEs to fulfil their potential and one concrete step would be to *lift intra-EU barriers for cross-border activity of venture capital funds*.

Recognising the strong entrepreneurial and innovation impetus provided by equity funding, extending the benefits of the **single European market** to venture capital is extremely important, as this would lead to further development and deepening of the private equity and venture capital markets. Free movement of capital is one of the four fundamental liberties of the single market and the Commission has consistently built a legislative framework and taken various supportive actions to achieve this goal.

In the Communication "*Financing SME growth – Adding European Value*"[2], the Commission outlined a set of measures to help innovative SMEs by improving access to finance, in particular at their early stages, at both EU and Member State levels. Making cross-border investments in venture capital easier was one of the key goals of this Communication and the Commission called for concrete and pragmatic steps to overcome the existing legal, regulatory and tax barriers and asked the Member States to engage with the issue.

As announced in the Communication, the Commission then launched a debate on removing obstacles for cross-border **venture capital** investments and invited national experts and stakeholders to participate in an expert group. The Commission services facilitated discussions and provided administrative support for the meetings and drafting of this report.

This **expert group aimed at** identifying for each participating country the regulatory framework affecting venture capital funds - both those domiciled in the country of investment and those domiciled elsewhere. The group served as a forum to identify the management and professional rules in different countries as well as to discuss possible common definitions. Most importantly, this group aimed at finding solutions to overcome the existing obstacles for venture capital funds investing cross-borders within Europe.

Meetings and work of this expert group took place from October 2006 to March 2007, and its main conclusions are summarised in this report.

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[1] See enclosed *glossary* in Annex I for definitions of risk capital, private equity and venture capital.

[2] Commission Communication of 29 June 2006 is available *in all Union languages* at: http://ec.europa.eu/enterprise/entrepreneurship/financing/publications_documents.htm

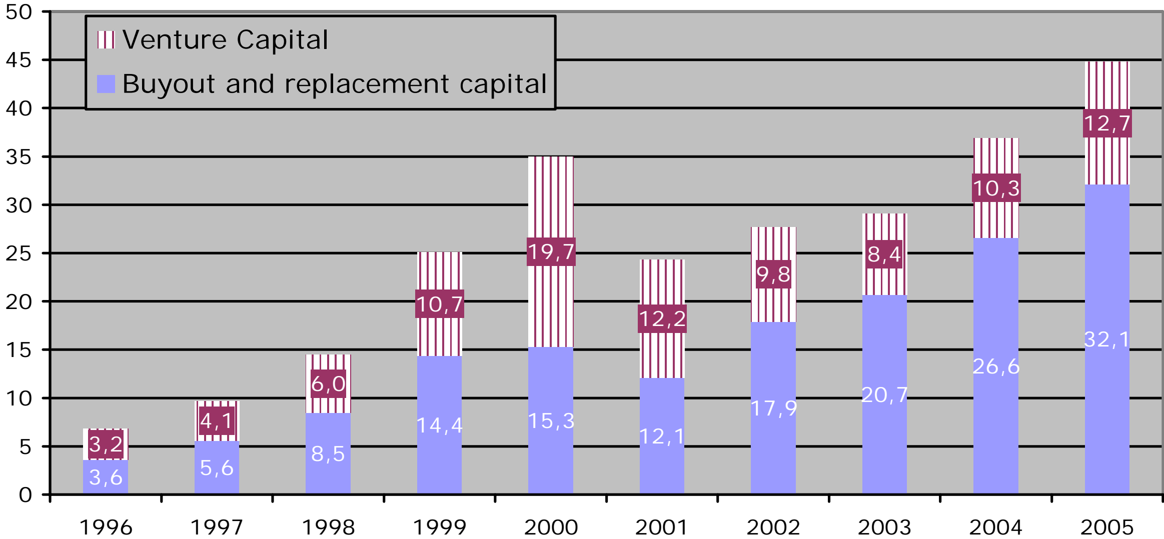
2. Recent trends in developing the venture capital market in Europe

2.1. Industry trends

Statistics have shown an **upward trend** in European private equity and venture capital (PE/VC) investments, notably since 2004. The buyout sector especially has been the driving force. In 2005, PE funds raised 71.8 billion EUR, up 2.5 times from 2004 levels; PE investments totalled 47 billion EUR, up 27% from 2004 and reached an all-time high (of the total amount invested, seed investments represented 0.2% by amount at 97 million EUR and 4% by number of investments; start-up investments represented 5% by amount at 2.3 billion EUR and 29% by number)[3].

Over the last ten years, European equity markets as a whole have developed markedly. Investments by European PE and VC funds increased by more than eight times from 5.5 billion EUR in 1995 to a record 47 billion EUR in 2005 (of which 34.3 billion EUR was buyout and replacement capital and 12.7 billion EUR venture capital). Within the increasing venture capital amounts, the major share continued to go to expansion capital and a smaller one to seed capital. A modest positive trend is reflected in the share of VC investments as a percentage of GDP which in 2005 amounted to 0.11% (whereas buyout investments were 0.31% of GDP). Some countries with a more open market approach also have a higher share of private equity investment as a percentage of GDP (i.e. the UK and Sweden above 1% in 2005, while the European average was around 0.4% of GDP).

Graph 1: PE/VC invested in 2005



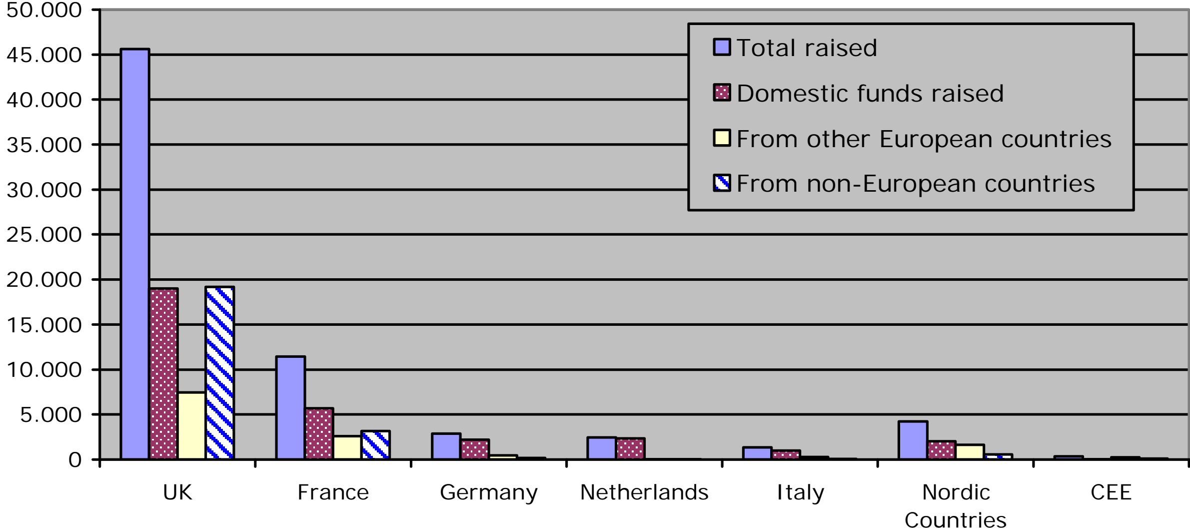
Source: EVCA Presentation to the Expert group meeting, 24 October 2006

The openness of an economy is also reflected when analysing PE/VC funds raised in a country. In 2005, the UK was the leading European private equity market with almost the same level of PE/VC funds raised by non-European countries as by domestic funds; the share of funds raised from other European countries was smaller, although still much higher than in any other European country. The reason is that British fund structures are attracting investors. By total amounts of PE/VC funds raised, in 2005, the UK was followed by France and the Nordic countries (*as shown in Graph 2 below*).

[3] Figures from 2006 Yearbook of EVCA (*European Private Equity and Venture Capital Association*); Preliminary figures for 2006: http://www.evca.com/images/attachments/tmpl_8_art_227_att_1095.pdf

The industry reported that the European VC industry was becoming **pan-European and globally oriented,** with a strong tendency to expand their investment focus. However, among the main reasons that VC funds would not expand their international investment focus in the next 5 years were **legal restrictions** and the **limited size of the fund.**

Graph 2: PE/VC funds raised by country in 2005



Source: EVCA Presentation to the Expert group meeting, 24 October 2006

2.2. Industry performance and economic impact

The number of companies receiving PE/VC backing was 4,995 in 1995 and 7,207 in 2005. Between 2000 and 2004, European PE and VC financed companies created 1 million **new jobs**, of which VC-backed firms created 630,000 (and buyout-financed firms created 420,000). In the period mentioned, employment grew by an annual average of 5.4%, of which 30.5% per year was the employment rate on VC-backed companies (and 2.4% annually was the employment rate in buyout-financed firms). [4]

The industry reported that VC-backed companies spend on average 45% of their total expenses **on R&D**, amounting to an average 3.4 million EUR per company per year. This averages to 50.500 EUR per employee per year and is 6-times higher as per employee expenditure of the EU-25 top 500 R&D spenders.

In Europe 78% of the total number of investments in 2005 went into companies employing less than 100 employees. Although external equity investments are a relevant option only for a very small number of SMEs, they are important **for the rapid growth of innovative firms**.

The majority of investments in Europe are **domestic** – they are made within private equity operators' home country: in 2005, 85% by number and 62% by amount of investment. However, according to a recent industry survey[5], European VC firms are planning to invest more cross-border, with a **primary focus in Europe**: out of 119 European VC funds surveyed, 66% indicated they intend to expand their international investment focus over the next five years and two thirds planned to expand investment into other European countries (32% of these VCs favoured Western Europe markets, 21% Central Europe and 14% in

[4] Figures from EVCA Research Paper on Employment Contribution of PE and VC in Europe: http://www.evca.com/images/attachments/tmpl_9_art_129_att_953.pdf

[5] Deloitte - EVCA 2006 Global Venture Capital Survey

Eastern Europe). The same survey showed encouragingly that **Europe is now perceived as the preferred destination by 30%** of global venture capitalists intending to expand their investment activities. In view of this, *removing obstacles for cross-border investment becomes increasingly important.*

2.3. Venture capital markets: EU versus US

Although there has been growth in European venture capital markets in recent years, they **remain behind** the United States. Before the 1990s, venture capital investments in Europe were limited. VC investments boomed on both continents between 1995 and 2000, but the subsequent bursting of the investment bubble led to a sustained decline in investment levels both in the EU and the US. At the same time the gap between Europe and US narrowed as both the bubble boom and its burst were more pronounced in the US. However, US venture capital funds adjusted quickly to changes in market conditions and recovered much quicker (in particular those operating close to centres of activity, such as Silicon Valley) than the markets in Europe.

In relative terms in 2004[6], overall US venture capital investment amounted to 0.18% of GDP and European venture capital investment to 0.11% of GDP. When comparing these relative figures, it might seem that EU and US are converging. However, the development of European VC industry is **held back by fragmentation**, among other reasons. Whatever the reasons, the European VC markets seem **less efficient** and **less profitable** than in the US.

On average, the overall **profitability** of European VC investments looks **low**[7]. As of the end of 2003, the average internal rate of return (IRR) for five and ten year investment horizons were 2.3% and 8.3% respectively. The performance of early-stage venture investments was particularly disappointing with five and ten year investment horizon IRR as low as -1.8% and +1.3%. In the US, the picture was better, with IRRs of 22.8% and 25.4% for five and ten year investment horizons. The **performance gap** between the European and US funds was even more striking in early stage venture investing since US funds showed IRRs of 54.9% and 37% for five and ten year horizons. However, many European-based funds and foreign funds investing in European target companies are capable of delivering attractive returns to their investors and hence give a chance to innovative start-ups and new technologies being put in the market. For example, the best-performing top quarter VC funds in existence since 1980 until 2005 delivered a compounded average return of 17.1% in 2005 and 18.6% in 2004.

Although good funds can still raise money, overall these low returns act as a brake on the development of the industry. **Low returns** make, in particular, seed and start-up investments unattractive, leading to a **lack of investors** that prevents new European enterprises from reaching a size where they can attract expansion capital.

Despite the volume of venture capital and private equity funding available, it is not clear that the European market is mature enough for innovative enterprises to get enough equity funding. European companies face substantial **problems in accessing finance**, while in the US more money is raised and invested.

Furthermore, European innovative companies with potential for high growth are not funded with amounts large enough and do not grow into globally competitive firms. Less seed and start-up capital is raised in Europe than in the US.

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[6] DG ECFIN document of January 2006: Venture capital investment in Europe in 2004

[7] DG ECFIN Economic Paper, March 2006: Profitability of VC investment in Europe and the US: http://ec.europa.eu/economy_finance/publications/economic_papers/2006/economicpapers245_en.htm

One of the key differences between EU and US markets is that Europe funds **more** VC-backed firms (7207 EU companies[8] versus 5406 US companies[9]), with **smaller amounts** than in the US. The average technology investment is around 0.9 million EUR in the EU against 6.1 million EUR in the US. This drip-feeding has various side effects, including **limiting growth potential**. The European average for seed and early start-up investment is 0.5 and 0.8 million EUR, respectively, whereas in the US the corresponding average investment is four times higher, at 1.8 and 4.0 million EUR, respectively.

American venture firms are usually characterised as committing larger sums to individual businesses, investing earlier in the lives of portfolio companies, and playing a more hands-on role in their subsequent development[10]. The result is that the US markets create a small number of rapidly growing, successful companies, as opposed to the European approach of targeting more modest returns from firms across the whole investment portfolio. In the US during the 1990s, 11 VC-backed companies returned more than 250 times their venture capitalists' original investment, whereas in Europe, only 10 venture-backed companies returned more than 20 times.

An example: a young European company is established and launches a product and gets funded by a first VC fund of approx. $5 million seed capital, but in the US it would get 3-times as much to grow into a competitive company.

Practitioners stressed that in comparison with US funds, EU funds have greater running costs and more uncertain regulatory and tax environment.

2.4. A changing environment

While within Europe differences exist between countries in the stage of development of venture capital markets (some countries have active and well performing markets, whereas in other countries venture capital industry has only recently started to develop), the **global** private equity and **venture capital industry** has succeeded in mobilising institutional investors and deploying their funds to attractive business opportunities throughout the world.

The industry is urging the removal of the existing obstacles to cross-border investments within Europe so that the sector could perform better. This need is market-driven as the European venture capital industry is globalising. Practitioners noted that in some of the larger Member States with mature venture capital markets the concept of a "country fund" has become irrelevant and it is rather a "**sector fund**" and specialisation by sector that matter; and that those sector funds need to invest across borders and raise money globally. According to some national experts, however, in markets that are only just starting to develop and need public intervention to boost their growth, smaller "**country funds**" can have an important and catalytic role.

The trend in the European venture capital industry has been towards **larger funds** and this is likely to continue. However, since this industry is growing as a whole, so far there has been no indication that the industry would be heading towards concentration. On the contrary, in the short term new VC funds are likely to enter the market after the recent difficult years, which will increase the **competition** in the industry.

[8] Figure from EVCA 2006 Yearbook

[9] Figure from Ernst&Young, Dow Jones, Venture One; 23 August 2006

[10] EVCA 2006 Yearbook, p. 16

Furthermore, in a **diverse European Union** now with 27 Member States, differences exist not only in terms of the level of development of venture capital markets, but the diversity is reflected also in regimes regulating those markets. Nevertheless, in all countries the main goal should be supporting innovative SMEs to achieve employment and growth.

From a public policy viewpoint the venture capital sector is an important factor contributing to European competitiveness but it has worked **below its potential** in Europe. As a consequence, venture capital as a source of alternative external financing has not contributed sufficiently to improving access to finance for innovative SMEs, *facing particular problems in all European countries*, nor has it managed to reduce the existing **equity gap**.

There are both cyclical and structural reasons, but the structural ones (market fragmentation) are a more important long-term obstacle, *as summarised in this expert group report*.

The expert group members discussed whether Europe **lacks a growth culture**: it seems that neither the investee companies nor the funds are aggressive enough in pursuing growth.

Given the considerations outlined above, industry expert emphasised that Europe as a whole was of the right size for developing a VC industry, whereas individual countries were not.

3. Increasing the cross-border activities of venture capital funds

Venture capital has become an essential part in generating economic growth. Active venture capital markets are important drivers of a more competitive, entrepreneurial and innovative Europe. These markets contribute particularly to creation of new jobs, and to the design and use of new knowledge and technologies.

3.1. Current situation in Europe

Currently, **a single market** for venture capital **does not exist** within Europe. Practitioners noted that the VC market is not benefiting from the same level of integration as other financial markets. Letting venture capital markets share the advantages of the single market would benefit both venture capital funds as actors on the supply side and SMEs as funding-seekers actors on the demand side:

- The increased availability of venture capital would benefit **innovative SMEs,** in particular through more seed and start-up capital. They could exploit innovations and new technologies, boost jobs and grow into competitive companies.
- **Venture capital funds** operating across borders over a wider geographical area could more easily reach economies of scale, develop a specialised sectoral expertise, raise more money, diversify portfolios and improve returns.

Innovative and high growth firms suffer from problems in raising capital, in particular in those parts of Europe where venture capital market is less developed or has only recently started to develop. Throughout the EU, fundraising and investments are concentrated in a limited number of regions, and access to suitable forms of financing for innovative SMEs is **unevenly spread across the EU**[11].

[11] Detailed information on number of VC funds in respective countries is in Annex III.

The group noted the **differences among Member States** concerning the development of equity markets, and activities on those markets as well as the size of their markets.

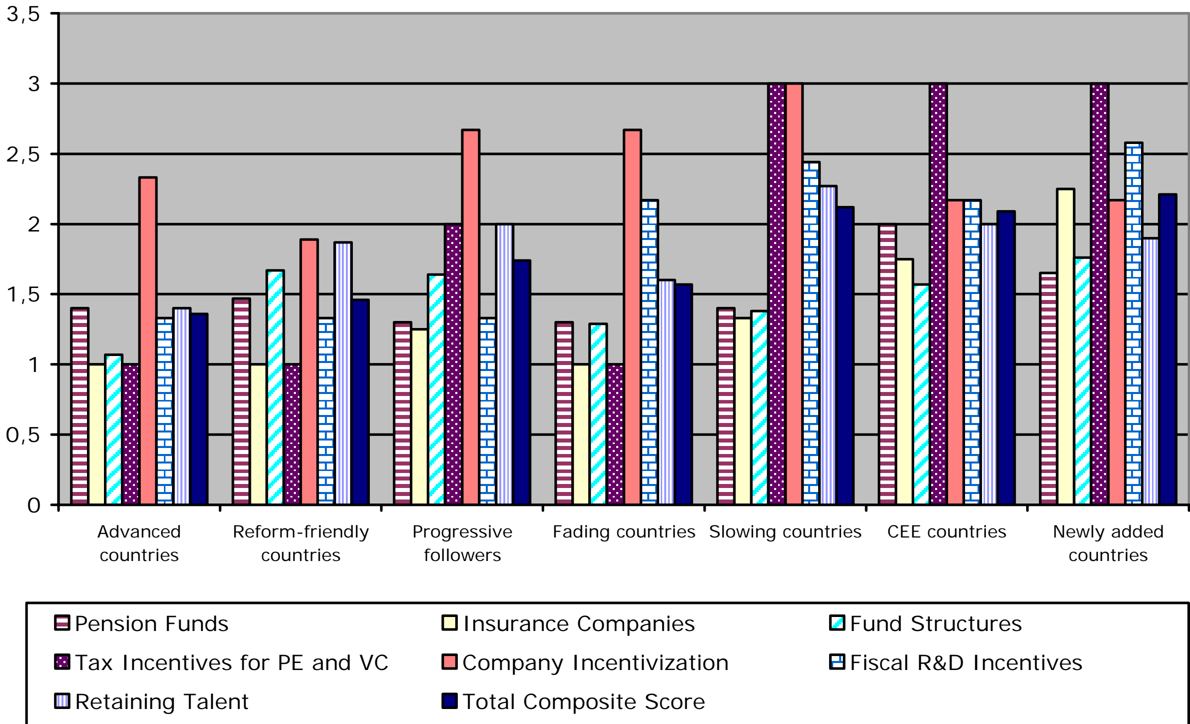
Some Member States have more mature and well-performing venture capital markets; some have less favourable environment but functioning markets, whereas in some Member States investment and fundraising opportunities are more limited.

Especially in the new Member States, equity markets have only recently started to develop and funds in those countries are smaller and thus need apart from more VC investors also to gain experience and knowledge.

Recent industry study[12] **benchmarking** European countries' tax and legal frameworks at levels of limited partners (investors), fund managers and investee companies grouped countries[13] in the following "country clusters":

- advanced countries: Ireland, UK;
- reform-friendly countries: France, Belgium, Spain; Luxembourg;
- progressive followers: Denmark, Austria[14], Finland;
- fading countries: Greece, Netherlands; Portugal, Italy, Hungary;
- slowing countries: Norway, Sweden, Germany;
- CEE countries (little improvement): Czech Republic, Poland, Slovakia;
- newly-added countries: Estonia, Latvia, Slovenia, Romania.

Graph 3: Benchmarking study – composite scores of listed "country clusters":



Source: EVCA Presentation to the Expert group meeting, 20 November 2006

[12] EVCA Benchmarking study, December 2006 (cut-off date: 1 July 2006): http://www.evca.com/images/attachments/tmpl_8_art_215_att_1051.pdf

[13] Bulgaria, Cyprus, Lithuania and Malta were due to difficulties in gathering information from those countries excluded from the final EVCA Benchmarking analysis.

[14] Austrian legal form MFAG is valid only till 31 Dec 2007; its replacement could affect any subsequent ranking.

3.2. Size matters

The European venture capital industry is very diverse in terms of fund size, capitalisation, management and investment strategies, though European VC funds do have some similarities and face similar problems.

As opposed to buyout funds, many European VC funds are relatively **small, operate locally** and do not have the resources to extend operations geographically or to new industry sectors and at the same time provide the investee companies with the support they need. Also, conditions for smaller funds need to be improved, since 80% of their deals represent investments into SMEs.

Industry experts shared the opinion that by definition venture capital is a volatile and risky business and that both the size of a VC fund and the size of VC market matter, the latter being often limited by the size of the country. In this respect the members of the expert group identified the following aspects as significant factors for investing in seed and early-stage firms as well as for a fund's investment focus and cross-border operations:

- The size of VC deals:

  European VC deals are **smaller** and are not sufficient for innovative SMEs; and market fragmentation acts as a brake on seed and early-stage investments. High overhead costs hit the profitability of smaller funds especially hard, which makes them to focus more on larger underlying investments.

- The size of VC funds:

  Although some European venture capital markets are maturing, they are producing only a limited number of large and successful funds. The majority of the existing VC **funds** in Europe are rather **small**, although there is a large variation[15]. Moreover, the costs and complexities of cross border investments further disadvantage smaller funds and deter them from operating outside their own jurisdiction and thus limit their growth and specialisation potential. Furthermore, the size of a VC fund is important, not just to build international presence, but also to allow for greater risk taking inside a fund's portfolio, and to assume different but still controllable risk. Especially for specialised funds, potentially interesting investments might be mostly outside its home jurisdiction.

  However, the group also noted that some smaller funds or **niche players** might operate successfully in home markets without investing beyond local borders. Nevertheless, even for those VC funds a simplified and friendly regulatory local environment could stimulate their investments.

- The size of the VC market (and the size of the country):

  The **limited** size of venture capital markets in many Member States (*especially in the new Member States and where the industry has only started to build up)* makes it necessary for venture capital funds to operate across borders to achieve any sustainable size.

  Funds need **a critical mass of deals** to reach economies of scale, specialise, and more easily raise funds from investment institutions. The only way that funds in smaller markets can compete is to allow them to grow easily across borders, invest in geographically wider area and encourage them to become larger, more professional funds.

[15] Information on the size of investment portfolio of VC funds in respective countries is in Annex III.

The venture capital industry is no longer a marginal industry; it has become an essential ingredient. However, Europe is not yet considered as a fully viable market.

Although the number of pan-European funds has increased, this could have been more pronounced if regulatory requirements had not complicated cross-border investments.

Industry experts stressed a need for Europe to address the current market fragmentation in one or two years, otherwise the prospects for an efficient venture capital market would be diminished, with negative effects on the competitiveness of Europe.

Some experts estimated that the average size of venture-backed investment in Europe is between 1 and 5 million EUR and that VC funds alone cannot solve the problem of a lack of risk capital in Europe. In order to expand private investments, business experience as well as incentives for serial entrepreneurs are needed on the demand side. On the supply side governments need to contribute public money to the market, following established good practices in public-private-partnerships.

4. Fragmentation of the European venture capital market

The group discussed national practices and regulatory approaches defining the environment of VC funds in Europe[16]. The participants recognised that despite the increasing importance of venture capital funding in the EU, it is **unnecessarily complicated for venture capital funds to invest in firms outside their home country.** This is a barrier for the functioning of the single market. Because venture capital funds are often liable for separate registration or establishment in each Member State, cross-border operations become both expensive and time consuming. Tax legislation, administrative rules and legal requirements - all are the responsibility of national authorities - create major barriers for funds looking to invest outside their home country.

The following barriers to improving the integration of European VC markets have been identified:

- **On the supply side:** VC funds face obstacles when investing across borders in Europe, since they are often liable for **separate registration or establishment** in each Member State, which increases costs and time spent for fund structuring. Some larger VC funds that are nevertheless operating across EU borders have to channel investments through complex and costly **parallel vehicles** established in other countries. National regulatory frameworks could be more responsive in recognising the need for VC funds to be able to invest outside their home market without having to establish parallel structures.

- **On the demand side:** many innovative and high-growth firms face difficulties in accessing equity finance. Although external equity capital is an important source of financing only for a limited number of innovative firms, understanding its importance for growth financing is essential also for entrepreneurs. Improving entrepreneurs' **investment readiness**[17] is the necessary counterpart for improving the supply of venture capital and providing basis for a rapid expansion of high-growth firms.

[16] Some examples are described in Annex III.

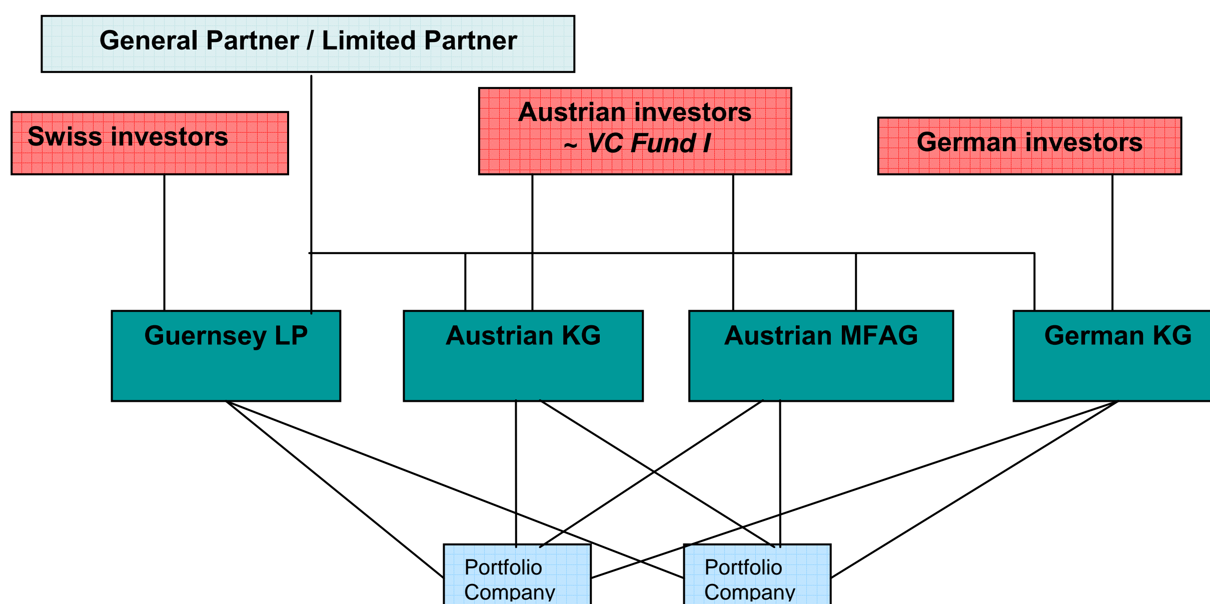
[17] The Commission organised a workshop on investment readiness – summary report is available at: http://ec.europa.eu/enterprise/entrepreneurship/financing/publications_documents.htm

4.1. Examples of barriers hampering VC investments in Europe

The group discussed the national approaches on legal, regulatory and fiscal issues that are not aligned and often do not provide legal certainty, putting additional burden on cross-border operations - affecting **both fundraising and investing**. The following example was described during the discussions - *as also shown in figure 1:*

- A venture capital fund ("VC Fund I") with an investment team based in Austria and focusing on investments in Austria and, to a lesser extent, certain neighbouring countries, was targeting investors in several jurisdictions.
- VC Fund I was first incorporated as an Austrian company limited by shares (MFAG). The reason for this is that the MFAG benefited from a favourable tax regime, provided that the MFAG invested at least 75% of its capital in Austrian companies and certain additional quantitative criteria were met. As the fund's general partner could not participate in the MFAG due to legislative restrictions, a parallel fund, constituted as an Austrian limited partnership (KG), was set up for purposes of the general partner's investment in the fund.
- The Austrian structure was not tax efficient for a number of non-Austrian investors, primarily Swiss and German, interested in participating in VC Fund I. A third parallel fund under the form of a Guernsey limited partnership was created for primarily the Swiss investors. To accommodate for the concerns of German investors facing similar tax issues as the Swiss investors but whose internal policy prohibited them from investing in offshore vehicles, a fourth parallel fund was incorporated as a German limited partnership (KG).
- The **cost** of the on-going management of the four parallel structures spread over three different jurisdictions during the investment period exceeded 0.4% of the total committed capital. The incremental cost, together with the high transaction costs for setting up the structure[18], significantly impact the funds overall performance.

Figure 1: Fund structuring with parallel structures in different jurisdiction



Source: M.Leander (EIF), U.Söderholm (Andulf Advokat), Presentation to the Expert group, 20 November 2006

Comment: Austrian legal form "MFAG " is valid until 31.12.2007 (a new regulation is in preparation).

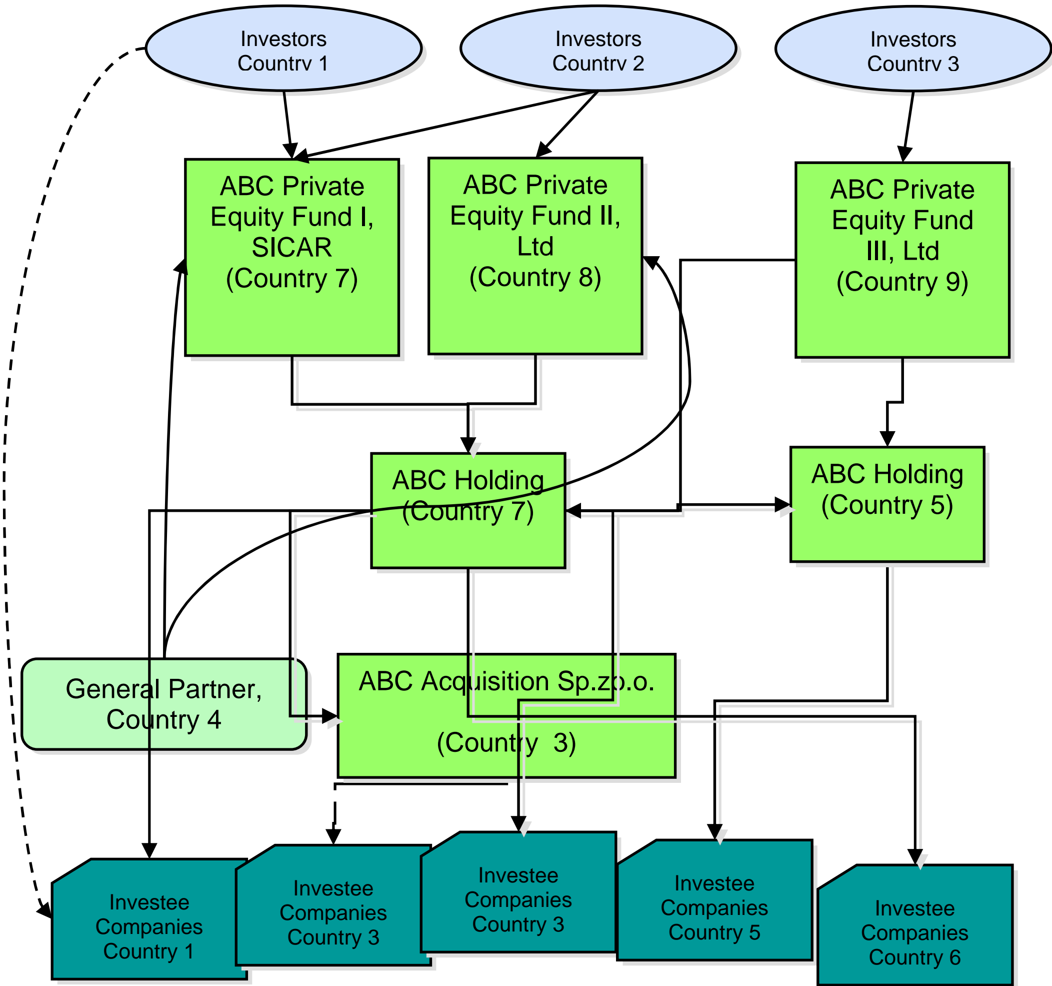
[18] "Typical" fund formation fees amount to 1% of total fees as a percentage of a LP's commitments over the ten-year life of a fund (from 2006 Fund Terms Advisor; Private Equity Intelligence).

Various other examples from the markets demonstrated that venture capital investments can indeed be done across borders. However, the examples given illustrate hurdles that any cross-border investment has to cross. Fund managers are able to build complex structures with **parallel vehicles** and deal with them but many funds are avoiding cross-border investment because of the **complexities** and **high fund structuring costs**.

Another example showed how unaligned national regimes and a lack of a common understanding lead to complex and costly fund structures when they cater for investors from different jurisdictions investing in a variety of European countries – *as shown in figure 2*:

- EU Member States have adopted different treatments and practices in areas such as tax status of the available PE/VC fund vehicles, treatment of capital gains derived from PE exits, permanent establishment criteria for General Partners, private placement rules or qualified investors definition.
- As a consequence, European fund structures often require separate vehicles per jurisdiction and category of investors, and separate vehicles per country of investing, resulting in a complex structure with several layers of vehicles.
- Costs for both setting up and administering such structures over the life of the fund, are very high, thus rendering the market **unattractive for smaller players**.

Figure 2: Fund structuring with parallel structures in different jurisdiction



Source: A.Kinsch (Ernst & Young Luxembourg), Presentation to the Expert group meeting, 19 January 2007

With reference to Figure 2, industry experts gave further examples on problems of different VC structures. In general, they concluded that fund vehicles as well as their regulatory treatment differ from one country to another. Several countries have created a working VC structure but such structures usually only fit into the environment in the respective country and work for **domestic funds only**. In many cases, a workable structure can be currently established only offshore. Besides high costs, this also creates the risk that such an offshore VC fund is functional only for a limited time.

There is no single vehicle that can meet all the requirements needed in different jurisdictions. There are some good examples, such as the Limited Partnership (LP) in the United Kingdom and "*Fond Commun de Placement à Risque*" (FCPR) in France, which attract investors to invest through LP in the UK and through FCPR in France. However, the UK LP is, *for example*, not recognised in France and thus investors from the UK need to invest in France through intermediary vehicles).

It was noted that some regulatory frameworks are based on rules that do not fully recognise the contribution of the venture capital industry to economic well-being. This is another barrier and VC investors therefore argue for a **more stable and predictable** environment.

4.2. A variety of operating models?

The group agreed that there are also players to whom cross-border investments would not be appropriate. Some VC funds, especially **smaller funds** and **niche players** or those operating in geographically-limited areas with a developing VC market, might not consider cross-border deals at all or might have sufficient deal flow and could perform well locally.

Such funds with portfolio orientation predominantly in home jurisdiction **provide local solutions** for firms seeking equity and if there are no bottlenecks in the investment cycle that would limit later investments and exits, such funds might not need to invest internationally.

Moreover, VC funds in certain countries are so small (up to 10 million EUR) that they are **not suitable** for cross-border investments. However, experts from some smaller Member States noted that geographical limitations might lead even such "smaller" funds to operate outside their home jurisdiction.

The group noted that it is important for each Member State to have investment vehicles that are acceptable and work well in the home market first. Especially in bigger countries, the likelihood is that medium-sized VC funds (of less than 50 million EUR) will only invest in their home jurisdiction; and if they invest outside it is likely to be only in jurisdictions with a similar investment environment.

4.3. Summary of key problems and possible solutions

The most important problems that the venture capital industry is facing in practice were summarised and analysed as follows below in Table 1.

Table 1: Key practical issues hindering VC investments and possible solutions:

Problem	*Possible solution*
Fund raising and distribution (between investors and VC funds)	
Different national standards to determine qualified investors in private equity - VC (institutional versus private investors)	*Common EU definition for a qualified investor (for institutional and private investors)*
Different national regimes concerning where institutional investors can invest (country-specific restrictions)	*Using a prudent person rule (implementation of the prudent person rule as defined by the pension fund directive 2003/41/EC)*
Difficulties in marketing private equity and VC funds in different Member States due to different national approaches to private placement/ exemptions from public offer rules	*Common EU approach to "private placements"*
Tax neutrality (between VC funds and the country of investment)	
Complex fund structures depending on investors' home countries and investee company countries (aiming at avoiding double taxation)	*Taxation of capital gains in the home country of the investors; equal treatment of direct investors and PE investors; equal treatment of quoted and unquoted equity.*
Different rules and requirements for private equity funds to benefit from tax treaties	*Tax transparency: list of mutually recognised PE fund structures (or common criteria for Member States to determine tax transparency); Tax neutrality: PE funds established as limited companies (not transparent) should benefit from double taxation treaties; common requirements for benefiting from these treaties.*
Professional standards (for VC funds)	
Different local rules for valuation and reporting (increased costs and a lack of comparability)	*Encouraging use of industry self-imposed professional standards (i.e. those of EVCA)*
Problems in applying IFRS (International financial reporting standards) to PE funds: in particular the consolidation requirement	
Permanent establishment (for the general partner or fund manager)	
Risk of the general partner to have permanent establishment in the investee company country (resulting in adverse tax consequences)	*- Mutual recognition of management companies; or passport for management companies;* *- in the long term, a "passport" for a management company*

5. Various fund structures within the EU

Venture capital funds can be established under various legal regimes. Some Member States have widely used solutions for locally established funds, while others might not have any appropriate legal structure or are such structures only planned. In some Member States a limited partnership structure is the most used one, but alternative corporate or similar vehicles can also be available. It should be noted that there is **no standard definition** of "limited partnership", neither a common understanding about its features.

While governments are becoming aware of the need to stimulate venture capital, the danger is that attempts to improve supply result in even more **complex** legal and tax requirements and **increased costs** for funds. At present, a fund structure aimed at fundraising and investing in different EU countries requires establishment of additional intermediary or **parallel vehicles**, often involving off-shore entities, and consequently results in additional costs and complexities.

Consequently, **only larger** VC funds usually set up intermediary vehicles that avoid double (or multiple) taxation of investor returns. Obtaining information about how certain jurisdictions treat funds is often time consuming and costly for venture capital funds, limiting such operations to larger funds that can absorb the overhead costs.

At present, none of the existing structures currently available in Europe is able to accommodate all types of investors from different countries, both within and from outside the EU. In this respect; the experts grouped countries as follows:

- First group: countries with specific structures to accommodate national and foreign VC investors on a tax transparent or tax-neutral basis;
- Second group: countries with specific VC structures, including some structures that are tax-exempt, but these structures are too complex and restrictive and are thus in practice virtually useless;
- Third group: countries without any rules or regulation and no structure defined in local legislation; in some cases, investment vehicles are using existing corporate structures; and in other cases, investments are possible only by using an off-shore or intermediary investment vehicle.

5.1. Examples of national venture capital markets

For the purpose of this group, the experts reported on development of VC market and regulatory framework in their respective countries[19]. Some of the examples presented are:

- In the **United Kingdom**, the venture capital market has performed outstandingly in terms of fund raising and attracting non-UK investors. The Limited Partnership (LP) fund structure has a enabled specific regulatory and fiscally transparent framework and has also led to a wide and recognised use of an LP structure. Moreover, with regard to the regulatory framework affecting domiciled funds, the "light touch" regulatory framework as administered through its Financial Services Authority (FSA) should be pointed out. Although regulatory, it tends to operate in an enabling manner. As for non-domiciled funds, they are not very prevalent in the UK, probably largely because the regulatory framework around domiciled funds is enabling a light touch. The introduction of a less-enabling regulatory framework for domiciled funds would probably have the unwanted effect of pushing funds offshore.

[19] Detailed information on various existing structures in different countries is in Annex III.

- In **France**, the venture capital market has also preformed well. Since the 1980's, a specific legal framework FCPR (*Fonds Commun de Placement à Risque*) has enabled fiscally transparent structures (50% of unquoted companies) and the FCPR can be used for VC funds, funds of funds, buyouts. Hence, FCPR can only be registered in France and only managed by a management company which is domiciliated in France. The French legal framework cannot regard FCPR as a permanent establishment of a foregin investor and consequently there is no risk for a foreign investor to be taxed twice.

- Conditions in **Ireland** are similar to those in the UK: the LP structure is the predominant one, but a general partner (GP) in a Limited Partnership does not have to be regulated in Ireland. However, some larger VC funds have voluntarily chosen to be regulated by the Financial Services Regulator; this adds to their credibility internationally and increases their status when fund raising. Funds that are registered in Ireland can also invest abroad and they are investing mostly in the UK.

- Venture capital financing in **Luxembourg** may be provided either by regulated and supervised funds in the form of investment companies in risk capital (SICARs) created by a designated law of 15 June 2004 or by non-harmonized investment funds (UCIs) under the law of 20 December 2002 as amended relating to undertakings for collective investment or by unregulated undertakings subject to general company law. Most SICARs are operating cross-border. Securities issued by a SICAR may only be acquired by *well-informed investors* which are defined as any institutional investor, professional investor as well as any other investor who meets certain conditions (as explained in Annex III). SICARs having a legal personality the legislation does not foresee any special provisions regarding their external management by specialized or dedicated *management companies*. Moreover, in Luxembourg there is no specific legal framework applicable to *non-domiciled venture capital funds*. Foreign VC funds wishing to be active in Luxembourg have to comply with the local general legal framework. They have to make sure that in view of the type of activity and the targeted investors, a license under the financial sector legislation is not required.

- In the **Nordic region**, markets are thriving and maturing; they are open and allow a wide presence of foreign investors that are involved in biggest deals of the VC sector. - In **Denmark**, the market is relatively small with around 50 VC funds established there of about 53 million EUR on average; no specific regulatory framework exists for VC funds and LP is a widely-used structure (it is also possible to establish a Limited Partnership company under the Danish Public limited Companies Act) and tax transparency exists, what is attracting foreign investors. Danish fund structure is widely used in the region and even more commonly used are funds established in the Channel Islands.

- No specific legislation is either in force in **Sweden**, though regulatory framework exists for LP (Limited Partnership) and LLC (Limited Liability Company). The market is now maturing: an increasing number of international investors is investing in Swedish funds and some Swedish funds are based on UK Channel Islands.

- The **Norwegian** market is very open and it is relatively easy for LPs to invest into or out of. There are about 10 to 20 LPs consistently investing into PE/VC, and about 8-10 larger active VC firms as well as 5-7 PE players. There is no legislation put in place for VC/PE. Norwegian corporations may currently receive capital gains and dividends without being taxed. Private investors are taxed. However, not many local VCs of a certain size choose to use the local structure, as the tax regime is considered unstable. Funds are typically established using a Danish structure or similarly on Jersey/Guernsey. Fund structuring is driven by international LPs need for tax transparency. Most VCs are local, but several are investing cross-border in the Nordic area and into the UK and US.

- New tax legislation has been in place in **Finland** since the beginning of 2006 treating Finnish VC funds similar as direct investors and introducing new tax treatment for VC investments, but investors have so far not taken advantage of this new Finnish structure and continued to invest either through a Danish structure or in the Channel Islands. The new Finnish Law namely requires that whenever a Finnish fund is investing abroad it has to have a permanent establishment abroad (as explained in Annex II).

- In **Germany**, no legal difference exists as regards private equity and venture capital structures. There are two main types: on the one hand, a larger number of funds using the Limited Partnership (LP) structure that is not licensed; and on the other hand, a smaller number of funds using the structure that is licensed at the state level (but not at the federal level). There is currently a debate about conditions for tax transparent funds as well as on a new law on private equity (that is to be

adopted in 2007, applicable as of 2008). Funds, domiciled outside Germany, are bound by their respective national regulatory frameworks. Foreign, not domiciled PE and VC funds, operating in Germany, are organised in the legal structures of the US Delaware LP, the Dutch NV, the Luxembourg SICAR/SICAV, the French FCPR and the Swiss "Investment Company". Furthermore, Guernsey and Jersey structures are often utilised.

- The new legislation that has been in force in **Spain** since end of 2005 has turned Spanish VC market into a much more attractive and flexible environment, which has resulted in an increase of VC investments by more than 30%. The new law allows certain tax benefits (although VC funds are not really tax transparent, they are almost exempt from company tax and fully exempt from VAT; non-domiciled funds without a permanent establishment in Spain do not pay tax on profits).

- **Italy** is attracting foreign investors with a tax transparent vehicle "*Fondo Chiuso*"; and more than 50% of funds raised come from abroad. Currently, the Italian Government is also trying to expand the tax transparency to domestic investors. Domestic funds now represent about the 50% of the private equity and venture capital players and they grew in the last few years, especially due to the improvements in the regulatory framework and in the risk diversification rules.

- In **Portugal**, the venture capital market has developed and domestic funds are prevailing (only 7 out of 39 funds have some cross-border activities), despite the small size of the domestic market. The new legal framework, which is expected during the first semester of 2007, will clarify and simplify the regulatory environment, and it is likely to have a positive effect on the venture market, allowing a greater and more varied number of new players to enter in the market. Moreover, non-domiciled VC funds can operate in Portugal on the same conditions as any foreign investor. Portugal offers tax incentives for VC only when investing through VC Funds registered under the Portuguese law.

- In the **Netherlands**, VC funds are exempt from regulation. No real impediment exists for private equity, except of taxation. For fund structuring either a "BV-structure" (limited liability company) or a CV-structure (limited liability partnership; kind of a LP-structure) is used; it is to be checked where the investor comes from, though non-domiciled funds can use the same framework as domiciled funds. Fund structuring works, but it is expensive. Moreover, cross-border activities do exist, though it is difficult to market a BV structure that is not that well-known as a LP. Cross-border activities are not that complicated because of the existing regulation but very much because of taxation. Most Dutch VC funds are locally-oriented; and it is not sure whether larger amounts of funds could be raised.

- The venture capital industry in **Austria** is young; it started to develop only a decade ago and is still developing. Currently there are 40 funds with average size of 35-50 million EUR. There is no specific regulatory framework for VC; except for one specific regulation for taxes that is not enabling tax transparency. The legal form of "MFAG" will no longer be possible after 31.12.2007 (a new regulation is being prepared).

- In most of the new Member States, venture capital markets are small and immature and have only recently started to develop (in parallel to certain governments' incentives for public-private-partnerships in establishing VC funds) and thus no regulatory framework yet exists. **Lithuania** as well as **Estonia** might adopt new legislation in 2007. In **Latvia** and overall in the Baltic region, Nordic investors have started to invest in through local branches. VC funds registered in any other EU Member State intending to invest in Estonia have only to notify the authorities, whereas funds from third countries would need to apply for a license.

- In **Slovenia**, the market is small and immature and has also only recently started to develop. Companies can invest in venture capital, but cannot benefit from any tax relief or other tax advantages. At present, no regulatory framework has existed and current conditions are not attractive neither for domestic nor non-domestic funds. Some VC funds have been however registered locally, whereas 3 abroad (1 in the Netherlands and 2 in Austria). A new law regulating venture capital (and certain tax advantages for VC investors) is in preparation (it is expected to be adopted in mid- 2007).

- Also in **Hungary**, the VC market is rather immature. There are 20 market players, of which only 2 funds are public and 3 more funds with a direct public intervention, whereas others are foreign funds managed locally (for a representation office, the Company law applies). If a foreign fund is registered in Hungary, it needs to operate under Hungarian law (but there is currently no such example). Existing funds are concentrating on later stages and thus a gap exists in early stage investments. Changes in legislation are expected (some proposals include tax incentives for VC funds) what would allow more space for cross-border activities.

- Most of VC funds operating in **Poland** are foreign funds managed from abroad; and they can operate on the same conditions as any foreign investor. If a VC fund was managed from Poland, it would have a permanent establishment and be taxed for all profits in Poland irrespective of where the profits were generated. There are two possible domestic structures for PE/VC investment - a regulated Closed End Fund for Non-Public Assets (tax exempt) and a Polish LP equivalent (tax transparent) which is not regulated; none of the two has been widely tested in the market: the former is too expensive for small VC funds, the latter raises many tax-related problems that need solving before the structure could become viable (for instance the management company of the Polish LP is not exempt from VAT, foreign investors are understood to have a permanent establishment in Poland if they invest into a Polish LP).

- Furthermore, VC industry is almost non-existent in **Cyprus** with problems on both supply and demand side. Also in Malta, no specific regulation exists. In **Malta**, however, it is accepted that VC funds have foreign management and currently there is no distinction between domestic and foreign VC funds, they are all considered as specialised collective schemes that can be of various structures (i.e. LP).

- In Bulgaria and Romania, no specific piece of legislation regulates local venture capital market. Some VC funds that do operate in **Bulgaria** are established elsewhere; some are, however, established locally and fall under the Company law. In **Romania**, funds with the characteristics of a venture capital funds are included in the category of non-harmonized collective undertakings.

6. Flexible regulatory framework and role of the public sector

While the whole group recognised the importance of a dynamic VC industry, in particular the industry stakeholders stressed that Member States need to assess all the possible supply and demand factors that may be contributing to market failures and should identify where tax and legal measures could be improved.

For example, certain well-functioning VC structures in place in some countries should be recognised also elsewhere. By reviewing their existing legislation, countries could take industry needs into consideration. Especially countries without any VC legislation could take these messages on board **to develop a more favourable environment** for venture capital funds to invest more in start-up companies with a high growth potential.

The group recognised that it was up to the individual Member States to decide what would be most suitable for them; these pathfinders could be countries that already have effective structures in place.

The PE/VC industry pointed out that venture capital funds have an expanding set of industry standards and a proven track record. The industry preference is for a **market-driven** approach to create VC-policy friendly tax and legal framework that could be used across Europe. In light of the Commission's renewed Lisbon goals of growth and jobs, and taking into account its commitment to develop financial markets in Europe, the industry has advocated taking practical steps to improve the situation and not to introduce excessive and even more complex regulatory environment.

The industry experts were arguing for **a common approach** by the Member States and the Commission to reduce market fragmentation:

- Member States should review their legal and administrative environment so that domestic and cross-border VC investments are **treated equally**, in particular VC funds should be able to operate without permanent establishment for tax reasons.
- Commission and the Member States should develop a good European **framework** for cross-border VC fund investments that all Member States could adopt if they wish.

Currently the Commission has no plans to legislate in the area of non-harmonised funds, the domain where private equity and venture capital belong. However, the Commission services published White Paper on Investment Funds[20] that would serve as a basis for a proposal on European private placement regime, including for fundraising by venture capital funds.

In recognising that fund structuring becomes increasingly complex when trying to invest across borders because fundraising in two jurisdictions is almost always different, certain steps have been already taken in the Nordic region.

6.1. Example: Nordic approach to removal of obstacles to Nordic VC funds

The Nordic countries have cooperated for many years, also in promoting an innovative, competitive and knowledge-intensive Nordic business sector. In this respect, the Nordic Innovation Centre (NICe) aims at stimulating innovation into business through increased cooperation between innovation systems in the Nordic area, and at establishing a borderless Nordic region through removal of barriers hampering the free movement of innovation resources – including venture capital.

The group heard that the majority of VC funds that make investments predominantly in the Nordic region are not operating outside of the Nordic countries. Most if not all of the PE/VC funds who want to invest in Nordic enterprises are set up in the British Channel Islands. An exception is Denmark where the tax law is not an obstacle to the establishment of venture capital funds in Denmark. Most Nordic countries have today no structures that can compete successfully with foreign fund structures as they lack either of two important criteria for venture capital funds, namely favourable tax treatment and trust.

There are obstacles for VC funds to receive transnational investments in the Nordic countries. In aiming at a well-functioning common Nordic venture capital market, a recent NICe project group presented **overall Nordic recommendations**[21]**,** as follows - mostly related to taxation issues:

- VC funds organised as limited partnerships should be transparent in taxation:
  This means that no income tax should be imposed in the country where the fund is established or where the management carries on the investment activities. Tax, if any, should only be paid in the country where the investor comes from.

- No VAT should be imposed on management services of the venture capital fund:
  A VC fund pays a management fee to the company that manages this fund. As a general rule, all supplies of goods and services, such as management services, are subject to VAT. Since VC funds generally are not registered for VAT (because they do not carry on any activities subject to VAT), any VAT charged on the management fee will not be recoverable. This means that any VAT paid on the management fee may be an additional cost that in the end will be paid either by the investors or the management team.

- The risk of taxing foreign funds should be abolished by explicit regulations:
  In situations where local related advisors are used or decision making takes place locally, it is currently possible that foreign VC funds are considered to have permanent establishments in target countries.

[20] White Paper on Enhancing the Single Market Framework for Investment Funds, November 2006: http://ec.europa.eu/internal_market/securities/docs/ucits/whitepaper/whitepaper_en.pdf

[21] NICe Report "Obstacles to Nordic VC funds" : http://www.nordicinnovation.net/prosjekt.cfm?Id=1-4415-210

These presented initiatives are geared towards improving the regulations for the venture capital industry in the Nordic area.

The Commission has aimed to analyse with this expert group the possibility of the Member States adopting similar solutions even on a wider basis.

An approach that would result in removal of the existing regulatory barriers could bring competitive advantages and would strengthen Nordic region within the European venture capital market.

Other countries could take similar initiatives. It might be that countries that try to expand venture capital investments would join countries that already have the cross-border investment framework in place.

7. Possible solutions

The discussions of this expert group made it clear that structures of VC funds in Europe need to be appropriate for **both domestic** and **foreign investors** and **investments**. However, efforts to build up such an environment would include in practice some regulatory changes. The experts agreed that encouraging venture capital investments by creating a favourable policy environment is a task where the Commission, Member States and various industry players should cooperate to meet the challenges in improving the demand and supply of finance.

The importance of alternatives to legal solutions was emphasised, for example through **exchanging best** government and market **practices** in promoting venture capital investments. Further, there is a need to build further cooperation among national regulators. For example, to aim for a uniform approach among regulators would be useful, in particular on core principles and best supervisory practices.

Moreover, according to EVCA, there are a number of key objectives that practitioners of VC take into consideration when structuring an appropriate VC fund, and that national regulators would benefit when taking into account:

- Suitability:
  A fund should be suitable for all its institutional or eligible investors (whether taxed or tax-exempt, such as pension funds) and capable of being marketed to suitable investors on a cross-border basis.

- Simplicity:
  All investors like simplicity; legal and administrative clarity and certainty would facilitate cross-border investments.

- Efficiency:
  Final investors and the fund itself should not be subject to economic or juridical double taxation. Tax is the main driver for complexity.

As regards **institutional investors**, industry experts reported that in some countries (Lithuania and Poland) pension funds are not permitted to invest in venture capital funds. In some countries, pension funds benefit from specific fiscal exceptions. Industry experts stressed that the possibility of institutional investors to invest into VC markets should be promoted across Europe. The reason is that private equity provides an opportunity for portfolio diversification and even the prospect of higher returns when the VC industry performance improves.

The group heard examples on these issues: in Poland, for example, pension funds cannot legally invest in foreign PE/VC funds and they are not encouraged to invest into domestic funds either. Therefore the largest **potential source of capital is absent** from the venture capital market. Several countries still have very low legal limits for investments in venture capital by local pension funds. In general, in Europe pension funds invest almost exclusively in buyouts whereas in the US they invest heavily in venture capital.

While recognising the complexity of issues at stake, involving legal and taxation regulation in each respective country, the group proposed the following solutions:

7.1. Harmonisation at the EU level (a long-term solution)

While recognising that harmonisation of VC fund regulations at EU level would be a solution to increase cross-border VC investments, such an approach would only be possible in the long term. However, some industry experts warned that by then it might be too late to have a performing venture capital industry in Europe[22].

It was also pointed out that VC industry is quite regulated in some countries and tackling the issues at stake only with a regulatory approach might cause even a more complex regulatory environment without stimulating the industry.

Therefore, a more pragmatic approach that would be possible to achieve in a shorter timeframe would be the mutual recognition of the existing national structures.

7.2. Mutual recognition

As part of the work of this expert group, a set of terms and practices applied in different countries was collected[23]. The result of the analysis is that countries differ not only in approaches used to stimulate venture capital investments but also in terms of their basic definitions. In the European Union **a common understanding** is needed in order to save time and money.

The experts took note of a report on private equity[24], which recommended that EU institutions and the Member States should take appropriate steps to arrive at mutual recognition of each other's fiscally transparent private equity fund structures and argued for a common understanding of a private placement. The report argued for non-legislative actions that would bring about mutual recognition between Member States of existing national laws governing the marketing and sale of VC funds. It argued that this could be based on a consistent approach by Member States to rules relating to "private placements". In view of the potentially negative impacts that these differing rules may have on the functioning of the market for institutional/sophisticated investment products, the Commission has undertaken to[25] report to the Council and Parliament on steps that need to be taken to give full effect to a **common private placement regime**.

[22] Some 10-12 years are needed for a VC fund and this is why changing regulatory environment is urgent now, otherwise any such changes might be ineffective.

[23] Extract from the questionnaire is provided in Annex III.

[24] Report on PE: http://ec.europa.eu/internal_market/securities/docs/ucits/reports/equity_en.pdf

[25] White Paper on Enhancing the Single Market Framework for Investment Funds, November 2006: http://ec.europa.eu/internal_market/securities/docs/ucits/whitepaper/whitepaper_en.pdf

The venture capital industry[26] has advocated mutual recognition that allows for **one recognised fund structure** at European level and that provides the same conditions for all the fund's investors and managers. This would not preclude existing national structures being used for purely national and locally established funds.

And most importantly, the venture capital industry has urged steps to be taken towards **mutual recognition** of the existing national frameworks leading towards a regulatory framework that all Member States could adopt if they wish.

Achieving mutual recognition is not an easy task since Member States have different structures and legal traditions.

Mutual recognition of fund structures based on existing national frameworks implies mutually acceptable levels of supervision and trust. Clearly, mutual recognition might not be immediately achievable, nor an optimal solution, *but currently seems to be the most pragmatic approach available.*

In a fragmented venture capital market with **27 sets of operating conditions**, fund structuring becomes increasingly complex when trying to invest across borders since fundraising in two jurisdictions is always different. The group established that a fund structure aimed at investing in several Member States requires the establishment of additional intermediary or parallel vehicles, often involving off-shore entities, and consequently results in additional costs and complexities that in most cases only larger VC funds can cope with. The regulatory framework needs to be more responsive to market needs.

To achieve this, the industry has been urging for some solutions and the Commission tried to summarise the relevant ones for this expert group. In this respect, the participating experts reviewed the following "preferred" features that national authorities would need to take into consideration when reviewing the existing or adopting a new legislation or regulation.

7.3. "Preferred" features of VC funds and management companies

7.3.1. "Preferred" features of a venture capital fund:

A fund should be established and registered only in its home jurisdiction and should be recognised in other Member States. It should not be liable for separate registration or establishment in each jurisdiction. National authorities should recognise that VC funds domiciled in another Member State and operating in their market are already subject to regulatory and taxation regimes in their country of residence.

In a single market Member States should not have a country-centric perspective preferring national solutions and discriminating against foreign investors. Mutual recognition of funds from other jurisdictions would lower operating costs, increase legal certainty, and reduce complexities, administration and time needed for fund raising and investing. Such an environment would increase the volume of venture capital in Europe by raising returns, stimulating further investments, facilitating smaller funds' operations on a wider market and would thus help to achieve economies of scale upholding the competitiveness of EU for global investors.

National experts' reactions to this proposed feature are provided in details in Annex II.

[26] Private Equity Fund Structures in Europe; an EVCA Tax and Legal Committee Paper, January 2006

7.3.2. "Preferred" features of a management company

VC funds that make investments across borders into other Member States should not need a permanent establishment outside its home jurisdiction. In other words, **the management company should not be liable for separate registration or establishment in each country where it invests**. With mutual recognition of VC funds from other jurisdictions (*as explained under 7.3.1.*), the same should apply for the management company of the fund. If the management company (subject to regulatory and taxation regime in the home country) could operate directly from the home country also in the investee country without being established there, costs and time required would be reduced.
If national authorities agreed on mutual recognition of fund structures and management companies based on national legislations, they would involve mutually acceptable levels of supervision and trust. In fact, Member States could on this basis build further.

In addition, a more ambitious approach would be that countries agree on **a common understanding on a passport for the management company.** Once a management company would be established in its home jurisdiction, it would get a passport that would allow activities also in other jurisdictions without being established or registered again. Such a passport would allow investors in venture capital to invest easily in other countries.

Furthermore, certain basic requirements are common to all Member States for operating in VC funds. In order to achieve some common understanding, countries should agree a common list of requirements. If regulators agreed upon such requirements, then this would affect that a VC company would have a passport for all EU countries.

National experts' reactions to this proposed feature are provided in details in Annex II.

7.3.3. Tax transparency

The group discussed tax issues only to a limited extent, since they were not part of its remit. Nevertheless, many of the other obstacles to cross-border investments by VC funds are closely related to taxation.

Mutual recognition implies that if a fund is regarded as being fiscally transparent in the country in which it has been constituted it should also be regarded as transparent for tax purposes **by the investee country**.

The aim of a fully transparent fund structure would be to **avoid economic double taxation**[27]. Simultaneously, investors' ability to enjoy the benefits of any double tax treaty between their country of residence and the investee country should also be ensured.

A transparent tax structure should enable investors of the fund to be treated for all tax purposes in the country of the investee company as if they had received the income and capital gains directly from the investee company. It should not lead to investors being deemed to have a **permanent establishment in the country of the investee company**. This would be achieved through appropriate provisions in double tax treaties between the investor's country of residence and the investee country.

It is clear that tax issues are of considerable significance when reviewing arrangements on venture capital funds. Taxation should take place **at the level of the final investor** (and not at the level of fund, *i.e.* partnership). Double taxation should be avoided.

[27] Economic double taxation (*definition: inclusion of the same income in the tax base when the income is in the hands of different taxpayers*) ≠ Juridical double taxation (*OECD: imposition of income taxes in two (or more) states on the same taxpayer in respect of the same income*)

The issues of tax transparency and tax neutrality were briefly discussed within this expert group (*some reactions are provided in Annex II*).

Given the importance of the tax issues, the Commission services will organise **a further expert group** to cover policy area of direct taxation and cross-border VC investments in order to examine cases of double taxation and discrimination of foreign VC vehicles, funds and investors.

8. Expert group recommendations

This group identified the drawbacks resulting from the lack of a real European venture capital market. The market is fragmented and hinders cross-border investments of venture capital funds. With 27 sets of operating conditions in place within the EU, fund raising and investing outside a fund's local jurisdiction has become increasingly complex and makes the development of a viable venture capital industry difficult, especially in the smaller Member States.

In order to ease cross-border operations, the group took note of industry-driven proposals for a more flexible and adaptive regulatory framework that would contribute to lower fund structuring costs and would increase flow of venture capital within Europe: venture capital funds could find the most deserving start-up companies with highest growth potential and access to finance of innovative SMEs would improve.

The most reasonable way to progress in the short term, apart from exchanging good market and government practices, would be the following two approaches, for which participating national experts were in general supportive:

- First, through a **mutual recognition of venture capital funds** from other jurisdictions: a fund should be established and registered only in its home jurisdiction and should be recognised in other Member States and not be liable for separate registration or establishment in each jurisdiction. National authorities could recognise that venture capital funds domiciled in another country and operating in their market are already subject to regulatory and taxation regimes in their country of residence.
- Second, through a **mutual recognition of management company of the fund**: if the management company, which is subject to regulatory and taxation regime in its home country, could operate directly from the home country also in the investee country without being established there, costs and time required would be reduced.

Steps could be taken towards mutual recognition of the existing national frameworks that allow VC investments. This should gradually lead towards a regulatory framework that all Member States could adopt if they wish.

If national authorities were to agree on mutual recognition of fund structures and management companies based on current national legislation, this would imply mutually acceptable levels of supervision and trust in regulatory arrangements. Member States could also take these requirements of the venture capital industry into consideration when reviewing existing, or adopting new legislation.

For **investors**, improved coordination between the Member States, increased common understanding and mutual recognition of fund structures would make it easier and cheaper to invest across borders. A consistent approach at European level would be that investors in

venture capital would be treated the same way as direct investors in each underlying investee company. It is important that **institutional investors**, such as pension funds, would be permitted to invest in venture capital in all countries, so that their funds would be deployed.

In addition, **private investors** should not be discriminated; to this end, the adoption of a common private placement regime for VC funds would be helpful.

Venture capital **firms** would benefit from more efficient operations both on the fund raising and on the investment side, enabling them to benefit from economies of scale and scope and to specialise. Deeper and more efficient European venture capital markets would promote economic growth and competitiveness.

9. Follow-up of this expert group report

The main findings of this expert group will be taken into consideration as the Commission develops its policy on venture capital. As part of the broad-based innovation strategy, the Council has requested the Commission to report in 2007 on obstacles to cross-border investments of venture capital funds[28].

The Member States have been invited[29] to monitor closely the developments in risk capital financing and innovation and report these in the context of their Lisbon National Reform Programmes (NRPs).

The Financial Services Committee of the Council has been given a mandate to update its assessment on European risk capital markets and submit a report to Financial Ministers.

To explore identified problems[30] and to enhance the European framework for investment funds the Commission will, based on the White Paper on Investment funds[31], report to the Council and Parliament in 2007 on steps that need to be taken to give full effect to a common private placement regime.

Building on the conclusions of this expert group, the Commission has set up an expert group on the removal of tax obstacles for cross-border venture capital investments[32], which will review the questions of direct taxation and double taxation of venture capital funds and investors, including cases of discrimination of foreign venture capital vehicles and investors.

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[28] 2796th Competitiveness Council meeting, Brussels, 4 December 2006: Council Conclusions on a broad-based innovation strategy: Strategic priorities for innovation action at EU level (page 6): http://www.eu2006.fi/news_and_documents/conclusions/vko49/en_GB/1165252699841/

[29] 2753rd Economic and Financial Affairs Council meeting, Luxembourg, 10 October 2006 (page 12): http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/ecofin/91272.pdf

[30] Report, July 2006: http://ec.europa.eu/internal_market/securities/docs/ucits/reports/equity_en.pdf

[31] White Paper on Enhancing the Single Market Framework for Investment Funds, November 2006: http://ec.europa.eu/internal_market/securities/docs/ucits/whitepaper/whitepaper_en.pdf

[32] Commission Communication "Financing SME growth – Adding the European Value", Annex I: http://ec.europa.eu/enterprise/entrepreneurship/financing/publications_documents.htm

Annexes

Annex I: *Glossary*

Annex II: *National experts' reactions on the "preferred" features of a VC fund*

Annex III: *Extract from the questionnaire*

Annex IV: *List of participating national and industry experts*

Annex I:

Glossary[33]

Asset allocation

A fund manager's allocation of his investment portfolio into various asset classes (e.g. stocks, bonds, private equity).

Asset class

A category of investment, which is defined by the main characteristics of risk, liquidity and return.

Business angels

Wealthy private individuals who invest directly in new and growing unquoted businesses. Business angels usually provide finance in return for an equity stake in the business, but may also provide other long-term finance. This capital can complement the venture capital* industry by providing finance at an earlier stage, especially at the pre-seed and seed stage.

Buyout

A transaction in which a firm (or part of it) is acquired from the current shareholders. In a management buyout the current managers are the buyers, with the support of private equity/venture capital investors.

Capital market

A market in which long term capital is raised by industry and commerce, the government and local authorities. Stock exchanges* are part of the capital market.

Closed-end fund

A fund with a fixed number of shares. These are offered during an initial subscription period. Unlike open-end mutual funds, closed-end funds do not stand ready to issue and redeem shares on a continuous basis.

Early-stage (capital)

Financing to companies before they initiate commercial manufacturing and sales, before they be generating a profit. Includes seed* and start-up* financing.

Equity

The ordinary share capital of a company.

EVCA Professional Standards

EVCA Professional Standards are a set of behavioural principles that encompass the relationship between limited partners, general partners and portfolio companies. The EVCA Professional Standards encompass a Code of Conduct, Governing Principles and Corporate Governance, Valuation and Reporting Guidelines.

[33] Based on the Commission documents and industry definitions as used by EVCA (European Private Equity and Venture Capital Association).

Exit

Liquidation of holdings by a private equity/venture capital investor. Usual ways of doing this are trade sale to another company; public offering (including an initial public offering) on a stock market; write-off of the investment; sale to another investor; or repayment of the investment (when part of the investment agreement).

Expansion capital

Financing provided for the growth of a firm. Capital may be used to finance increased production capacity, market or product development, or to provide working capital.

Fund-of-funds

A fund that invests in other (venture capital or private equity) funds.

Fund size

The total amount of capital committed by the limited and general partners of a fund

Fundraising

The process in which private equity/venture capital practitioners raise money to create an investment fund. These funds are raised from private, corporate or institutional investors, who make commitments to the fund which will be invested by the General Partner (see below).

General Partner (GP)

A partner in a private equity/venture capital management company who has unlimited personal liability for the debts and obligations of the limited partnership and the right to participate in its management.

Internal Rate of Return (IRR)

In a private equity/venture capital fund, the net return earned by investors from the fund's activity from inception to a stated date. The IRR is calculated as an annualised effective compounded rate of return, using monthly cash flows and annual valuations.

Institutional investors

Refers mainly to insurance companies, pension funds, banks and investment companies collecting savings and supplying funds to the markets, but also to other types of institutional wealth (e.g. endowment funds, foundations, etc). Usually these have substantial assets and are experienced investors.

Initial Public Offering (IPO)

Also flotation, going public. The process of launching a private company for the first time on a stock market by inviting the public to subscribe in its shares.

Limited Partner (LP) - An investor in a limited partnership

Limited Partnership

A legal structure that is used by most private equity/venture capital funds. A partnership is usually formed for a fixed period of time between the investors in a private equity/venture capital fund and the management company making the investments in the underlying portfolio companies. The investors have limited liability and the management company has unlimited liability. The details on management policy and profit-sharing are laid out in a partnership agreement.

Listed company

A company whose shares are traded on a stock exchange

Microcredit

Small loans, usually smaller than €25 000, granted most often by specialised institutions.

Permanent establishment

A permanent establishment is, according to the OECD definition, a fixed place of business through which the business of an enterprise is wholly or partly carried on. For private equity/venture capital, permanent establishment refers to the possibility that a limited partner, either owing or having a stake in a private equity or venture capital fund, is considered as a resident of that country and hence liable for national taxation.

Private equity

Investment by private investors taking an equity stake in companies not listed on a stock market. Venture capital is strictly speaking a subset of private equity, where the latter also includes replacement capital and buyouts.

Private equity/venture capital funds

A private equity/venture capital investment fund is a vehicle for enabling pooled investment by a number of investors in equity and equity-related securities (such as quasi-equity) of companies (investee companies). These are generally private companies whose shares are not quoted on any stock exchange. The fund can take the form either of a company or of an unincorporated arrangement such as a limited partnership. In form, a private equity/venture capital fund can be either a company or a limited partnership: a few are also quoted on stock markets.

Prudent person rule

A behaviourally-orientated standard of investment, rather than one based on quantitative criteria. The Prudent person rule allows pension funds to include private equity/venture capital funds in their asset allocation according to their own needs, while respecting the risk profile of their clients. In other words, the obligation of pension managers to invest as a prudent investor would do on his own behalf, in particular by carrying out sensible portfolio diversification.

Private placement

Private placement can be best understood as a specific sales method for financial instruments or investments which allows the buyer and seller to conclude an investment transaction subject to an exemption from many or all of the statutory requirements that would apply in the event of a public offering. In particular, a private placement regime would disapply many of the requirements that are imposed in the event of marketing to the public - such as publication of mandatory disclosure documents, conduct of business rules, and rules on general solicitation of interest in financial transactions. In order to ensure that these exemptions from general securities law are limited to actors who are able to transact without needing these regulatory protections, private placement regimes generally specify criteria for entities who are eligible to conclude transactions under these conditions.

Quasi-equity (or mezzanine finance)

Financing that combines the features of debt and equity. The term covers a variety of instruments tailored to a specific legislative and operating environment. Quasi-equity encompasses such instruments as convertible shareholder loans, loan notes, preference shares. These instruments are unsecured and convertible on exit.

Replacement capital

Purchase of existing shares in a company from another private equity investor or shareholder.

Risk capital (markets)

An EU term used to describe markets providing equity financing to a company during its early growth stages (start-up* and development*). In the framework of the recent Commission Communication[34], it covers three types of financing, (1) informal investment by business angels*; (2) VC*; (3) stock markets specialized in SMEs* and high growth companies.

Seed capital

Financing provided to study, assess and develop an initial concept. The phase preceding the start-up phase.

SME – Small and medium-sized enterprises

Under European rules an SME should have less than 250 employees, an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 m.

Start-up capital

Provided to companies for product development and initial marketing. Firms may be in the process of being set up or may exist but have not sold their product or service commercially.

Stock exchange (stock market)

A market in which securities are bought and sold. Its basic function is to enable public companies, governments and local authorities to raise capital by selling securities to investors.

Tax neutrality

The notion that decisions to produce or purchase a particular good or service should not be made on the basis of differential tax treatment.

Tax transparency

A fund structure or vehicle is tax transparent when the fund itself is not subject to taxation and the investment in an underlying company is treated as if it would be a direct investment for the initial investor (the limited partner), who is taxed only when the investment structure distributes its gains and revenues.

UCITS - Undertakings for Collective Investment in Transferable Securities (acronym in EU legislation)

Investment funds that are harmonised at EU level.

Venture Capital (VC)

Investment in unquoted companies by venture capital firms who, acting as principals, manage individual, institutional or in-house money. In Europe, the main financing stages included in venture capital are: early stage, covering seed and start up, and expansion. Strictly defined, venture capital is a subset of private equity. Venture capital is thus professional equity co-invested with the entrepreneur to fund an early stage (seed and start-up) or expansion venture. Offsetting the high risk the investor takes is the expectation of higher than average return on the investment.

[34] Commission Communication « *Financing SME growth – Adding the European Value* », 29 June 2006

Annex II - National experts’ reactions on the proposed “preferred” features of a VC fund

“preferred” features *National experts’ reflections*	**1. For the VC fund:** ➢ VC fund established and registered only in home jurisdiction; ➢ mutual recognition of VC funds from other jurisdictions	**2. For the management company:** ➢ management company should not need permanent establishment outside home-country; ➢ mutual recognition of management company; ➢ management company could operate directly from the home country also in the investee country; ➢ eventually a common understanding on a passport for a management company.	**3. Tax transparency and tax neutrality:** ➢ VC fund is fiscally transparent or neutral in home country and transparent or neutral for tax purposes by the investee country; ➢ taxation should take place at the level of final investor; ➢ double taxation should be avoided.
Austria	Government officials shared opinion that a single license principle would imply minimum requirements. Foreign VC funds as well as foreign management companies can invest in Austria. However, VC industry has not played an important role, thus regulation of this sector had no priority by now.		
Belgium	No position yet.	No position yet.	No position yet.
Bulgaria	*No information provided.*	*No information provided.*	*No information provided.*
Cyprus	Currently no specific regulation is in force in Cyprus. In principle, they would agree with the proposed features, since they can contribute to the growth of cross-border investments. However, Cypriot national expert does not agree with the proposed approach of implementing mutual recognition on a bilateral basis (proposed by the UK), and focussing only (even if only initially) on a few Member States. The risk of such approach is that this will be implemented only among the larger and more mature VC markets, leaving the less developed Member States behind and increasing the gap between the two groups of Member States.		
Czech Republic	*No information provided.*	*No information provided.*	*No information provided.*
Denmark	National expert has been expressing his own view from a practitioner’s perspective. The government could agree on the 1st and 2nd issue.		Given that in Denmark tax transparency is already in force, authorities could agree with the 3rd feature on tax transparency.
Estonia	Estonia is supportive for free movement of capital and they would agree with the 1st and 2nd issue: mutual recognition seems to be the best solution (and attempts could go even further, towards a harmonisation).		Tax neutrality would be a better option than tax transparency.
Finland	Despite a recent reform, the new Finnish law does not appear to fully take into account the complexities of cross-border investments (and foreign VC funds thus have not effectively as yet entered the Finnish market). The following tax issues have raised concerns in Finland: - Problems concerning withholding taxation on VC funds: According to the new Finnish legislation, PE funds are obliged to levy a withholding tax on dividends distributed by target companies. Therefore, a GP has remarkable administrative responsibilities. In addition, if a LP is in a loss making position, it is questionable whether withholding taxation is justifiable at all. Such a situation may lead to double taxation of dividends - Permanent establishment: foreign investors, who invest in Finnish companies through a foreign VC fund, are not usually subject to taxation in Finland. However, it is possible that in situations where actual decision making on investments takes place in Finland or a foreign investor		

	permanently uses a related Finnish advisor, a foreign VC fund could be considered to have a permanent establishment in Finland. This could lead to taxation of investment income in Finland. The risk of taxing foreign funds could be abolished by explicit regulations. - Problem related to foreign parallel funds: If a foreign parallel fund of a Finnish fund is considered to be effectively managed from Finland, the parallel fund could be regarded as a partnership for Finnish tax purposes. In such case, foreign investor could become tax liable in Finland. - Associations for public good are tax exempt. However, when such an association makes an investment in a VC fund (which generally is taxed pursuant to the Business Income Tax Act), investment is not tax exempt from taxation. Therefore, in practice such associations, which have a considerable investment asset base, have not been willing to make investments in VC funds.		
France	- A VC fund could be recognized in another Member State and allowed to invest in a company there (foreign VC funds can already invest in France). - A VC fund could be recognized in another Member State and thus allowed to look for investors there. - *This last Commission's proposal of the 1st "preferred" feature should be more precise. At this stage, it seems important to remind that France pays a special attention to protection of retail investors.*	- The proposed idea of a passport for a management company should be explored. - But VC funds created in France by foreign management companies, using such a management company passport, should be restricted to qualified investors.	Currently tax transparency exists in France for 3 vehicles and it is difficult to maintain such tax transparency in the French legal framework. Therefore, to create and maintain tax transparency for risk capital vehicles from EU-27 in the French legal framework would be even more difficult.
Germany	Germany has in the past not objected to the concept of mutual recognition. A new law on PE is likely to be adopted in Germany by the end of 2007 and it is expected to be in line with the objectives of the "preferred" feature of tax transparency. The Requirement that an investor should be able to refer to the double taxation treaty between its seat state and the seat state of the target presumes the transparency of the Fund-vehicle. Accordingly, tax neutrality is not enough. Tax transparency is necessary.		
Hungary	The Hungarian government agrees that by implementing the proposed features VC market in Hungary would benefit and develop further. In Hungary, public funds investing public money in VC need more expertise, and there are currently not many management companies. Therefore, mutual recognition would be overall beneficial.		
Ireland	*No information provided.*	*No information provided.*	*No information provided.*
Italy	On the side of venture capital funds, mutual recognition would be useful to push for other funds to invest in Italy. A common private placement regime could reduce problems and costs for Italian funds in understanding other countries' regulation and private placement rules. According to the Bank of Italy, "the prevision of plain ways of notification regarding the marketing of *cross border* fund shares should not act as an obstacle to the sector's development. As also expressed the Commission's White Paper, initiatives about *"private placement regime"* should enable the diffusion of VC fund shares at the EU level".	On the side of management company, a mutual recognition of management companies operating in Italy can avoid the problems of permanent establishment. According to the Bank of Italy, "the operator's duty to install in every country in which it intends to operate constitutes a braking factor and could be removed by the condition that the management company is actually authorized and supervised in the country of origin. Different is the option that foresees the setting up of a fund in a foreign country with a *cross border* management: this is the most relevant topic, actually examined within the EU Commission's White Paper".	The Italian vehicles (*Fondo Chiuso*) are tax transparent if wholly subscribed only by foreign investors; the Italian Government is introducing a Decree that should extend the tax transparency principle to every closed-end fund. According to the Bank of Italy, "every project intended to rise the VC's transparency level is shareable, as every one intended to avoid the double imposition and the promotion of taxation mechanisms that act in favour of the sector's development. The taxation matter, anyway, complies with the European general situation of lack of homogeneity".
Latvia	No regulation yet exists; VC industry has started to develop. The Latvian authorities expressed positive opinion about the proposed features and agree that harmonising the European VC market would improve an overall access to venture capital.		

Lithuania	No regulation has existed so far, though new legislation is in preparation. However, some VC funds have been active: they do not have a permanent establishment in Lithuania (as it is also not requested) but are their branches working as investment companies. The Lithuanian authorities are in favour of the proposed features.		
Luxembourg	Luxembourg is open to exploring further the approach outlined. The existence of a European private placement regime in the field of VC funds could facilitate mutual recognition (in the absence of harmonisation).	Luxembourg is open to exploring further the approach outlined. The specificities of the VC industry should be taken into account in any further analysis. The acceptability of the principle of mutual recognition and the passport for management companies is difficult to appreciate in the absence of generally agreed definitions and given the large variety of legal structures of VC funds. For Luxembourg VC funds, the general partner of SICARs under the form of a limited partnership and the management company of VC UCIs without legal personality shall be located in Luxembourg.	The announced further Commission expert group dealing specifically with taxation of VC funds shall discuss taxation issues. Whereas, this expert group report should only refer to that specific expert group and not put forward any “preferred features” in the field of taxation.
Malta	Authorities would agree with the proposed features, which are actually to some extent reflected in the local legislation (for professional investors’ funds) that already recognises VC funds from elsewhere. In Malta, there is no specific requirement for a permanent establishment and also not for a legal personality; VC funds are also tax-exempted.		
Netherlands	The proposed features are well received; need for a harmonisation of the reporting rules. In the Netherlands, pension funds currently can invest in VC and this should be permitted also in other Member States.		Tax neutrality would be preferred (and not tax transparency); legal personality does not have to be an issue in this discussions.
Poland	*n.a.*	For the Polish government to take the position on whether cross-border recognition of fund management company is possible depends on precise definition of entities that are to be recognized.	*n.a.*
Portugal	Although no final position has been taken, in principle, under a common set of rules/definitions, mutual recognition and fiscal neutrality would be very positive to push foreign VC Funds to invest in Portugal, and also the Portuguese VC market would benefit and develop further.		
Romania	Romanian authorities consider that an important step in the development of the cross border activity of VC funds may be the existence within the European legislation of a definition of the private placement.	Authorities consider that there should be a distinct European passport for asset management companies which do not manage the undertakings for collective investments in transferable securities (UCITS) and which manage other collective investment undertakings, such as the VC funds.	*n.a.*
Slovenia	A new law regulating VC (and certain tax advantages for investors) is in preparation (it is expected that the National Assembly in August 2007). This new law will define the definition of “venture capital” and “venture capital company”. Venture capital companies will have some tax advantages on capital gains created with venture capital investments. It has been planned that in 2007 also a public venture capital company would be created, which should invest in SMEs, especially in start ups, but always together with private venture capital companies.		
Spain	- There is a need for a common understanding and harmonisation and a possible way to achieve this would be with a piece of legislation (including a definition on private placement).	Both mutual recognition and a passport for a management company would be supported, but the following concern has to be taken into account: - for a management company to benefit of a passport, there should be a common set of rules/definitions	Tax neutrality would be preferred.

	- Concept of a mutual recognition of is acceptable (unless a VC fund turns to retail investors).		
Sweden	If registration is needed, a fund should be established and registered only in its home jurisdiction and recognised in other Member States.	The management company should not need a permanent establishment outside its home jurisdiction. - However, under MiFID, a management company providing "investment advice" will be deemed an "investment firm" and be subject to authorisation. The Swedish committee working on the implementation of MiFID has suggested that management companies active in the PE industry shall not be considered providing "investment advice", even though the company is not strictly speaking a traditional group company in relation to the fund. Thus, it seems that authorisation for the PE industry will be optional under the Swedish implementation of MiFID. Other Member States may require authorisation, which means that a Swedish management company must obtain authorisation in such a Member State in which the management company is active. The implementation of MiFID may therefore work against improving the possibilities for management companies of VC funds to work cross-border.	The fund structure ideally should be fiscally transparent. - It will be a problem in Sweden to create a new limited partnership that has no legal personality; also, even a structure where there is no legal personality in Sweden could give rise to tax implications in Sweden for foreign investors. - investors should only be taxed in their home countries and that will be the effect if limited partnerships are made fiscally transparent (However, such a change of Swedish law would have tax policy implications since certain investors, in particular "Tax Haven Investors", then would be better off by investing through a Swedish limited partnership than directly in the underlying investee company).
United Kingdom	- The proposed features reflect a positive approach towards achieving an open capital market. - The concept of mutual recognition is questionable in cases when certain Member States do not have any existing legislation. Reservations regarding mutual recognition: a major factor underpinning the success of the UK model has been striking the right balance between regulation and free operation of the market. By accepting 'blanket' mutual recognition the UK could potentially be admitting investors from Member States with little or no regulatory framework whose conduct might bring British finance markets into disrepute. - The UK would advocate mutual recognition on a bi-lateral basis between Member States.		Taxation issues need to be excluded from the "preferred" features here and this expert group report should simply refer to the announced Commission expert group dealing specifically with taxation of VC funds.
Norway	National expert expressed opinion on behalf of the industry. Regulation is not necessarily a good solution. The proposed features would be supported and states need to legislate but any legislation should be at a minimum level. EVCA has to play an active role.		Tax transparency (and not tax neutrality) is to be agreed upon.

Source: Minutes of the 3rd expert group meeting on 19 January 2007; national experts' reactions received by 30 March 2007

Annex III – Extract from the questionnaire analysed for the purpose of this expert group

1a. Which definitions are used in the country for:			
	Risk capital	**Private equity**	**Venture capital**
Austria	Investing equity or quasi-equity in early-stage companies.	General term for investing equity in unlisted companies.	Investing equity in companies in their earlier development stages.
Belgium	No legal definition exists. In general, this term is used for All capital invested in non-listed companies, incl. PE/VC. The "Notional Interest Deduction"-rule has introduced this term in the Belgian Income Tax code (articles 205 bis and following). Within the NID-context, risk capital is defined as equity minus some corrections.	No legal definition exists. In general, this term is used for equity in unlisted companies.	No legal definition exists. In general, this term is used for equity in unlisted companies in their earlier development stages.
Bulgaria	*No information provided.*	*No information provided.*	*No information provided.*
Cyprus	Definitions "*risk capital", "private equity", "venture capital"* are being used interchangeably to denote an investment in a private, non-listed, company, with *"risk capital"* usually denoting the riskier seed and early-stage investments.		
Czech Republic	//	Funds invested in return for company stock for the purpose of introducing a new product onto the market, to extend existing production or to expand into new markets.	Funds invested into fast-growing innovative projects managed by risk capital funds. Investors who provide funding in this form accept a higher level of risk for a better return in future.
Denmark	No legal definition exists. Risk capital is typically considered to be capital provided by investors who, in some form or another, agree to be subordinated the debtor's other (simple) creditors, but on the other hand typically has potential for a higher return. This can be capital provided as subordinated loan capital, or capital in the form of equity (own funds) given to new or established enterprises in connection with expansion of production, development of new innovative products and services, succession or mergers and acquisitions, cf. for example The Danish Ministry of Economic and Business Affairs' Plan of Action Regarding Risk Capital, Jan 2005, (in Danish: "Regeringens Handlingsplan for risikovillig kapital").	No legal definition exists. Private equity is in practice considered to encompass funding by non-public means for the acquisition or funding of a target with a view to its eventual sale or initial public offering.	No legal definition exists. Vaekstfonden (a Danish, publicly funded venture fund set up as a part of the government's innovation initiatives) has in its most recent annual rapport on the Danish Market of Venture Capital and Buy-outs (2006) limited the term venture capital to comprise seed, start-up or expansion capital for unquoted companies, i.e. capital in the early phases of corporate financing.
Estonia	See definition for VC.	Private equity – not defined in relevant legislation, generally understood as a synonym of venture capital.	Risk capital and venture capital are used as synonyms, currently not defined in any legal acts. Definition of risk (venture) capital fund is proposed by the draft Investment Funds Amendment Act (IFA) as "a fund that

			invests at least 60% of its assets into non-listed securities or into the shares or units of other risk capital funds." The shares or units could be offered to eligible investors only.
Finland	Equity financing to companies in growth stages. In Finland it covers informal investments by business angels (wealthy private individuals who invest directly in new and growing companies) and VC/PE investments.	Investment providing equity capital to companies not listed on a stock market.	Investment in unquoted companies by VC firm. In Europe main financing stages in VC are: seed, early stage, expansion, replacement and buyout. Strictly defined the term VC does not include replacement and buyout deals. This latter defination is commonly used f.e. in the US. In Finnish, the term "*pääomasijoittaminen*" covers both VC and PE investments.
France	//	private equity : *capital social de sociétés non cotées, activité consitant en des prises et cession de participation au capital de sociétés non cotées.*	//
Germany	No legal definition exists. According to the German doctrine and finance practice, risk capital is seen as equity or other financing instruments similar to equity which is generally invested mainly in non-listed companies. The German approach to "Risk Capital" is characterised by: all kinds of equity capital products ; high risk; high earnings outlook.	A legal definition does not exist. According to doctrine and finance practice, PE has been defined as equity capital invested mainly in non-listed companies. In the formation phase of the German PE industry, the term was synonymously used with VC. In the meantime, PE is generic term of all types of off-market equity products in the broadest sense, covering VC, buy-outs, mezzanine investment made by PE firms. PE investments may be traded on the stock exchanges. German PE definition is characterised by: any equity investments; short or long-term products; all sorts of enterprises in any business sectors; any stage of financing. - SMEs in technology and life science - the main target of PE investments; last 10 years, also long-established major enterprises in traditional industrial segments (their non-core business).	A legal definition does not exist. According to doctrine and finance practice, VC is off-market equity investments with a high risk component. Generally, VC is contemplated as a middle-term (3 to 5 years, as a rule) investment into innovative start-ups up to SMEs. A VC investor generally acquires a minority share capital of a company and often exerts influence on the business policy by bringing own management expertise into the company. VC includes seed, start-up and expansion financing, but does not generally occur on replacement and buyout stages. The German VC definition is characterised by: medium-term equity investments; small and medium enterprises in new technology segments; seed, start-up phase or another early stage; supportive management expertise.
Hungary	General expression for equity fiancing during their early-growth stages.	Equity investments made by financial investors into non-listed companies.	means investment in early stage unquoted companies by investment funds.
Ireland	*No information provided.*	*No information provided.*	*No information provided.*
Italy	General expression for PE and VC activity.	An investment activity in the equity of non-listed companies, with the goal of increasing the value of the target company for the purposes of a divestment in the medium to long term.	VC activity is a part of PE activity; it is not a different activity by itself, it is a particular form of PE activity intended to finance companies under very "adventurous" circumstances - in the first, or during early-stages (seed or start-up capital). Italian statistics (acc. to EVCA), expansion capital investments are included in VC activities.
Lithuania	//	The definition of "Private Equity" .	The definition of "Private Equity" .

Latvia	No specific definitions exist.		
Luxembourg	Investments in "risk capital" - investment in securities of unlisted companies either because these companies have been recently formed or because they still are in the course of development and therefore have not yet obtained the stage of maturity required to have access to stock markets. Risk capital is characterized by the concurrent gathering of two elements - high risk and intention to develop the target entities. The concept refers to VC and PE financing.	PE is described as the investment in non-listed private companies, often of a relatively limited size and a significant level of risk. PE bears an inherent risk notably linked to the lack of liquidity.	VC is described as referring usually to capital provided to newly launched entities (start-up) or to entities active in sectors with high development potential.
Malta	Albeit there is no proper formal definition, as one is to keep in mind that the development of VC is very much in its infancy, the risk/venture capital terminology applied in the case of the new VC fund that is being set up in Malta is very much based on the EVCA definition. The term risk/venture capital is commonly used interchangably; meana equity invested in a seed or early stage company or to fund innovative processes, ideas and techniques.	Private equity is commonly used to refer to equity capital invested in businesses not quoted on the stock exchange. It would normally include equity used to finance additional working capital, for acquisitions or for strengthening a company's balance sheet.	The term risk/venture capital is commonly used interchangeably and is understood to mean equity that is invested in a seed or early stage company or to fund innovative processes, ideas and techniques.
Netherlands	Share capital and (shareholder) loans subordinated to bank loans.	Risk capital for non-quoted companies	Risk capital for young, innovative, fast growing, non-quoted companies, often, but not necessarily, in high-tech sectors.
Poland	These terms are not defined in any legal acts.		
Portugal	risk capital = venture capital Means equity and quasi-equity financing to companies during their early-growth stages (seed, start-up and expansion phases) provided by VC investors.	Means equity and quasi-equity financing to companies during their early-growth stages (seed, start-up and expansion phases) and including replacement capital and buy-outs provided by VC/PE investors.	risk capital = venture capital Means equity and quasi-equity financing to companies during their early-growth stages (seed, start-up and expansion phases) provided by VC investors.
Romania	There is no definition for risk capital, private equity or venture capital. Similar concepts can be found on the market - the collective investments schemes (are called *collective undertakings other than UCITS)* - this type of investment schemes, called other collective undertaking (OCIU) can have the characteristics of a risk capital fund or of a VC fund, they are pooling the asset from the investors and can invest them in companies that are not public.		
Slovakia	*No information provided.*	*No information provided.*	*No information provided.*
Slovenia	Markets providing equity financing to a company during its early growth stage (start up and development). In the framework of the recent Commission Communication, it covers three types of financing, (1) informal investment by business angels; (2) venture capital; (3) stock markets specialized in SMEs and high growth companies. *- Definitions are based on Commission documents and EVCA definitions. Definitions are written in the new Slovenian "Venture Capital Company Law", which is currently in the adopting phase.*	Investment in equity share by private investors in companies not listed on a stock market. VC is strictly speaking a subset of PE that also includes replacement capital and buyouts. *- Definitions are based on Commission documents and EVCA definitions. Definitions are written in the new Slovenian "Venture Capital Company Law, which is currently in the adopting phase.*	Investment in unquoted companies by venture capital firms who, acting as principals, manage individual, institutional or in-house money. In European statistics, four main financing stages are included in VC: early stage, expansion, replacement buyout. Strictly defined (as mostly used in the US) the term "venture capital" does not include replacement and buyout deals. *- Definitions are based on Commission documents and EVCA definitions. Definitions are written in the new Slovenian "Venture Capital Company Law, which is currently in the adopting phase.*
Spain	The concept of *risk capital* is not used.	No clear and precise distinction between the concepts of *VC and PE.* The Law 25/2005 on	No clear and precise distinction between the concepts of *VC and PE.* The Law 25/2005 on venture capital

		venture capital does not differentiate between VC and PE. However, a distinction can be based depending on moments or steps in which the firms take positions in a company: PE firms would be more interested on companies in later stages (of still non-quoted). PE refers mainly to operations like *management buying, management buyouts, replacement,* etc. A PE firm can: provide support to expert managers and manages cash flow; is orientated to already established sectors; looks for control of the company in which is investing; PE is less risky than VC and disinvestment is clearer.	does not differentiate VC and PE. However, a distinction can be based depending on moments or steps in which the firms take positions in a company: VC firms would normally buy shares of companies in their first steps (*seed, start up, development, expansion)* A VC firm can: provide support to the entrepreneur and manages the company growth; orientated to innovative technology fields; would provide the companies with minor investment; VC industry is more risky and the disinvestment is uncertain, but profits are higher.
Sweden	Investments in the equity of a company. Includes both public and private equity.	Professional investments in the equity of unlisted companies with an active ownership.	Private equity investments in seed, start-up and expansion phases, often co-investments with the entrepreneur.
United Kingdom	Term "risk capital" is generally interchangeable with the term "venture capital" when it is used to describe investment provided in the earlier, *riskier*, stages of a company's life. It's any type of investment that has an equity element "at risk" – so that can include mezzanine funding.	Private equity is medium to long-term finance provided in return for an equity stake in potentially high-growth unquoted companies. Some use the term to refer only to the buy-out and buy-in investment sector. Some use the term to describe both venture capital (seed to expansion stages) and management buy-outs and buy-ins. Accordingly, when talking to a UK interlocutor, it is important to establish what definition of "private equity" she/he is using.	*Historically "venture capital" has encapsulated the full spectrum of PE activity; the provision of equity finance to private businesses in return for a minority or majority stake.* There has been a gradual convergence within the UK industry towards the US definition, where VC is limited to describing investment provided in the earlier stages of a company's life. Accordingly, when talking to a UK interlocutor, it is important to establish what definition of "venture capital" she/he is using.
Norway	Equity and equity like instruments	Equity and equity like instruments invested into unlisted assets, including seed capital, venture capital, expansion capital, replacement capital as well as buyout capital	Equity and equity like instruments invested into companies with ????
Turkey	*No information provided.*	*No information provided.*	*No information provided.*

1b. Which definitions are used in the country for:

	Eligible qualified investor	**Management company**	**Private placement**
Austria	//	General partner of a PE/VC-fund.	Raising of risk capital by issuing shares to a non-public community of investors.
Belgium	There is no appropriate definition of "eligible qualified investors". In several specific law and regulations, terms such as professional, institutional and private investors are	Legal entity managing one or more private equity funds. Several conditions have to be met in order to obtain an operating license of management company of investment companies (legal form,	The opposite of public offering. Off-market placement of equity, meaning the investment opportunity is only given to a selected number of persons.

	defined. In general: - Professional investors include corporate investors and institutional investors; - Institutional investors include credit institutions, insurance companies, pension funds, …; - Private investors include physical persons. - In general, the normal investors in private equity and venture capital will be professional or institutional investors.	minimum equity, shareholder structure, management, organisation …).	
Bulgaria	*No information provided.*	*No information provided.*	*No information provided.*
Cyprus	Definition for the "Professional Investor" includes such organisations as financial institutions, insurance companies, pension funds, large corporations etc.		
Czech Republic	//	//	//
Denmark	The executive order concerning the obligation to publish a prospectus based on directive 2003/71/EC defines qualified investors as: 1) Legal entities under public supervision or regulation in respect to operation on financial markets, or which sole purpose is investments in securities 2) governmental or regional authorities, 3) central banks, 4) international and supranational organizations, e.g. IMF, ECB and the likes, 5) other legal entities which are not small and medium sized enterprises (SMEs), or 6) SMEs or persons registered as qualified investors with the Danish Financial Supervisory Authority. *SMEs are enterprises, which fulfil two of the following three conditions in the most recent financial year:* 1) an average No. of full time employees under 250; 2) a balance sheet total under 43.000.000 EUR; 3) a net turnover under 50.000.000 EUR.	No legal definition exists. Since VC fund structuring in Denmark is mostly unregulated, the definition depends on the structure and form agreed upon by the investors. Typically the management company will be the company contracted by the VC/PE to manage the VC/PE in relation to administrative tasks in particular in relation to market analysis and other tasks more directly connected to the investments.	No legal definition exists. Private placement generally means investment in unquoted companies.
Estonia	Eligible qualified investor – currently not defined, the definition is proposed by the Investment Funds Amendment Act (IFA) as a professional investor or a person meeting at least to two of the following requirements: 1) the minimal amount of initial investment is 10 000 EUR and confirmation in writing to have sufficient knowledge of investing, risks related herewith and specific risk level of risk capital fund; 2) is working or has been working at least for one year at a position in financial field presuming knowledge of investing into securities; 3) has performed in average at least 5 substantive deals at the stock market per quarter during the past 4 quarters. Investment portfolio is at least 100 000 EUR.	The Investment Funds Act (IFA) defines a management company as a public limited company whose main and permanent activity is management of the assets of a fund founded as a public limited company or management of a common fund (hereinafter management of fund). A management company may manage several funds. Draft IFA Amendment proposes that a management company of the risk capital fund may manage the risk capital funds only.	Securities Market Act defines a form of private placement originating from 2003/71/EC: an offer of securities is not deemed to be public in the case of: 1) an offer of securities addressed solely to qualified investors or 2) an offer of securities addressed to fewer than 99 persons per Contracting State, other than qualified investors, or 3) an offer of securities addressed to investors who acquire securities for a total consideration of at least 50,000 EUR per investor, for each separate offer, or 4) an offer of securities whose denomination per unit amounts to at least 50,000 EUR or 5) an issue or offer of securities with a total consideration of less than 100 000 EUR in a period of 12 months. Approach of the risk capital investor in IFA Amendment could be another private placement form.
Finland	The Securities Market Act (SMA) defines two different and to some extent overlapping definitions: 1) "professional investors" (used in chapter 1 section 4 of the SMA, which substantiates the provisions relating to	Legislation contains two versions of the definition of a "management company": 1) "investment services company" (defined in the Act on Investment Services, ISA) and 2) "mutual fund	No specific definition. Indirectly, private placement could be defined as a type of placement, which is not executed as an offer to the public and does trigger the obligation to draft and

	securities trade and the offering of investment services) and 2) "qualified investors" (primarily used in the context relating to marketing of securities). The SMA defines qualified investors as: 1) investment firms, credit institutions, management companies, insurance companies, mutual insurance companies and a public mutual insurance; 2) companies referred to in the Act on Pension Insurance Companies and corresponding foreign organisations subject to control by authorities; 3) ECB, the Bank of Finland and a corresponding foreign central banks; 4) stock exchange and corresponding foreign securities exchange subject to supervision by authorities; 5) option organisation referred to in the Act on Trading in Standardized Options and Futures and corresponding foreign option exchanges subject to supervision by authorities; 5) clearing houses, central securities depositories and corresponding foreign option exchanges and central se-curities depositories subject to supervision by authorities; 6) the State of Finland, Finnish municipalities and joint municipal authorities as well a corresponding foreign States and their regional administrative units; 7) IMF, EIB and similar internat. legal entities; 8) SMEs - legal entities, meeting certain criteria; 8) SMEs with their registered office in Finland and meeting criteria under 8); 9) natural persons domiciled in Finland requested tro be entered in the register of qualified investors and meeting criteria; 10) other domestic or foreign legal entities, which are engaged in activities corresponding to that of investors referred to 1) – 8). In addition, professional investors are the State of Finland and enterprises referred to in the State Enterprise Act.	company" (defined in the Mutual Funds Act, MFA). - Companies managing Finnish PE and VC funds are generally neither regarded as investment services companies nor mutual fund companies. - Companies managing Finnish PE and VC are the companies acting as the general partner in a private equity fund. Usually owning a small percentage of each fund and employing the managers.	publish a prospectus. "Offering to the public" is defined in Standard 5.2a issued by the FIN-FSA (the "Standard"; currently under revision). According to the Standard an offer to over 100 persons is always an offer to the public. Similarly, an offer made through public media, e.g. throug newspaper or television advertisement, shall be considered as an offer to the public. According to the SMA, an issuer of securities is obliged to draft and publish a prospectus relating to the securities to be offered, if the securites are offered to the public (3 exemptions - usually applied to foreign private investment funds offering partnership interests to Finnish institutional investors).
France	//	The management companies must get an agreement from the AMF (*Autorité des Marchés Financiers*) to be allowed to manage a portfolio in an investment fund for third parties in France. To get this agreement, the company must apply for it, and give information on: registered office; equity and financial means; identity of share holders and their share; executives must be honorable competent and experienced; strategy must be given by at least two experienced and competent persons; legal structure; activity programme.	//
Germany	The only German definition is based on the European definition (Directive 2003/71/EC), transposed by the Securities Prospectus Act (*Wertpapierprospektgesetz)*, as of July 2005; Sec 2 no 6 - Qualified investors: 1) credit institutions and financial services institutions; 2) enterprises abroad with a branch in Germany conducting banking business or providing financial services; 3) deposit-taking credit institutions or securities trading firms domiciled in another EEA state conducting banking business or providing financial services in Germany (through branch or cross-border services); 4) private or public insurance companies, investment companies and their management companies, pensions funds and their management companies, commodity dealers, non regulated legal entities, whose corporate purpose is solely to	No legal definition, though the term (*Verwaltungsgesellschaft*) is used in German legal terminology. - German law generally refers to the UCITS directive : "manag.company" - any company, the regular business of which is the management of UCITS in the form of unit trusts/common funds and/or of investment companies. - Parallel thereto, the Federal Ministry of Finance set forth the elements of a manag. company in Statement on taxation of VC and PE funds (Dec 2003): Accordingly, most German PE funds are structured as Limited Partnership (*GmbH & Co.*	The legislator does not define the term. According to the German doctrine and finance practice, private placement means an off-market placement of share capital. Only selected qualified investors may subscribe for share capital of the offering company. The circle of investors is selected if it is clearly defined. Thus, private placement describes the opposite of public offering. German definition is characterised by: off-market placement of share capital; solely offered to selected qualified investors.

	invest in securities; 5) national and regional governments, central banks, international and supranational institutions (IMF, ECB, EIB, other similar internat.org. and KfW); 6) other legal entities not being qualified as SME; 7) registered SMEs with a registered inland office or SMEs with a registered office in EEA state, if registered in a foreign, mutually recognised register; 8) natural persons with a domestic residence; 9) natural persons with a residence in EEA, if enlisted in foreign, mutually recognised register. A recent draft law (transposing Directive 2004/39/EC), abuts on the definition of "qualified investors"; this draft law, shall contain the definition of "professional clients": clients having sufficient experience, knowledge and expertise to take investment decisions and to understand the risks in connection thereto; and shall define "eligible counterparties": listing certain type of companies or organisms.	*Kommanditgesellschaft;* with a Limited Liability Company (*GmbH);* as general partner, which is deemed to have administrative functions only. The corporate general partner will generally not hold a capital interest in LP. Investors are admitted to the fund as LPs. For tax reasons, funds avoid to be treated as a commercial partnership and mandate, therefore, GPs to manage the funds' assets. These partners, frequently structured as GmbH, are referred to as management companies. The management company is responsible for due diligence of potential investments, negotiation of investment agreements, support and monitoring of target companies reporting, draw downs of capital and the support of investors. The funds remunerate these contributions by paying manag. Fees of 1 % to 2.5 % of the fund's committed capital. - German definition is characterised by: corporate entity; (Corporate) Partner of the managed fund; management fees as remuneration.	
Hungary	//	Investment of the fund's assets pursuant to the general endorsement by the owners of the funds notes, as well as the exercise of the fund's rights on behalf of the fund.	A procedure of selling securities amongst pre-selected investors.
Ireland	*No information provided.*	*No information provided.*	*No information provided.*
Italy	Decree of the Ministry of Treasury No. 228/1999, defines the following categories: - investment firms, banks, stockbrokers, SGRs, SICAVs, pension funds, insurance companies, financial companies heading banking groups and companies registered in specific lists referred of Testo Unico Bancario; - foreign intermediaries authorised under the law in force in their home country to perform the same activities as those performed by the intermediaries specified immediately above; - banking foundations; - individuals and other entities possessing specific expertise and experience in transactions involving financial instruments expressly declared in writing.	Testo Unico della Finanza (Legislative Decree No. 58/1998) defines management company as the SGR, Società di Gestione del Risparmio.	According to the Regulations of CONSOB No. 11971/1999 (amended from time to time), private placement is the offer of units of the fund: (i) addressed only to qualified investors or (ii) addressed to less than one hundred investors.
Lithuania	"Business Angels"	"Management company"	//
Latvia	*No specific definitions exist.*		
Luxembourg	In general, VC funds are reserved to well-informed investors which may be defined as any institutional investor or professional investor as well as any other	Luxembourg law distinguishes between: management companies related to undertakings for collective investments (governed by Chapter	Private placement is defined by the opposite of offer of securities to the public. According to the CSSF circular 05/225 related to the

	investor who meets the following conditions: 1) has confirmed in writing to adhere to the status of well-informed investor, and 2) invests a minimum of 125,000 EUR in the company, or 3) has obtained an assessment made by a credit institution within the meaning of Directive 2006/48/CE, another professional of the financial sector subject to rules of conduct within the meaning of Article 11 of directive 93/22/EEC, or by a management company within the meaning of Directive 2001/107/EC certifying his expertise, his experience and his knowledge in adequately appraising an investment in risk capital.	13 of the law dated 20 December 2002) and management companies governed by Chapter 14 of the aforesaid law. Chapter 13 of the law applies to all the Luxembourg management companies that manage at least one authorized UCITS (according to Council Directive 85/611 as amended by the Council Directives 2001/107 and 2001/108), including their branches. Chapter 14 of the law applies to all Luxembourg management companies which do not manage UCITS authorized according to the aforesaid Directive.	notion "offer to the public of securities" as defined in the law on prospectuses for securities and the "obligation to publish a prospectus", the offer of securities to the public means "*a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities*".
Malta	The term "qualified" or "qualifying investor" is used when dealing with Professinal Investor Funds (PIFs). In order to be "Qualifying", investor must certify that he/she meets certain specific criteria: 1) a body corporate which has net assets in excess of USD1 million or which is part of a group which has net assets in excess of USD1 million; 2) an unincorporated bona fide body of persons or association which has net assets in excess of USD1 million; 3) a trust where the net value of the trust's assets is in excess of USD1 million; 4) a person who has reasonable experience in the acquisition and/or disposal of : funds of a similar nature or risk profile; or property of the same kind as the property, or a substantial part of the property, to which the PIF in question relates; 5) an individual whose net worth or joint net worth with that person's spouse, exceeds USD1 million; 6) employees and directors of service providers to the PIF (vide question 2 below for a definition of PIF); 7) relations and close friends of the promoters limited to a total of 10 persons per PIF; 8) entities with (or which are part of a group with) USD5 million or more under discretionary management or advice, investing on its own account or for the account of its clients; Before a PIF may accept any investment, PIF must obtain a completed "Qualifying Investor Declaration Form" in which the investor confirms to have read and understood the mandatory risk warnings and describes why he/she is an "Qualifying Investor". In the case where the Qualifying Investor is a company or partnership, such declaration is required from the Directors/ Partners, whilst in the case of a Trust, from the Trustee. Legislation also refers to "Experienced investors" and these are persons having the expertise, experience to be in a position to make their own investment decisions and understand the risks involved.	The Manager's role – which may be undertaken by one or more parties ordinarily comprises: overall control of the operation of the fund (which may not be necessary in corporate funds with a board of directors); and the role of the investment Manager/adviser (day to day investment management/advice). In addition, the Manager may also assume the role of the administrator (whose role covers, amongst other things: liaison with shareholders; calculation of NAVs; Reconciliations; Pricing the Investment Portfolio; Payment of Bills; Preparation of Financial Statements; Fund Accounting; Performance Reporting; Compliance Reporting; Preparation of Contract Notes). The role of the administrator may be carried out either by: a separate Administrator appointed directly by the PIF (in which case the Manager's role would be limited to the day to day management of the PIF's portfolio); or the Manager itself, after it has been delegated with such duties by the PIF.	Private placing is defined as an offer of Securities already in issue but not authorised as Admissible to Listing on the Malta Stock Exchange or not yet in issue, to specified persons or clients of the Sponsor or any other intermediaries assisting in the private placing, which does not involve a Public Offer or an offer to existing holders of the Issuer's Securities generally.
Netherlands	A distinction is between professional and private investors. Professional investors, the normal investors	Legal entity managing one or more private equity funds.	Sale of unquoted stock, in which the share price results from negotiation rather than from 'supply meets

	in VC, are practically not regulated.		demand' system.
Poland	A qualified investor (*Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading, and Public Companies of 29.07.2005*) - Art. 8.1.: 1) financial institution or another legal person authorized; 2) another legal person whose sole activity is to invest in securities; 3) state, a regional or local authority, including a local government body, the central bank of a state, or an international financial institution (IMF, ECB, EIB); 4) a legal person other then a SME; 5) a natural person (resident of Poland or of another Member State…); 6) a SME (with registered office in Poland or in another Member State…). Two constraints for qualified investors: 1) The definition applies to legal persons and not to unincorporated entities. 2) Qualified investors invest in securities which embrace shares in a joint stock company but not shares in a limited liability company…Shares in limited liability companies are not securities.	An investment fund - a legal person whose sole business consists in investing funds raised by offering units or investment certificates to the public or by non-public offering of investment certificates, in securities, money market instruments and other property rights. It may be created only by an Investment Fund Society, subject to the Commission's authorization. According to Act on Investment Funds: - Investment Fund Society - an investment fund management company, it's a joint stock company. - Management Company (for foreign management companies only) - an entity or company registered in a Member State, whose core business comprises management of foreign funds. - Foreign fund - an open-end investment fund or an investment firm registered in a Member State, which conducts its operations in accordance with the Community laws pertaining to collective investments in securities. There are also some definitions of a management company used in venture capital related context. This context is created by governmental programs of support to seed and start up funds.	
Portugal	According to the Decree-Law n.º 319/2002, there are the following categories of qualified investors: (1) The State and other public bodies, national or foreign; (2) European Community and international financial companies and institutions; (3) Risk Capital Companies (RCC) and Risk Capital Funds (RCF); (4) Credit institutions; (5) Finance companies; (6) Investment companies; (7) Collective investment undertakings and their management companies; (8) Insurance companies; (9) Pension fund management companies; (10) Financial holding companies; (11) Public companies; (12) Foundations and associations; (13) Companies carrying out placement of investment units on behalf of third parties; (14) Independent consultants; (15) Persons having qualified holdings in the companies referred to in items (3) to (12).	- Management company is any company whose main activity pertains to the management of securities funds or investment companies that are subject to the Council Directive 85/611/CEE. - The sole company object of a securities investment fund management company is to manage one or more securities investment funds, by means of representation of the investors. - The management company, in the performance of its duties, shall act independently and solely in the interests of unit-holders.	Means the sale of securities directly to institutional investors, such as banks, mutual funds, insurance companies, pension funds, and foundations.
Romania	The Romanian Capital Market Law no. 297/2004 defines qualified investors: 1) credit institutions, investment undertakings, other authorized or regulated financial institutions, insurance companies, collective investment schemes and management companies, pension funds and entities not so authorized or regulated whose corporate purpose is solely to invest in securities; 2) local and central public administration authorities, central credit institutions,	According to the Romanian Capital Market law, a legal person, established as a joint stock company and is allowed to operate only based on an authorization issued by Romanian National Securities Commission (R.N.S.C.).	Private placement is not defined;. However, a similar concept is that of a public offer, when the offer is made to less than 100 investors and the publication of a prospectus and other disclosure requirements are not imposed.

	international and supranational institutions such as IMF, the ECB, EIB and other similar internat. organizations; 3) legal entities (bigger than SMEs) – meeting certain criteria; 4) certain natural persons, who are residents in Romania and apply to be considered as qualified investors, meeting certain criteria ; 5) certain SMEs with registered office in Romania and which apply to be considered as qualified investors.		
Slovakia	*No information provided.*	*No information provided.*	*No information provided.*
Slovenia	There is no appropriate definition of "eligible qualified investors". Investor can be any company or self-employed entrepreneur, in accordance with The Company Law. Private individuals can also be counted as investors.	There is no appropriate definition of "Management Company". It can be any company or self-employed entrepreneur, in accordance with The Company Law carrying on advisory activity.	There is no appropriate definition of "private placement". Under "private placement", we understand the participation of companies or self-employed entrepreneurs, without any public resources.
Spain	The Law (article 4.2) defines a possibility of special VC funds for qualified investors (*"entidades de régimen simplificado"*- *entities with simplified regime*): has to be placed through a private placement (there cannot be a public offer or advertisement for the placement); 500,000 EUR as a min investment (unless if institutional investors: pension funds, UCITS, insurance or credit entities, investment firms), managers or people working in VC firm; max 20 investors per fund. - Entities with a simplified regime benefit from: simplified administrative authorisation rules; more flexible risk diversification ratios; carried interest schemes for founders or promoters of the entity. Out of the scope of Law 25/2005, there is a definition of qualified investor (Art. 39 of the Royal Decree 1310/2005; as a result of the Directive 2003/71/EC): 1) legal persons authorised or regulated to operate on financial markets (credit institutions and financial services institutions); 2) national and regional governments, central banks, international and supranational institutions (IMF, ECB, EIB, other similar internat.org. 3) legal persons not being SMEs, 4) natural persons with residence in Spain meeting certain conditions; 5) SMEs incorporated in Spain and asked to be treated as qualified investors.	The management company (the Law, articles 40-46): "public limited companies whose main corporate object is the administration and management of VC funds and of the assets of VC companies. As a complementary activity, they may provide advice to the non-financial companies". Management companies of collective investment schemes may also manage VC funds and the assets of VC companies.	For entities registered in the CNMV (Registry of the Spanish Securities market Commission) and authorised in accordance with the Law 25/2005 apply rules enabling a special treatment for private placement. Foreign firms – subject to rules of public offering (as a result of the Directive 2003/71/EC); the Law contains a list of different types of offers of securities to be considered as private placement: offer solely to qualified investors; offer to fewer than 100 natural or legal persons per Member State (other than qualified investors); offer to investors who acquire securities of at least 50,000 EUR per investor for each offer; offer in denomination per units of at least 50,000 EUR; of offer up to 2,5000,000 EUR.
Sweden	*Not used*	The Company providing services to the general partner or the private equity fund.	Placement issued to selected investors.
United Kingdom	An individual or SME that has been accepted on to the FSA–*regulated manual register of qualified investors*. Qualified investor status is granted for one year after certification of meeting necessary requirements is provided by acceptable professional intermediary e.g. solicitor or accountant.	Fund management company	The raising of capital via private, rather than public channels. Opportunity to invest is offered to selected, usually institutional, investors.
Norway	Not currently a term in use.	Company managing or advising one or more funds.	Fundraising event directed at few or more players.
Turkey	*No information provided.*	*No information provided.*	*No information provided.*

2. Describe existing <u>regulatory framework</u> for venture capital funds (*existing structure/s; permanent establishment of management company…*):

	Domiciled funds	**Not domiciled funds**
Austria	Most of the Austian funds are established in the form of a so-called Mittelstandsfinanzierungs AG (MiFiG), which is a stock company subject to several <u>tax incentives</u> on the one hand and investment as well as <u>funding restrictions</u> on the other hand. Incentives: Tax exempt on the level of the fund for all revenues generated by the PE business (interest as well as capital gains) Restrictions – funding: Have to be founded by banks. Restrictions – investments: not more than 49% stake in a company, not allowed to invest in the energy and financial service industry, at least 2/3 of the fund volume has to be invested domestically, loan financing of a particular portfolio company is restricted to the amount of equity provided to the same portfolio company. There are no regulatory restrictions for management companies. Management of VC funds is not a banking business, banking law does not apply.	No regulations (apart from general regulations for companies).
Belgium	In PE funding a distinction can be made between "statutory" and "contractual" funds. The main difference between those two types is the fact that <u>statutory funds</u>, contrarily to the contractual funds, possess corporate personality. Therefore, in case of <u>contractual funds</u>, the fund is seen as undivided property of the investors. Both the statutory and the contractual funds are managed by a management company. Two legal structures exist in Belgium to set up a PE statutory fund: public (PRIVAK) and private (private PRIVAK) collective investment fund: (1) <u>PRIVAK's</u> are regulated by royal decree of 18 April 1997. PRIVAKS are Belgian investment companies with fixed equity, so called "closed end" investment companies. The sole objective of the PRIVAK is to perform collective investments in specific financial instruments emitted by off-market companies and growth companies. The PRIVAK attracts its equity by public offering. (2) <u>Private PRIVAK's</u> are regulated by the law of 20 July 2004 concerning specific forms of collective management of investment funds. The private PRIVAK attracts its equity by private placement. - It has to be noted that the legal form of the private PRIVAK, due to its complexity and limitations is not commonly used in Belgium. A new royal decree, in order to develop a new legislation reflecting special needs of PE industry, is currently under construction.	Funds, domiciled outside Belgium, are bound by their respective national regulatory frameworks.
Bulgaria	*No information provided.* *No information provided.*	*No information provided.*
Cyprus	There is no specific regulatory framework for domiciled funds, although the "Limited Partners-General Partner" structure of VC funds used in mature markets could be established under the current General Partnership Law, which, however, limits the number of limited partners to 20. So far, however, the few local organisations that conduct VC investments are structured as Limited Liability Companies.	While international mutual funds are being regulated by the Central Bank of Cyprus through a specific regulation, the International Collective Investments Schemes Law, which defines a number of specific legal structures for such funds, there is no specific regulation for VC Funds.

Czech Republic	- domiciled fund estabilished by the state (using public money): In accordance with Act No. 219/2000 Coll., on the property of the Czech Republic and its representation in legal relations, as amended by later regulations, the state can exclusively establish, through the Ministry, a joint-stock company or invest the property of the state in a trading (joint-stock) company; prior consent of the government is necessary. By other means or in another form a legal-private entity – trading company – cannot be established using the property of the state. Location of a fund outside the Czech Republic with respect to the equity participation of the state is not allowed. - domiciled fund estabilished by private investor / owner (using private money):private VC funds are subjected to the Act on Collective Investments and their income is taxed under the terms of the Income Tax Act.	Funds domiciled outside the Czech Republic are subject to the legislation of the state in which they were established. *(not a proper answer – the question was on foreign funds established in the CR) –clarification needed)*
Denmark	Establishment and running There is no specific act on venture capital funds (VC) and/or private equity funds (PE) in Denmark. The regulatory framework depends on what form and structure the investors choose: - Limited Company Choosing the form of a private or public limited company will of course put the VC under the regulation of the Private or Public Limited Companies Acts. The Acts are very detailed in comparison to the relevant legislation regarding other available structures as can be seen below, and are not widely used for structuring VCs in Denmark. For that reason the regulation will not be handled any further herein. Private and public companies must be registered with the Danish Commerce and Companies Agency ("DCCA") (in Danish: "Erhvervs- og Selskabsstyrelsen"). Limited Partnership The most commonly used structure is the Limited Partnership. Investors can also choose a variation hereof namely the Limited Partnership Company. The differences of the two will be described briefly in the following. The limited partnerships are to a wide extent unregulated. For instance there is no legislative restrictions or requirements regarding the capital structure, including allotment of dividends, repayment of capital to investors etc. The partners/investors are in large part free to organize their partnership as they choose as long as there is at least one partner with unlimited liability – the general partner – and one or more limited partners (i.e. partners with limited liability). Furthermore there is some regulation of the partnership's name-calling and on how to vest powers of procurator onto an assistant general manager. The general partner can be a natural person, or a public or private limited company (which is the case for VC's) or any other legal person. There is no nationality demand for the general partner, or the investors (limited partners) for that matter. If the general partner is a private or public limited company, a Danish limited partnership must be registered with the DCCA. A foreign company designed to be the general partner in a Danish limited partnership could depending on the circumstances be subject to registration at the DCCA of a branch office before being able to act as general partner in a Danish partnership. However, this is normally not the case. The same applies with respect to a management company domiciled outside Denmark. As mentioned, the partnership is mostly free to organize itself inwards. However, the general partner must have a minimum of management and economic authority in the partnership. The directive herein is however easily met and thus constitutes no real restrictions in the use of this structure. Naturally, if the general partner is a Danish private or public limited company it must meet the demands laid down in the respective Companies Acts. The limited partnership is tax transparent.	As mentioned in relation to the domiciled funds, a foreign public limited company can be subject to registration of a branch office before being able to conduct business in Denmark. A VC domiciled outside Denmark could be subject to the same provisions. However, as mentioned under "domiciled funds", the investors will not be considered to be conducting business in Denmark if they only *invest* in securities, i.e. with the purpose of retrieving profits springing from the investment objects and not by profiting from trading these securities (continuously). This applies directly in relation to tax and is equally considered to be the case in relation to whether the investor has the obligation to register a branch office before being able to place investments. See "domiciled funds" concerning issues regarding branch office registration where only the general partner and/or management company are domiciled outside Denmark.

	Limited Partnership Company The limited partnership company is a hybrid between the public limited company and the limited partnership. Thus there must be at least one partner with unlimited liability and at least one partner with limited liability, which for example results in tax transparency for the limited partnership company like the limited partnership. The limited partnership company is however, contrary to the limited partnership, regulated by the provisions in the Danish Public Limited Companies Act with the relevant adjustments resulting from the inherent nature of a limited partnership. The choice of this company type thereby gives a formalised set of rules on the internal structure and outwards characteristics of the company. And then on the other hand the company for instance keeps the tax transparency of the limited partnership.	
Estonia	Both domiciled and non domiciled funds can be in two different legal forms: 1) companies (public limited companies or private limited companies) pursuant to the business code; 2) risk capital funds pursuant to the Investment Funds Act *(IFA)* - the Act prescribes certain restrictions but also advantages compared to the business code. Additional advantages are provided for in the draft of the Investment Funds Amendment Act. IFA has incorporated the clauses of the UCITS (EU Investment Fund Directive). - domiciled funds based on IFA must always have a management company; - domiciled management companies have to apply for activity licence that will be issued by the Financial Supervision Authority of Estonia.	Both domiciled and non domiciled funds can be in two legal forms: 1) companies (public limited companies or private limited companies) pursuant to the business code; 2) risk capital funds pursuant to the Investment Funds Act *(IFA)* - the Act prescribes certain restrictions but also advantages compared to the business code. Additional advantages are provided for in the draft of the Investment Funds Amendment Act. IFA has incorporated the clauses of the UCITS (EU Investment Fund Directive). - a foreign fund may not have a managing company in Estonia if it publicly offers its units in Estonia. - A person who, according to the legislation of the state where it is founded has the right to manage funds or other similar undertakings or institutions established for collective investment, may manage funds founded as public limited companies and registered in Estonia on the basis of the activity licence issued in the home state by establishing branches or providing cross-border services in Estonia. - In order to found a branch in Estonia, a management company of a third country is required to apply for a corresponding authorisation from the Financial Supervision Authority. A management company of a Contracting State which wishes to found a branch in Estonia shall inform the Financial Supervision Authority thereof through the financial supervision authority of the Contracting State. - A management company of a third country which wishes to provide cross-border services in Estonia shall apply for a corresponding authorisation from the Financial Supervision Authority. A management company of a Contracting State which wishes to provide cross-border services in Estonia shall inform the Financial Supervision Authority thereof through the financial supervision authority of the Contracting State. - The offer of units of a foreign fund in Estonia shall be registered with the Financial Supervision Authority before the offer is commenced.
Finland	The most commonly used fund structure is a Finnish limited partnership (*"kommandiittiyhtiö, ky"*). Other legal vehicles are not common in VC or PE funds and in practise do not seek financing from outside investors but rather operate as joint ventures or public entities. The "*ky*" is a non-listed usually closed-end vehicle for VC and PE. There is no permanent establishment. However, it is possible that in situations where actual decision making on investments takes place in Finland or a foreign investor permanently uses a related Finnish advisor, a foreign private equity fund could be considered to have a permanent establishment in Finland.	If a foreign pararell fund of a Finnish fund is consired to be effectively managed from Finland, the parallel fund could be regarded as a Finnish partnership for Finnish tax purposes. In such case, foreign investor could become tax liable in Finland.

France	FCPR (*Fonds Commun de Placement à Risque*) - must have more than 50% of its funds invested in PE (of which 20% of public equity of small caps (< 150M euros) can be included); FCPR ensures tax transparency for investors. FCPR can only be registered in France and only managed by a management company domiciled in France (and has an agreement). FCPI (*Fonds Commun de Placemment dans l'Innovation*) - a kind of FCPR with more constraints on investments and a tax incentive. FCPI must invest 60% of its funds in equity of unquoted innovative companies (of which 20% can be of public equity of innovative small caps (< 150M euros). The investors (physical persons only) have a tax credit at the entrance of 25% of the subscription. FIP (*Fonds d'Investissement de Proximité*) - a kind of FCPR with more constraints on investments and a tax incentive. FIP must invest 60% of its funds in PE (10% must be invested in newly created companies, less than 5 years old). To be eligible at this 60% quota, the companies must be SMEs and have their main activity in 1 or 2 or 3 regions which have common borders. The FIP must abide by diversification of the investors rules. Iinvestors (physical persons only) have a tax credit at the entrance of 25% of the subscription. SCR (*Société de Capital Risque*) - a special form of a SAS (*Société par actions simplifiée*). SCR must : define its « objet social » as management of a portfolio; not borrow more than 10% of its "actif net"; more than 30% must be owned by a family; declare they want to be regarded as an SCR. The SCR must always have more than 50% of the invested funds in PE (of which 20% of public equity of small caps (< 150M euros) can be included). SCR is exempted from tax. The SCR is a SAS, so it is a legal entity. The shareholders of the SCR benefit of lower taxes. SUIR (*Société Unipersonnelle d'Investissement à Risque*) - has a unique shareholder; is exempted from tax on companies and tax on revenues (for the shareholders) for 10 years; must not have more than 30% in the capital of a company. (less than 10 SUIRs in France, hasn't been success).	FCPR can only be registered in France and only managed by a management company which is domiciliated in France (and has an agreement). The French legal framework cannot regard FCPR as a permanent establishment of a foregin investor. Thus, there is no risk for a foreign investor to be taxed twice.
Germany	- For PE and VC funds domiciled in Germany, the regulatory framework is set by the Commercial Code (*Handelsgesetzbuch*), the Limited Liability Companies Act (*Gesetz über die Gesellschaft mit beschränkter Haftung, GmbH*), the Investment Act (*Investmentgesetz,* and the Special Investment Companies Act (*Gesetz über Unternehmensbeteiligungsgesellschaften, UBGG).* - The regulatory tax framework is based on the Investment Tax Act (*Investmentsteuergesetz)* from Dec 2003; and the carry legislation (*Gesetz zur Förderung von Wagniskapital*) from July 2004. The most suitable structures available for PE funds in Germany, are: 1) GmbH: shareholder liability is limited to the amount of the respective subscriptions; a rather flexible form - a popular vehicle for PE investments (as is not yet the stock corporation AG (*Aktiengesellschaft*)- inflexibility, strict formalities) ; the shares of a GmbH may not be listed on a stock exchange ; can easily be transformed into AG to provide for IPO at the time of the exit. GmbH is relatively easy to establish/ operate (The Act on German Limited Liability Companies is being reformed (expected for 2008) and will simplify certain procedures); seat must be in Germany (to cease with the expected reform); directors - must be individuals and do not have to be German nationals/residents; transfer of shares in a GmbH requires certain formalities such as notarisation. A variation - participation of a silent partner (whose share is not disclosed and is not a co-owner ; participates in profits and losses ; upon termination of the silent partnership	Funds, domiciled outside Germany, are bound by their respective national regulatory frameworks. According to information of the German Private Equity and Venture Capital Association (BVK), foreign, not domiciled PE and VC funds, operating in Germany, are organised in the legal structures of Delaware LP, Dutch NV, Luxembourg SICAR/SICAV, French FCPR and Swiss "Investment Company". Furthermore, Guernsey and Jersey structures are often utilised.

	arrangement, silent partner gets back the book value of his original investment). In an atypical silent partnership, the silent partner may take more responsibilities in the management and may participate in the hidden reserves of the GmbH. Silent partnership provides a convenient and flexible way of financing the GmbH. 2) Limited Partnership - GmbH & Co. KG: commercial partnership established by one or more limited partners (LPs) and a general partner (GP). Liability of LPs is limited to amount of respective capital subscriptions, liability of GmbH as GP is limited to amount of its share capital. The GmbH & Co. KG conveniently combines the flexibility of a partnership with the limited liability of a corporation. Partnership interests may be transferred without notarisation but must be registered with the Commercial Register. Accounting and public disclosure requirements are as strict for the GmbH & Co. KG as for the GmbH. 3) Funds formed under the InvG: Two types of investment funds: 1) open-ended investment funds structured as Funds (*Sondervermögen);* 2) Investment stock corporations with fixed or variable capital German funds structured as *Sondervermögen*, managed by the KAG, are subject to complex regulatory provisions. As the InvG classifies the business of a KAG as banking business, it is also subject to the Banking Act and the KAG is supervised by the BaFin -> banking licence is required. Relevance of this kind of funds for PE in German is very limited. 4) Special Investment Companies (UBG): Two types available (open and closed), which provide certain tax and other advantages but are too limited in scope and too restrictive regarding investment possibilities that this structure is rarely used. Nevertheless, the UBGG may well be the base for the new German Private Equity Act. -> The most popular structures for PE investment are GmbH and GmbH & Co. KG. Legal form of Investment Company - designed specifically for PE sector, but due to its complexity and limitations did not make it a success. Currently to develop a new legislation reflecting special needs of the PE industry (to enter into force in 2008).	
Hungary	1) Established upon being registered by the State Capital Market Supervisory Authority (and terminated upon being cancelled from the register). VC funds may only function as a closed-ended fund established by the private offering of non-redeemable venture capital fund certificates. 2) VC fund certificates issued for a particular fund may be of different face value and may carry different rights. /…/ 4) Subscribed capital of a VC fund shall not be less than 250 million forints (~1million EUR); 5) The amount of a VC fund's own capital may not be less than the minimum amount of subscribed capital; 6) subscribed capital of VC funds shall consist of cash contributions only. 7) At least 10% of the total nominal value of VC fund certificates, or not less than 250 million forints, must be paid up at the time of purchase of the VC fund certificates. The balance remaining shall be paid up according to the conditions laid down in the VC fund's operating regulations, not later than within 6 years from the date of foundation. /…/ 11) VC funds may only be established for a specific duration, min 6 full calendar years. 12) VC fund management companies may extend the term of the VC fund, if so allowed by the VC fund's operating regulations, by a period of time not to exceed the original term.	The same as for domiciled funds.
Ireland	*No information provided.*	*No information provided.*

Italy	Domestic funds are regulated by the Testo Unico della Finanza (Legislative Decree No. 58/1998).	International players investing in Italy usually act through: - an Italian management company - SGR, regulated by the Testo Unico della Finanza (Leg. Decree No. 58/1998); - an advisory company – Srl (like an English Limited Company); - a financial company regulated by the Testo Unico Bancario (art. 106 and art. 107 of Leg. Decree No. 385/1993). Two legal entities most commonly used for structuring a foreign investment fund operating in Italy are the following: - the UK limited partnership, popular because of its tax transparency; - the Dutch BV, popular because of its participation exemption.
Lithuania	No legal framework exists for the establishment of PE or VC funds. However, amendments of the Law on Collective Investment Undertakings were prepared by the Security Depository now in the Parliament, are to be approved in early 2007. Now exist PanBaltic funds, registered in Latvia or Estonia (or Luxembourg or in the US) and are investing into SMEs in all three Baltic states, and thus could be treated as vehicles investing cross boarder. The Existing PE "fund" has forms of investment companies (Hermis Capital, Invalda, MG Baltic) – Private limited liability Companies (like "holding" companies), which are regulated according the Companies' Law. Ascembla Growth fund is established as the private partnership, and the Management company – as the Plc.	"Management companies" have a status of the consulting companies. Investments are made from funds registered abroad.
Latvia	No specific regulatory framework, regulated as general business activity.	
Luxembourg	VC funds in Luxembourg may be organized: - The contractual form is called "fonds commun de placement" (FCP): "any undivided collection of assets made up and managed according to the principle of risk-spreading, on behalf of joint owners who are liable only to the extent of their contribution and the rights of which are represented by units". The FCP is managed by a management company. - The corporate type exists as a separate legal entity, generally under the form of a "société anonyme" (S.A. or a public limited company), which may be organized with a fixed or variable capital. In the latter case the company is called "société d'investissement à capital variable" (SICAV) and the amount of the capital is at all times equal to the net asset value of the company, whereas a company organized with a fixed capital is called "société d'investissement à capital fixe" (SICAF). Please be advised that SICAVs and SICAFs have to adopt the form of a public limited company and as such are subject to the provisions applicable in general to public limited companies, i.e. the law dated 10 August 1915, insofar as the law dated 20 December 2002 does not provide otherwise.	- UCIs "other than the closed-end type" formed according to or operating under foreign laws, which are not situated in a Member State of the EU, which market their units in Luxembourg, and whose securities are the subject of a public announcement, offer or sale in or from Luxembourg, must be submitted in their State of origin to a permanent supervision performed by a supervisory authority set up by law in order to ensure the protection of investors. - UCIs must appoint a credit institution to ensure that facilities are available in Luxembourg for making payments to unit holders and redeeming units. - UCIs must take the measures necessary to ensure that the information which it is obliged to provide, is made available to unit holders in Luxembourg.

<table>
<tr><td>Malta</td><td colspan="2">VC funds are currently considered as specialist collective investment schemes. Malta has no specific regulatory framework and the existing framework which covers collective investment schemes including SICAVS, INVCOS and Professional Investor Funds (PIF) would be applicable.
PIF - a type of Collective Investment Scheme (CIS), which can be incorporated as an open or closed ended investment company – in the form of a SICAV or INVCO, or a limited partnership or a unit trust. PIFs that are incorporated as open-ended or closed-ended investment companies in Malta may not be required to issue a Prospectus under the Companies Act, 1995. However, an Offering Document will be required. The PIF regime consists of two categories: PIFs promoted to Qualifying Investors and PIFs promoted to Experienced Investors.
- Minimum initial investment in PIFs is USD100,000, or other currency equivalent.Provided that the threshold is satisfied, additional investments – of any size – may be made. The minimum investment threshold applies to each individual “Qualifying Investor”. The minimum investment threshold for an Experienced Investor is USD20,000 or equivalent in foreign currency. The minimum investment threshold applies to each individual “Experienced Investor”.

Given the relatively high risk profile associated with such schemes and the long-term nature of the investment they ordinarily enter into, such schemes are more suited at non-retail investors and would often be of the closed-ended type rather than a SICAV.

VC funds may appoint a third party fund manager or be 'self-managed'. The fund management company may be a local licensed fund management company or an overseas based fund management company considered 'of sufficient standing and repute' by the Malta Financial Services Authority.

Although non-corporate legal forms have never been used yet by local CISs, schemes may also be established in the form of a trust or limited partnership.</td></tr>
<tr><td>Netherlands</td><td>Two fund structures are available:
1) Besloten vennootschap met beperkte aansprakelijkheid - BV (Limited liability company)): This fund structure provides international investors with the ability to be exempted from having a permanent establishment in our country when investing through this fund.
2) Commanditaire vennootschap - CV (limited liability partnership): This fund structure does not provide international investors with the ability to be exempted from having a permanent establishment in our country when investing through this fund.</td><td>N.B. international investors investing through a CV will only have a permanent establishment in the Netherlands, in case the CV is carrying on a business (which depends on the activities of its managers; in practice, investing through a CV used as Dutch VC fund, will constitute a Dutch permanent establishment for international investors).

Not domiciled funds can use the same framework as domiciled funds. Dutch and foreign funds are allowed to use foreign legal forms like LLC’s.</td></tr>
<tr><td>Poland</td><td>There are only 2 domiciled VC funds - organized as a publicly listed joint stock company, with regulatory status of any public company, their investment activity does not affect in any way the regulatory status. This structure is not tax transparent. They shall not be considered as viable PE fund structures.

Under Polish law, there are two suitable fund structures for PE/VC (though none has been widely tested by the market):
1) Closed-End Investment Fund for Non-Public Assets (CEIF): regulated in detail by the Law on Investment Funds (27 May 2004; the same law covers UCITS funds); managed by an investment fund company, which is required to have the legal structure of a joint stock company.
2) Limited Partnership or Limited Joint- Stock Partnership: governed by the Commercial Companies Code. This structure is not regulated. A Limited Partnership has at least one partner (general partner) with unlimited liability towards the partnership’s creditors, and least one partner (limited partner) with limited liability. The liability of each limited partner towards creditors is limited only up to the amount of the commandite sum.</td><td>The vast majority of PE and VC funds investing in Poland use foreign fund structures. They are not regulated in Poland. They do not have management companies in Poland. If a fund had a Polish management company, it would be considered to have a permanent establishment in Poland and taxed on all its profits irrespective of where they were generated.</td></tr>
<tr><td>Portugal</td><td>The portuguese law provides two types of Risk Capital Funds (RCF):
- RCF whose participation units must be subscribed by qualified investors (FIQ); and
- RCF whose participation units may be subscribed by any investor (FCP).</td><td>Not domiciled funds can operate in Portugal as general foreign investors, but do not enjoy any special legal or tax benefits.</td></tr>
</table>

	Share capital for RCF is potentially stable, should not be less than 1 million EUR. Notes: The new legal framework, which is expected to be published during the first quarter of 2007, will change to only one type of RCF and the share capital will probably increase to €2,5 million. Active Operations - RCF may: (1) Acquire, originally or on a secondary basis, investment units in companies with high growth and appreciation potential; (2) Acquire, by assignment or subrogation, credits on companies in which they participate or in which they intend to participate; (3) Grant credit, under any form, or provide guarantees in benefit of companies in which they participate; (4) Apply their treasury surpluses in financial instruments; (5) Conduct any foreign exchange operations necessary to the development of the respective activity. Note: Applications in securities admitted to trading on a regulated market cannot exceed 50% of the net asset value of the funds. Permanent establishment: Portuguese RCF can only be managed by registered management companies based in Portugal.	
Romania	Legislation does not define a VC fund, but a fund with characteristics of a VC fund can be included in the category of the so called *collective undertakings other than UCITS.* (O.C.I.U.) According to the Capital Market Law no. 297/2004, a collective investment scheme that is not harmonized with the provisions of the Directive 85/611/EEC as further amended (UCITS) can be established. O.C.I.U. can *publicly* or *privately* collect funds and/or savings from the natural or legal persons and can be established *under a civil contract (closed–end investment funds)* or *under articles of incorporation (closed-end investment companies).* - The O.C.I.U. that *publicly raise funds and those which privately raise funds from the investors* ***and are managed*** *by an asset management* company have stricter rules set by the Law no. 297/2004, having the obligation to register with Romanian National Securities Commission and to comply with R.N.S.C. regulations and orders. - Article 115 of the Capital Market Law provides that the *collective investment schemes which privately collect funds* ***and are not managed*** *by an asset management company* do not have to register with the R.N.S.C and they are operating under the provisions of their articles of incorporation regarding their investment policy, their business conduct and transparency. In this case, the law requires that in their articles of incorporation a warning should be explicitly included stating clearly that they are not operating under the Capital Market Law. The OCIU that are registered with R.N.S.C. are also classified according to the categories of investors from which they raise money, their total number of investors and the instruments in which they may invest. According to the capital market regulations, the following types of OCIU can be established in Romania: ***a)*** OCIU for qualified investors, set up by privately raising finance and with a min nominal value of the participation title of 10.000 RON (approx 2,900 EUR); ***b)*** OCIU for other qualified investors, set up by privately raising finance and with a min nominal value of the participation title of 2 million RON (approx 570,000 EUR); ***c)*** OCIU with a permissive investment policy - set up by publicly or privately raising finance and with a min nominal value of participation of 1000 RON (285 EUR). ***d)*** OCIU with a diversified investment policy - set up by public or private raising finance and with a minnominal value of participation title of 2000 RON (570 EUR). ***e)*** Other types of OCIU registered with C.N.V.M., classified according to their investment policies, set up by publicly or privately raising finance such as: OCIU with a restrictive investment policy, O.C.I.U. specialized in equity investment; O.C.I.U. specialized in bonds, in money market instruments, in participation title of collective undertakings, in derivatives, in mortgage instruments.	The OCIU from Member State (which are not harmonized with the provision of the Directive 85/611/EEC) and seek distribution of participation titles on the territory of Romania have to register to the R.N.S.C. The request for registration will be made by the legal representative of the investment management firm, or as appropriate by the legal representative of the self managed OCIU and shall be accompanied by specified documents according to the R.N.S.C. regulations. The distribution of participation titles on the territory of Romania by OCIU from non Member States shall be carried out only where R.N.S.C. has concluded a cooperation agreement with the competent authority of the home member state of that OCIU and provided that a branch is established. Regarding not domiciled fund, in order to function and raise capital from the investor, an OCIU should register to the RNSC and the RNSC should have a cooperation contract with the competent authorities from the origin country of that OCIU. The procedure of the registration is similar to a procedure of authorization, the OCIU being obliged to present different documents required.

	- The categories of OCIU which privately rise capital and are targeting to qualified investors may have max 100 investors. The other OCIU categories may have max 500 investors. - The OCIU which rise privately capital and those addressing to the qualified investors can be established as a closed end investment fund or as a closed end investment company (with kind of investment policy without diversifying limits for their investment). - Considering the above mentioned types of collective investment structure, VC funds can be set up as an OCIU which privately raises capital addressing, especially those targeting the qualified investors or those undertakings that do not have the obligation to register with the R.N.S.C. or which do not publicly raise funds.	
Slovakia	*No information provided.*	*No information provided.*
Slovenia	Slovenia does not have special regulatory framework for VC funds. VC funds can operate as ordinary companies, established in accordance with The Company Law. There are no differences between domiciled and non-domiciled funds. At the moment, Slovenia is preparing a new "Venture Capital Company Law". It will define which companies can acquire "the venture capital company" status.	Slovenia does not have special regulatory framework for VC funds. VC funds can operate as ordinary companies, established in accordance with The Company Law. There are no differences between domiciled and non-domiciled funds.
Spain	- The new Law 25/2005 on PE and VC entities under the title Venture Capital Entity (VCE) shapes an investment vehicle designed to take temporary stakes in the capital of non-financial and non-listed companies. VCE – two possible legal forms: 1) VC companies (*sociedades anónimas*) – acting independently without the need for the services of a management entity; investors subscribe part of the share capital by means of cash payments or contributions in kind. 2) VC funds: merely separate assets pools devoid of legal status which must be managed and represented by a management entity and can only be funded by cash contributions. - Regardless the form, the new Law 25/2005 distinguishes two regimes for VCE: 1) Common regime – defined by: mandatory investment ratio (60% of assets in stakes, of which 30% can be granted principatory loans), free disposal ratio (possibilities for assets not in mandatory ratio), diversification requirements (not more than 25% of calculable assest can be invested in the same company or more than 35% in companies belonging to the same group), timing (mandatory invest.ratio - complied with at the end of each fin.year) 2) Simplified regime: private placement (shares offered without any kind of publicity), min investment (500,000 EUR per investor, unless if institutional investor), reduced scope (max 20 shareholders, excl. institutional investors); benefiting of certain exceptions: carried interest (permitted to issue to those different of VCE shares), more flexible investment regime (diversification, 40% of assets), faster access to activity and less supervision (no need for a prospectus and annual report, if CNMV does not repond within month, authorisation granted). Both regimes – several exceptions providing greater flexibility for investing in listed securities on domestic and foreign markets. - the new Law 25/2005, two alternatives for investment in other VCEs, open for both common and simplified regime: 1) General Regime: VCEs may use up to 20% of mandatory ratio for investing in	

	other VCEs (if the latter do not then invest more than 10% in other VCEs) 2) Funds of funds: VCEs must invest at least 50% of mandatory ratio in direct investment VCEs (but max 40% of assets in one VCE). - Regardless of the path chosen, VCEs are established as genuinely international vehicles, allowing investment in both domestic VCEs and foreign entities that, their name or legal status notwithstanding, carry out venture capital activities.	
Sweden	There are three basic requirements that most domestic and foreign investors have on a fund vehicle: 1) there shall not be any restrictions on how profits can be allocated among and immediately distributed to the partners, and that the partners can make tailor made solutions on how to organise the business of the fund; 2) the fund should be fully tax transparent and that no VAT should be imposed on management's services to the fund; 3) the structure should be similar to most often used LPs (and many foreign investors trust only in LP structures). Today, there is no Swedish legal structure that satisfies all the three requirements. There are two basic structures that can be used as fund vehicles: 1) Swedish limited partnership (Sw: kommanditbolag), which fulfils legal and trust, but not tax requirements. Swedish law has very few restrictions as regards to the distribution of funds to the partners and the organisation of the business. The reason why the tax requirement is not fulfilled is that if management operates the fund out of Sweden, most Swedish and foreign investors will be taxed on the income derived from the partnership. 2) Swedish limited liability company (Sw: aktiebolag), which fulfils tax and possibly alsolegal requirements, but not yet the trust requirement. A fund vehicle based on a Swedish limited liability company may be structured to avoid unfavourable tax treatment, and is thus today the only Swedish structure that could attract both Swedish and foreign investments in the same fund vehicle. /see also text right/ The regulatory framework for investments in limited partnerships and limited liability companies consists foremost of the Act on Partnerships and Non-registered Partnerships and the Swedish Companies Act, respectively. There is generally no requirement for providing potential fund investors with prospectuses, since investors are approached one at a time. The fund may be required to provide a prospectus, though, if the general public is invited to invest in the fund, or the shares of the fund are traded in a marketplace. Furthermore, a portfolio company may be required to provide a prospectus in case of an exit through an IPO. There is no specific Swedish regulatory framework customised for the VC industry, but rather the industry participants try to adapt to the general law. It is common that Swedish management teams establish funds in internationally recognised jurisdictions, such as the British Channel Islands.	There are three basic requirements that most domestic and foreign investors have on a fund vehicle… /see text left/ Swedish limited liability company (Sw: aktiebolag) may be structured to avoid unfavourable tax treatment, and is thus today the only Swedish structure that could attract both Swedish and foreign investments in the same fund vehicle. It is possible to capitalise the Swedish limited liability company so that distributions to the partners can be made immediately, but the capital structure can be perceived as complicated by especially foreign investors. Furthermore, some foreign investors are reluctant to invest in a vehicle that is still novel in the private equity business, i.e. that is not a limited partnership.
United Kingdom	"Light touch" regulation through Financial Services Authority (FSA).	Although they do exist, there are few not domiciled funds as the regulatory framework for domiciled funds is tax-transparent.
Norway	VC funds have usually been structured as a private limited company (AS) or as a	*No information provided.*

	limited partnership (KS). Recently, and usually in respect of larger funds, Norwegian fund managers have organised their funds in foreign jurisdictions (particularly in Denmark and on the Channel Islands). The reasons behind this are partly that these jurisdictions are deemed by investors and fund managers to provide predictable and stable tax regimes, partly that investors in such VC funds may be taxed according to the tax laws in their own domicile and finally that the corporate laws governing the fund structures in these jurisdictions are more flexible than Norwegian corporate law. KS is now the most common structure for funds organised in Norway and have similarities to LPs based on the Channel Islands and Denmark. There is no regulation that prohibits implementation of customary market terms in VC funds. However, the Norwegian Partnership Act (1985) contains certain limitations, which are deemed problematic for fund managers and investors: ▪ 20 % of the limited partnership's equity must be paid in at closing and 40 % of the equity must be paid in within two years from closing. This requirement will normally result in the investors paying in funds to the VC fund more rapidly than needed, which has a detrimental effect on IRR performance of the fund. ▪ 40 % of the equity is restricted capital, which may delay distributions from the fund and thus also reduce the IRR performance of the fund. ▪ The general partner GP (No: *komplementaren*) of a limited partnership must at all times invest at least 10 % of the partnership's total equity and have the right to receive at least 10 % of the profits. Like in most international funds, the GP can have the exclusive responsibility for the operation of the fund, including making decisions relating to investment and realisations on behalf of the fund. However, due to the funding requirement of the GP, the fund managers do not often have financial means to own the GP. The most common solution is that the investors invest in GP as well as in the fund. Whilst doable, this makes the structure more complex in respect of distribution of carried interest, implementation of customary decision-making bodies etc. Norwegian funds, as normally structured, may operate its business without undue regulatory restrictions on investments. However, as a consequence of the investment services directive (MiFID), it is proposed that a fund will be required to obtain authorisation to provide investment services under the Norwegian Trading Securities Act. As we understand it, similar provisions will not be implemented in the other Nordic countries.	
Turkey	*No information provided.*	*No information provided.*

3. How many venture capital funds are in the country?								
	registered VC funds		private VC funds		private-public VC funds		funds of funds	
	total N°	operating cross-borders	total N°	operating cross-borders	total N°	operating cross-borders	total N°	operating cross-borders
Austria	38 MifiGs	32	35	32	3	0	0	/
Belgium data for **BVA members**	Around 32 (BVA has 38 members, of which 6 buy-out funds and others VC or mixed funds) + 3 or 4 (non-BVA members)	15 + 3 local offices of internat. fund	31 funds (out of 38 BVA members) + 3 spin-offs	15	12 ARKIVs + 3 spin-offs + GIMV	1 GIMV	6	5
Bulgaria	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*
Cyprus	- Domestic Scene: There are only 3-4 cypriot-registered investment companies operating as VC investors, which were really formed "opportunistically" reacting to the stock market boom of 1999. The majority of their investments are based in Cyprus, although they have some "ad-hoc" investments in other countries (e.g. Greece). - International Funds: No information was found on any international funds being domiciled in Cyprus (taking advantage of its low taxation) and active in markets outside Cyprus. As for foreign funds investing in Cyprus, there are a few (mainly from Greece) that have invested in Cypriot companies.				0	/	0	/
Czech R.	10							
Denmark	52	17	44	17	8 Vaekstfonden and other innovation environments; 12 funds in which Vaekstfonden is an investor	6	3 (or more)	3 (or more)
Estonia	While VC funds could be of various legal forms, the number of funds is not known. All the VCs act currently in the form of a customary company and their number is estimated to be below 100. No VC funds have been founded pursuant to the IFA.							
Finland *(incl. only FVCA members → not accurate view)*	82	31	77	31	//	//	2	2
France *data for manag. companies*	688 FCPR							
Germany *funds not subject to registration; data - a BVK internal survey*	90 – 100 early stage funds (of which 93 VC funds)	/	66 VC firms	/	14 early stage (private-public or solely public); of which 13 VC firms of German savings banks	/	*unknown*	*unknown*

Hungary	10, only 2 registered by State Supervisory Agency	0	8 representation offices of foreign private VC funds)	-mainly operating regionally	0	0	0	0
Ireland	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*
Italy	20 (only funds); 75 (all, incl funds of funds and manag.comp)	20 (only funds); 25 (all, incl funds of funds and manag.comp)	20 (only funds); 69 (all, incl funds of funds and manag.comp)	20 (only funds); 23 (all, incl funds of funds and manag.comp	0 (only funds); 3 (incl. manag. comp)	0 (only funds); 0 (incl. manag.comp)	0 (only funds); 3 (all, incl funds of funds and manag.comp)	0 (only funds); 2 (all, incl funds of funds and manag.comp)
Lithuania	0	/	0	/	0	/	0	/
Latvia	0 (no registration required)		11 (have either done investments in Latvia or have local representation) - only 1 without any crosborder connections, rest are local offices of pan-Baltic or even bigger funds). No investments identified of Latvia based funds (or local offices) in other country.		5 (3 operational) – restricted to operations only in Latvia		Only Latvian Guarantee agency, acting as fund-of-funds within state aid program.	
Luxembourg	14	All funds are allowed to invest outside Lux.	0	/	14	All funds are allowed to invest outside Lux.	0	/
Malta	The only VC fund, licensed by the MFSA, is the Malta Development Fund Ltd - a closed-ended corporate CIS licensed in October 1994. Private in nature, this has remained very limited in scope and save for an investment in one local company it was never really active in the local economy and its focus was predominantly foreign. MDF Ltd has a third party fund manager. There are no other VC funds at present however the Government of Malta is in the process of incorporating one in conjunction with private investors. The fund will take the form of a Professional Investor Fund that will raise its financing from qualified and/or experienced investors. The fund will be set up as a closed ended Collective Investment Scheme.						/	/
Netherlands	Not registered in the NL. Around 60 PE funds – funded by institutionals, private individuals etc. (18 invest in start-up)			25 PE (5 VC)	4 regional development companies	0	2 (AlpInvest, Robeco)	2
Poland	29	18	29	18	0	0	1	1
Portugal	39	7	6	5	33	2	1	0
Romania	6 OCIOU	0	/	/	/	/	/	/
Slovakia	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*
Slovenia	There are no registered VC funds. Interested Slovenian investors (financial institutions, insurance companies, etc.) have in most cases registered their funds in foreign countries (Austria, Netherlands, etc.), mainly because of an appropriate tax legislation in those countries. Only "Management Companies" that manage such funds are registered in Slovenia.							
Spain - data from CNMV and ASCRI	92 VC companies (SCR); 60 VC funds (FCR)	// // 3 pan-European funds	77 SCR 28 FCR	// //	15 public SCR 10 public FCR ; 21 public-private FCR	//	3	2

Sweden (info from SVCA => N° of VC funds not registered)	about 90	62%	67	/	7	/	0	/
United Kingdom *–mapping study for VC in England*	191 funds (managed by 131 firms)				50 funds (16 wholly publicly-backed, 34 at least partially publicly-backed)		//	//
Norway	about 20	about 8	about 20	about 8	1	0	1	1
Turkey	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*	*n.a.*

4. What is the average fund size? Is the majority of the funds small or large?	
Austria	35 – 55 million EUR
Belgium	Widely differing, but the majority of the funds available is below 50 million EUR (certainly VC funds and ARKIVs). Most of the buyout funds are above 100 million EUR in size. One specificity of the Belgian market is the wide existence of open ended funds (GIMV, Sofinim, TrustCapital, Fortis PE, KBC PE). For these funds, the traditional metric fund size is difficult to evaluate, as they constantly reinvest money obtained from exits (The largest one is GIMV, with a total balance of 1 billion EUR).
Bulgaria	*No information provided.*
Cyprus	The size of investment portfolios of VC investment companies (see question 5) is generally small, of the order of CYP10-15 million.
Czech Republic	The minimal volume of investment is often some 2 or 3 million EUR.
Denmark	An average Danish VC/PE manages funds of DKK 390 million. However, 40 % of the funds manage less than DKK 100 million.
Estonia	//
Finland	The average VC fund size is 9 156 000 EUR. The majority of funds are small.
France	//
Germany *Data for Nov 2005: 17 early stage VC funds*	1 VC fund raised under 25 million EUR; 4 VC funds raised under between 25 million and 50 million EUR; 7 VC funds raised under between 50 million and 100 million EUR; 2 VC funds raised under between 100 million and 200 million EUR; 1 VC fund raised above200 million EUR
Hungary	Range is between 1 million EUR up to 140 million EUR, an average of 20 million EUR. Majority of funds are small.
Ireland	*No information provided.*
Italy	Excluding Pan European funds, the average fund size is 181.55 million EUR. In Italy the distribution of venture capital and private equity funds by size is: 19 funds (size of 0-99 million EUR), 14 funds (size of 100 million-199 million EUR), 11 funds (size of 200 million-499 million EUR), 4 funds (size > 500 million EUR), 7 funds (size of n.a.).
Lithuania	No registered funds → *size cannot be known.*
Latvia	- local funds in range of 300,000 to 15 million EUR; - foreign funds (with local offices) 10 million – 100 million EUR
Luxembourg	The average size of the 14 UCIs as at 30 September 2006 was 46.1 million EUR. The majority of these funds were small.

Malta	*See previous question.* The planed Professional Investor Fund, which is to be incorporated by the Government of in conjunction with private investors, is expected to have a financing target of Lm10 million (equivalent to c. €23,290,000) and will be seeking financing from both public and private investment; albeit the funding structure will be heavily skewed towards private financing. Government will be investing Lm900,000 (c.€2,096,100) with the remaining Lm9.1 million (c.€21,193,900) being raised from private qualifying and/or experienced investors.
Netherlands	Excluding fund of funds: 8 funds above 300 million EUR, on average 800-900 million EUR per fund (2 of them include VC investments of app. 150-200 million EUR each). 6 funds between 100-300 million EUR; around 20 funds between 10-100 million EUR (5 are VC's or include VC investments) around 30 funds (including 8 new Technopartner funds) below 10 million EUR (10 of them include VC investments
Poland	It is difficult to answer the question on an average fund size because an average would not be meaningful with a small number of funds operating in Poland. 10 funds (size of 200 million -650 million EUR), 7 funds (size of 50 million-100 million EUR), 12 funds (size of less than 50 million EUR).
Portugal	Average size: 21 million EUR. The majority of the funds are small.
Romania	Fund industry is in a growing process (important part having the UCITS sector). Regarding the non-harmonized funds, this industry is in its early stage. 5 out of 6 private OCIU registered of the RNSC have an average total assets of 150,000 EUR (1 registered OCIU with 2 qualified investors having a total asset of approximately 4 million EUR).
Slovakia	*No information provided.*
Slovenia	The average fund size, investing Slovenia, is between 8 – 20 million EUR. The majority of Slovenian funds are small. In the last 5 years, there were approx. 21 million EUR invested, which means approx. 4.37 million EUR per year. Potential for the year 2006 is approx. 10 million EUR. In such mentioned funds, there is already approx. 60 million EUR of capital collected.
Spain - ASCRI data	Most funds are small or medium: 50% are funds under 30 million EUR, 30% manage funds between 30-120 million EUR, and 20% manage funds over 120 million EUR. 80% of the total funds under management are managed by 40 big companies.
Sweden (info from SVCA)	- For the non-governmental PE funds, the average is about 3 billion SEK in managed capital and the median is around 600 million SEK. - For the companies focusing on the VC segment, the average in managed funds is around 900 million SEK and the median is 300 million SEK → in both case, incl. are funds, private, corporate and quoted private equity companies
United Kingdom – a mapping study for VC **in England**	A mapping study of VC provision **in England** found that average fund size for funds managed by VC firms was £59million. For funds managed by VC trusts the average was £23million. The average for publicly-backed funds was £13million.
Norway	Funds typically range from 10 million to 550 million EUR, with the average fund raised in 2006 at about 130 million EUR. The average fund size however is lower estimated at between 50 million and 75 million EUR.
Turkey	*No information provided.*

Source: national experts' replies to a questionnaire; inputs received by 20 February 2007

Annex IV – List of participating national and industry experts

National experts		
Austria	Christian STEIN	Austria Wirtschaftsservice GmbH
Belgium	Erik STERCKX Marie-Hélène CHAUBIRON	Service Public Federal Economie, PME, Classes moyennes & Energie; DG Potentiel économique
Bulgaria	Lachezar Dimitrov BORISOV	Ministry of Economy and Energy
Cyprus	Lida MARDAPITTA-HADJIPANTELI	Cyprus Development Bank
Czech Republic	Hana ŠIMKOVÁ	Ministry of Industry and Trade
Denmark	Jim ØKSNEBJERG	Advokatfirma DLA Nordic A/S
Estonia	Ele-Merike PÄRTEL	Ministry of Economic Affairs and Communications
Finland	Ilkka HARJU	Ministry of Finance, Financial Markets Dept.
	Pertti VALTONEN	Ministry of Trade and Industry
France	Julien MERCERON	Ministère de l'Economie, des Finances et de l'industrie
Germany	Daniela WEBER REY	Clifford Chance
Hungary	Peter PÖSTENYI	Corvinus International Investment Ltd.
Ireland	Denis MARNANE Sean HIGGINS	Enterprise Ireland
Italy	Anna GERVASONI Alessandra BECHI	AIFI - Italian Private Equity and Venture Capital Association
Latvia	Krisjanis ZARINS	Latvian Guarantee Agency
Lithuania	Audrius ZABOTKA	Investments and Business Guarantees, Ltd, INVEGA
Luxembourg	Antoine KASEL	Représentation Permanente du Grand-Duché de Luxembourg auprès de l'UE
Malta	Stanley MIFSUD	Malta Investment Management Company Ltd, Enterprise Centre
Netherlands	Dinand MAAS	Ministry of Economic Affairs
Poland	Barbara NOWAKOWSKA	Polish Private Equity Association
Portugal	Nuno GONCALVES	IAPMEI - Instituto de Apoio às Pequenas e Médias Empresas
Romania	Anca IOACARA	National Securities Commission
Slovenia	Maja TOMANIC-VIDOVIC	Slovenian Enterprise Fund
Spain	José MONCADA	Ministerio de Economía y Hacienda, Dirección General del Tesoro y Política Financiera
Sweden	Cecilia GROSS FRIBERGER	Sixth Swedish National Pension Fund
United Kingdom	Bob GEORGE	Small Business Service, Access to Finance
Norway	Thomas FALCK	Verdane Capital

Industry experts	
Amadeus Capital Partners Limited, UK	Anne GLOVER
European Investment Fund	Maria LEANDER
Andulf Advokat AB, Sweden	Ulf SÖDERHOLM
Ernst & Young S.A., Luxembourg	Alain KINSCH
Nordic Innovation Centre, NICE	Bjørn TILLER
European Private Equity & Venture Capital Association, EVCA	Javier ECHARRI
European Private Equity & Venture Capital Association, EVCA	Marie-Annick PENINON BERNARD
European Private Equity & Venture Capital Association, EVCA	Justin PERRETTSON

European Commission services		
DG Enterprise & Industry	Unit D3 – Financing SMEs, entrepreneurs and innovators	Jean-Noël DURVY
DG Enterprise & Industry	Unit D3 – Financing SMEs, entrepreneurs and innovators	Vesa VANHANEN
DG Enterprise & Industry	Unit D3 – Financing SMEs, entrepreneurs and innovators	Ulla HUDINA
DG Internal Market	Unit G4 – Asset Management	David REED
DG Taxation and Customs Union	Unit E2 - Direct Taxation	Eric FITZGERALD
DG Taxation and Customs Union	Unit E2 - Direct Taxation	Vicente HURTADO ROA
DG Economic and Financial Affairs	Unit L6 – Risk capital and SME financing	Catrin ERICSON