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► **B** REGULATION (EU) No 345/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 April 2013

on European venture capital funds

(Text with EEA relevance)

(OJ L 115, 25.4.2013, p. 1)

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PARLIAMENT AND OF THE COUNCIL****of 17 April 2013****on European venture capital funds****(Text with EEA relevance)**

## CHAPTER I

## SUBJECT MATTER, SCOPE AND DEFINITIONS

*Article 1*

This Regulation lays down uniform requirements and conditions for managers of collective investment undertakings that wish to use the designation ‘EuVECA’ in relation to the marketing of qualifying venture capital funds in the Union, thereby contributing to the smooth functioning of the internal market.

It also lays down uniform rules for the marketing of qualifying venture capital funds to eligible investors across the Union, for the portfolio composition of qualifying venture capital funds, for the eligible investment instruments and techniques to be used by qualifying venture capital funds as well as for the organisation, conduct and transparency of managers that market qualifying venture capital funds across the Union.

*Article 2*

1. This Regulation applies to managers of collective investment undertakings as defined in point (a) of Article 3 that meet the following conditions:

- (a) their assets under management in total do not exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU;
- (b) they are established in the Union;
- (c) they are subject to registration with the competent authorities of their home Member State in accordance with point (a) of Article 3(3) of Directive 2011/61/EU; and
- (d) they manage portfolios of qualifying venture capital funds.

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2. Articles 3 to 6, Article 12, points (c) and (i) of Article 13(1), Articles 14a to 19, the second subparagraph of Article 20(3), and Articles 21 and 21a of this Regulation shall apply to managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU that manage portfolios of qualifying venture capital funds and intend to use the designation ‘EuVECA’ in relation to the marketing of those funds in the Union.

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3. Where managers of qualifying venture capital funds are external managers and are registered in accordance with Article 14, they may additionally manage undertakings for collective investment in transferable securities (UCITS), subject to authorisation under Directive 2009/65/EC.

*Article 3*

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

- (a) ‘collective investment undertaking’ means an AIF as defined in point (a) of Article 4(1) of Directive 2011/61/EU;
- (b) ‘qualifying venture capital fund’ means a collective investment undertaking that:
  - (i) intends to invest at least 70 % of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents, within a time frame laid down in its rules or instruments of incorporation;
  - (ii) does not use more than 30 % of its aggregate capital contributions and uncalled committed capital for the acquisition of assets other than qualifying investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents;
  - (iii) is established within the territory of a Member State;
- (c) ‘manager of a qualifying venture capital fund’ means a legal person the regular business of which is managing at least one qualifying venture capital fund;
- (d) ‘qualifying portfolio undertaking’ means an undertaking that:

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- (i) at the time of the first investment by the qualifying venture capital fund in that undertaking complies with one of the following conditions:
  - the undertaking is not admitted to trading on a regulated market or on a multilateral trading facility, as defined in points (21) and (22) of Article 4(1) of Directive 2014/65/EU of the European Parliament and the Council<sup>(1)</sup>, and employs up to 499 persons;

<sup>(1)</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

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- the undertaking is a small and medium-sized enterprise, as defined in point (13) of Article 4(1) of Directive 2014/65/EU, which is listed on an SME growth market as defined in point (12) of Article 4(1) of that Directive;

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- (ii) is not itself a collective investment undertaking;

- (iii) is not one or more of the following:

- a credit institution as defined in point (1) of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions <sup>(1)</sup>,
- an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC,
- an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) <sup>(2)</sup>,
- a financial holding company as defined in point (19) of Article 4 of Directive 2006/48/EC, or
- a mixed-activity holding company as defined in point (20) of Article 4 of Directive 2006/48/EC;

- (iv) is established within the territory of a Member State, or in a third country provided that the third country:

- is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force on Anti-Money Laundering and Terrorist Financing,
- has signed an agreement with the home Member State of the manager of a qualifying venture capital fund and with each other Member State in which the units or shares of the qualifying venture capital fund are intended to be marketed to ensure that the third country fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;

- (e) ‘qualifying investments’ means any of the following instruments:

- (i) equity or quasi-equity instruments that are issued by:

<sup>(1)</sup> OJ L 177, 30.6.2006, p. 1.

<sup>(2)</sup> OJ L 335, 17.12.2009, p. 1.

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- a qualifying portfolio undertaking and acquired directly by the qualifying venture capital fund from the qualifying portfolio undertaking,
  
  - a qualifying portfolio undertaking in exchange for an equity security issued by the qualifying portfolio undertaking, or
  
  - an undertaking of which the qualifying portfolio undertaking is a majority-owned subsidiary and which is acquired by the qualifying venture capital fund in exchange for an equity instrument issued by the qualifying portfolio undertaking;
- (ii) secured or unsecured loans granted by the qualifying venture capital fund to a qualifying portfolio undertaking in which the qualifying venture capital fund already holds qualifying investments, provided that no more than 30 % of the aggregate capital contributions and uncalled committed capital in the qualifying venture capital fund is used for such loans;
- (iii) shares of a qualifying portfolio undertaking acquired from existing shareholders of that undertaking;
- (iv) units or shares of one or several other qualifying venture capital funds, provided that those qualifying venture capital funds have not themselves invested more than 10 % of their aggregate capital contributions and uncalled committed capital in qualifying venture capital funds;
- (f) ‘relevant costs’ means all fees, charges and expenses which are directly or indirectly borne by investors and which are agreed between the manager of a qualifying venture capital fund and the investors therein;
- (g) ‘equity’ means ownership interest in an undertaking, represented by the shares or other forms of participation in the capital of the qualifying portfolio undertaking, issued to its investors;
- (h) ‘quasi-equity’ means any type of financing instrument which is a combination of equity and debt, where the return on the instrument is linked to the profit or loss of the qualifying portfolio undertaking and where the repayment of the instrument in the event of default is not fully secured;

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- (i) ‘marketing’ means a direct or indirect offering or placement at the initiative of the manager of a qualifying venture capital fund, or on its behalf, of units or shares of a venture capital fund it manages to or with investors domiciled or with a registered office in the Union;
- (j) ‘committed capital’ means any commitment pursuant to which an investor is obliged, within the time frame laid down in the rules or instruments of incorporation of the qualifying venture capital fund, to acquire an interest in, or to make capital contributions to, that fund;

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- (k) ‘home Member State’ means the Member State in which the manager of a qualifying venture capital fund has its registered office;

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- (l) ‘host Member State’ means the Member State, other than the home Member State, where the manager of a qualifying venture capital fund markets qualifying venture capital funds in accordance with this Regulation;

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- (m) ‘competent authority’ means:
  - (i) for managers as referred to in Article 2(1) of this Regulation, the competent authority referred to in point (a) of Article 3(3) of Directive 2011/61/EU;
  - (ii) for managers as referred to in Article 2(2) of this Regulation, the competent authority referred to in Article 7(1) of Directive 2011/61/EU;
  - (iii) for qualifying venture capital funds, the competent authority of the Member State in which the qualifying venture capital fund is established;
- (n) ‘competent authority of the host Member State’ means the authority of a Member State other than the home Member State in which the qualifying venture capital fund is marketed.

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In regard to point (c) of the first subparagraph, where the legal form of a qualifying venture capital fund permits internal management and where the governing body of the fund does not appoint an external manager, the qualifying venture capital fund itself shall be registered as the manager of a qualifying venture capital fund in accordance with Article 14. A qualifying venture capital fund that is registered as an internal manager of a qualifying venture capital fund shall not be registered as an external manager of a qualifying venture capital fund of other collective investment undertakings.

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## CHAPTER II

## CONDITIONS FOR THE USE OF THE DESIGNATION 'EuVECA'

*Article 4*

Managers of qualifying venture capital funds that comply with the requirements set out in this Chapter shall be entitled to use the designation 'EuVECA' in relation to the marketing of qualifying venture capital funds in the Union.

*Article 5*

1. Managers of qualifying venture capital funds shall ensure that, when acquiring assets other than qualifying investments, no more than 30 % of the fund's aggregate capital contributions and uncalled committed capital is used for the acquisition of such assets. The 30 % threshold shall be calculated on the basis of amounts investible after the deduction of all relevant costs. Holdings in cash and cash equivalents shall not be taken into account for calculating that threshold as cash and cash equivalents are not to be considered as investments.

2. Managers of qualifying venture capital funds shall not employ at the level of the qualifying venture capital fund any method by which the exposure of the fund will be increased beyond the level of its committed capital, whether through borrowing of cash or securities, the engagement into derivative positions or by any other means.

3. Managers of qualifying venture capital funds may only borrow, issue debt obligations or provide guarantees at the level of the qualifying venture capital fund where such borrowings, debt obligations or guarantees are covered by uncalled commitments.

*Article 6*

1. Managers of qualifying venture capital funds shall market the units and shares of qualifying venture capital funds exclusively to investors which are considered to be professional clients in accordance with Section I of Annex II to Directive 2004/39/EC or which may, on request, be treated as professional clients in accordance with Section II of Annex II to Directive 2004/39/EC, or to other investors that:

- (a) commit to investing a minimum of EUR 100 000; and
- (b) state in writing, in a separate document from the contract to be concluded for the commitment to invest, that they are aware of the risks associated with the envisaged commitment or investment.

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2. Paragraph 1 shall not apply to investments made by executives, directors or employees involved in the management of a manager of a qualifying venture capital fund when investing in the qualifying venture capital funds that they manage.

*Article 7*

Managers of qualifying venture capital funds shall, in relation to the qualifying venture capital funds they manage:

- (a) act honestly, fairly and with due skill, care and diligence in conducting their activities;
- (b) apply appropriate policies and procedures for preventing malpractices that can reasonably be expected to affect the interests of the investors and the qualifying portfolio undertakings;
- (c) conduct their business activities in such a way as to promote the best interests of the qualifying venture capital funds they manage, the investors therein and the integrity of the market;
- (d) apply a high level of diligence in the selection and ongoing monitoring of investments in qualifying portfolio undertakings;
- (e) possess adequate knowledge and understanding of the qualifying portfolio undertakings in which they invest;

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- (f) treat their investors fairly. This shall not preclude more favourable treatment of private investors than of a public investor, provided that such treatment is compatible with State aid rules, in particular Article 21 of Commission Regulation (EU) No 651/2014 <sup>(1)</sup>, and is disclosed in the fund's rules or instruments of incorporation;

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- (g) ensure that no investor obtains preferential treatment, unless such preferential treatment is disclosed in the rules or instruments of incorporation of the qualifying venture capital fund.

*Article 8*

1. Where a manager of a qualifying venture capital fund delegates functions to third parties, the manager's liability towards the qualifying venture capital fund or the investors therein shall remain unaffected. The manager shall not delegate functions to the extent that, in essence, it can no longer be considered to be the manager of a qualifying venture capital fund and to the extent that it becomes a letter-box entity.

<sup>(1)</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).



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2. Any delegation of functions under paragraph 1 shall not undermine the effectiveness of supervision of the manager of a qualifying venture capital fund, and, in particular, shall not prevent that manager from acting, or the qualifying venture capital fund from being managed, in the best interests of the investors therein.

*Article 9*

1. Managers of qualifying venture capital funds shall identify and avoid conflicts of interest and, where they cannot be avoided, manage and monitor and, in accordance with paragraph 4, disclose promptly, those conflicts of interest in order to prevent them from adversely affecting the interests of the qualifying venture capital funds and the investors therein and to ensure that the qualifying venture capital funds they manage are fairly treated.

2. Managers of qualifying venture capital funds shall identify in particular those conflicts of interest that may arise between:

- (a) managers of qualifying venture capital funds, persons who effectively conduct the business of those managers, employees of, or any person who directly or indirectly controls or is controlled by, those managers, and the qualifying venture capital fund managed by those managers, or the investors therein;
- (b) the qualifying venture capital fund or the investors therein, and another qualifying venture capital fund managed by the same manager, or the investors therein;
- (c) the qualifying venture capital fund or the investors therein, and a collective investment undertaking or UCITS managed by the same manager, or the investors therein.

3. Managers of qualifying venture capital funds shall maintain and operate effective organisational and administrative arrangements in order to comply with the requirements set out in paragraphs 1 and 2.

4. Disclosures of conflicts of interest as referred to in paragraph 1 shall be provided, where organisational arrangements made by a manager of a qualifying venture capital fund to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented. A manager of a qualifying venture capital fund shall disclose in clear terms the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf.

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5. The Commission shall be empowered to adopt delegated acts in accordance with Article 25 specifying:

- (a) the types of conflicts of interest referred to in paragraph 2 of this Article;
- (b) the steps that managers of qualifying venture capital funds must take, in terms of structures and organisational and administrative procedures in order to identify, prevent, manage, monitor and disclose conflicts of interest.

*Article 10*

1. At all times, managers of qualifying venture capital funds shall have sufficient own funds and shall use adequate and appropriate human and technical resources as necessary for the proper management of the qualifying venture capital funds that they manage.

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2. Both internally managed qualifying venture capital funds and external managers of qualifying venture capital funds shall have an initial capital of EUR 50 000.

3. Own funds shall at all times amount to at least one eighth of the fixed overheads incurred by the manager in the preceding year. The competent authority of the home Member State may adjust that requirement in the event of a material change to the manager's business since the preceding year. Where the manager of a qualifying venture capital fund has not completed a year of business, the requirement shall amount to one eighth of the fixed overheads expected in its business plan, unless the competent authority of the home Member State requires an adjustment to that plan.

4. Where the value of the qualifying venture capital funds managed by the manager exceeds EUR 250 000 000, the manager shall provide an additional amount of own funds. That additional amount shall be equal to 0,02 % of the amount by which the total value of the qualifying venture capital funds exceeds EUR 250 000 000.

5. The competent authority of the home Member State may authorise the manager of qualifying venture capital funds not to provide up to 50 % of the additional amount of own funds referred to in paragraph 4 if that manager benefits from a guarantee for the same amount given by a credit institution or an insurance undertaking which has its registered office in a Member State, or in a third country where it is subject to prudential rules which the competent authority of the home Member State considers to be equivalent to those laid down in Union law.

6. Own funds shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions.

*Article 11*

1. Rules for the valuation of assets shall be laid down in the rules or instruments of incorporation of the qualifying venture capital fund and shall ensure a sound and transparent valuation process.
2. The valuation procedures used shall ensure that the assets are valued properly and that the asset value is calculated at least annually.

*Article 12*

1. Managers of qualifying venture capital funds shall make available an annual report to the competent authority of the home Member State for each qualifying venture capital fund that they manage, by six months following the end of the financial year. The report shall describe the composition of the portfolio of the qualifying venture capital fund and the activities of the previous year. It shall also disclose the profits earned by the qualifying venture capital fund at the end of its life and, where applicable, the profits distributed during its life. It shall contain the audited financial accounts for the qualifying venture capital fund.

The annual report shall be produced in accordance with existing reporting standards and the terms agreed between the managers of qualifying venture capital funds and the investors. Managers of qualifying venture capital funds shall provide the report to investors on request. Managers of qualifying venture capital funds and investors may agree to make additional disclosures to each other.

2. An audit of the qualifying venture capital fund shall be conducted at least annually. The audit shall confirm that money and assets are held in the name of the qualifying venture capital fund and that the manager of a qualifying venture capital fund has established and maintained adequate records and checks in respect of the use of any mandate or control over the money and assets of the qualifying venture capital fund and the investors therein.
3. Where the manager of a qualifying venture capital fund is required to make public an annual financial report in accordance with Article 4 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market<sup>(1)</sup> in relation to the qualifying venture capital fund, the information referred to in paragraph 1 may be provided separately or as an additional part of the annual financial report.

<sup>(1)</sup> OJ L 390, 31.12.2004, p. 38.

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4. The competent authority of the home Member State shall make available all information gathered under this Article to the competent authority of each qualifying venture capital fund concerned, to the competent authority of each host Member State concerned and to ESMA in a timely manner by means of the procedure referred to in Article 22.

**▼ B***Article 13*

1. Managers of qualifying venture capital funds shall, in relation to the qualifying venture capital funds that they manage, inform their investors, prior to the investment decision of the latter, in a clear and understandable manner, of the following:

(a) the identity of that manager and any other service providers contracted by that manager in relation to their management of the qualifying venture capital funds, and a description of their duties;

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(b) the amount of own funds available to that manager for maintaining the adequate human and technical resources necessary for the proper management of its qualifying venture capital funds;

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(c) a description of the investment strategy and objectives of the qualifying venture capital fund, including:

(i) the types of the qualifying portfolio undertakings in which it intends to invest;

(ii) any other qualifying venture capital funds in which it intends to invest;

(iii) the types of qualifying portfolio undertakings in which any other qualifying venture capital fund, as referred to in point (ii), intends to invest;

(iv) the non-qualifying investments which it intends to make;

(v) the techniques that it intends to employ; and

(vi) any applicable investment restrictions;

(d) a description of the risk profile of the qualifying venture capital fund and any risks associated with the assets in which the fund may invest or investment techniques that may be employed;

(e) a description of the qualifying venture capital fund's valuation procedure and of the pricing methodology for the valuation of assets, including the methods used for the valuation of qualifying portfolio undertakings;

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- (f) a description of how the remuneration of the manager of a qualifying venture capital fund is calculated;
- (g) a description of all relevant costs and of the maximum amounts thereof;
- (h) where available, the historical financial performance of the qualifying venture capital fund;
- (i) the business support services and the other support activities provided by the manager of a qualifying venture capital fund or arranged through third parties in order to facilitate the development, growth or in some other respect the ongoing operations of the qualifying portfolio undertakings in which the qualifying venture capital fund invests, or, where these services or activities are not provided, an explanation of that fact;
- (j) a description of the procedures by which the qualifying venture capital fund may change its investment strategy or investment policy, or both.

2. All of the information referred to in paragraph 1 shall be fair, clear and not misleading. It shall be kept up to date and reviewed regularly where relevant.

3. Where the qualifying venture capital fund is required to publish a prospectus, in accordance with Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading<sup>(1)</sup>, or in accordance with national law in relation to the qualifying venture capital fund, the information referred to in paragraph 1 of this Article may be provided separately or as a part of the prospectus.

## CHAPTER III

## SUPERVISION AND ADMINISTRATIVE COOPERATION

*Article 14*

1. Managers of qualifying venture capital funds that intend to use designation 'EuVECA' for the marketing of their qualifying venture capital funds shall inform the competent authority of their home Member State of their intention and shall provide the following information:

- (a) the identity of the persons who effectively conduct the business of managing qualifying venture capital funds;

<sup>(1)</sup> OJ L 345, 31.12.2003, p. 64.

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- (b) the identity of the qualifying venture capital funds, the units or shares of which are to be marketed and their investment strategies;
- (c) information on the arrangements made for complying with the requirements of Chapter II;
- (d) a list of Member States where the manager of a qualifying venture capital fund intends to market each qualifying venture capital fund.

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2. The competent authority of the home Member State shall only register the manager of a qualifying venture capital fund if the following conditions are met:

- (a) the persons who effectively conduct the business of managing qualifying venture capital funds are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the manager of a qualifying venture capital fund;
- (b) the information required under paragraph 1 is complete;
- (c) the arrangements notified according to point (c) of paragraph 1 are suitable for complying with the requirements of Chapter II.

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3. Registration under this Article shall be valid in the entire territory of the Union and shall allow managers of qualifying venture capital funds to market qualifying venture capital funds under the designation 'EuVECA' throughout the Union.

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4. The competent authority of the home Member State shall inform the manager as referred to in paragraph 1 whether it has been registered as a manager of a qualifying venture capital fund no later than two months after it has provided all the information referred to in that paragraph.

5. A registration in accordance with this Article shall constitute a registration for the purposes of Article 3(3) of Directive 2011/61/EU in respect of the management of qualifying venture capital funds.

6. A manager of a qualifying venture capital fund as referred to in this Article shall notify the competent authority of the home Member State of any material changes to the conditions for its initial registration in accordance with this Article before such changes are implemented.

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If the competent authority of the home Member State decides to impose restrictions or reject the changes referred to in the first subparagraph, it shall inform the manager of the qualifying venture capital fund, within one month of receipt of notification of those changes. The competent authority may extend that period by up to one month where it considers this to be necessary due to the specific circumstances of the case, after having notified the manager of the qualifying venture capital fund. The changes may be implemented if the relevant competent authority does not oppose the changes within the relevant assessment period.

7. In order to ensure the uniform application of this Article, ESMA may develop draft regulatory technical standards to further specify the information to be provided to the competent authorities in the application for registration as set out in paragraph 1 and to further specify the conditions as set out in paragraph 2.

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

8. In order to ensure the uniform application of this Article, ESMA may develop draft implementing technical standards on standard forms, templates and procedures for the provision of information to the competent authorities in the application for registration set out in paragraph 1 and the conditions set out in paragraph 2.

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

9. ESMA shall organise and conduct peer reviews in accordance with Article 30 of Regulation (EU) No 1095/2010 in order to strengthen the consistency of the registration processes carried out by competent authorities pursuant to this Regulation.

*Article 14a*

1. Managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU shall apply for registration of the qualifying venture capital funds for which they intend to use the designation 'EuVECA'.

2. The application for registration referred to in paragraph 1 shall be made to the competent authority of the qualifying venture capital fund and shall include the following:

- (a) the rules or instruments of incorporation of the qualifying venture capital fund;
- (b) information on the identity of the depositary;
- (c) the information referred to in Article 14(1);

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- (d) a list of Member States in which the managers referred to in paragraph 1 have established, or intend to establish, qualifying venture capital funds.

For the purposes of point (c) of the first subparagraph, the information on the arrangements made for complying with the requirements of Chapter II shall refer to the arrangements made for complying with Articles 5 and 6 and points (c) and (i) of Article 13(1).

3. Where the competent authority of a qualifying venture capital fund and the competent authority of the home Member State are different, the competent authority of the qualifying venture capital fund shall ask the competent authority of the home Member State whether the qualifying venture capital fund falls within the scope of the manager's authorisation to manage AIFs and whether the conditions laid down in point (a) of Article 14(2) are fulfilled.

The competent authority of the qualifying venture capital fund may also ask the competent authority of the home Member State for clarification and information as regards the documentation referred to in paragraph 2.

The competent authority of the home Member State shall provide an answer within one month of the date of receipt of the request submitted by the competent authority of the qualifying venture capital fund.

4. Managers as referred to in paragraph 1 shall not be required to provide information or documents which they have already provided under Directive 2011/61/EU.

5. Having assessed the documentation received in accordance with paragraph 2 and having received any clarification and information referred to in paragraph 3, the competent authority of the qualifying venture capital fund shall register a fund as a qualifying venture capital fund if the manager of that fund meets the conditions laid down in Article 14(2).

6. The competent authority of a qualifying venture capital fund shall inform the manager as referred to in paragraph 1 whether that fund has been registered as a qualifying venture capital fund no later than two months after that manager has provided all the documentation referred to in paragraph 2.

7. Registration under this Article shall be valid in the entire territory of the Union and shall allow the marketing of those funds throughout the Union under the designation 'EuVECA'.

8. In order to ensure the uniform application of this Article, ESMA may develop draft regulatory technical standards to further specify the information to be provided to the competent authorities in accordance with paragraph 2.



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

9. In order to ensure the uniform application of this Article, ESMA may develop draft implementing technical standards on standard forms, templates and procedures for the provision of information to the competent authorities in accordance with paragraph 2.

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

10. ESMA shall organise and conduct peer reviews in accordance with Article 30 of Regulation (EU) No 1095/2010 in order to strengthen the consistency of the registration processes carried out by competent authorities pursuant to this Regulation.

*Article 14b*

Member States shall ensure that any refusal to register a manager as referred to in Article 14 or a fund as referred to in Article 14a shall be substantiated, shall be notified to the managers referred to in those Articles and shall be subject to a right of appeal before a national judicial, administrative or other authority. That right of appeal shall also apply in respect of registration where no decision on registration has been taken within two months of the manager having provided all of the required information. Member States may require that a manager exhaust any administrative preliminary remedy provided for under national law before exercising that right of appeal.

**▼ B***Article 15*

Managers of qualifying venture capital funds shall inform the competent authority of the home Member State where they intend to market:

- (a) a new qualifying venture capital fund; or
- (b) an existing qualifying venture capital fund in a Member State not mentioned in the list referred to in point (d) of Article 14(1).

*Article 16***▼ M1**

1. The competent authority of the home Member State shall notify the competent authorities of the host Member States and ESMA immediately of any registration or removal from the register of a manager of a qualifying venture capital fund, of any addition to or removal from the register of a qualifying venture capital fund, and of any addition to or removal from the list of Member States in which a manager of a qualifying venture capital fund intends to market those funds.

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For the purposes of the first subparagraph, the competent authority of a qualifying venture capital fund that has been registered in accordance with Article 14a shall immediately notify the competent authority of the home Member State, the competent authorities of the host Member States, and ESMA, of any addition to or any removal from the register of a qualifying venture capital fund or of any addition to or removal from the list of Member States in which the manager of that qualifying venture capital fund intends to market that fund.

2. The competent authorities of the host Member States shall not impose on the managers of qualifying venture capital funds any requirements or administrative procedures in relation to the marketing of their qualifying venture capital funds, nor shall they require any approval of that marketing prior to its commencement. Such requirements or administrative procedures include fees and other charges.

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3. In order to ensure uniform application of this Article, ESMA shall develop draft implementing technical standards to determine the format of notification under this Article.

4. ESMA shall submit those draft implementing technical standards to the Commission by 16 February 2014.

5. Power is conferred on the Commission to adopt the implementing technical standards referred to in paragraph 3 of this Article in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

**▼ M1***Article 16a*

1. For the purpose of organising and conducting peer reviews in accordance with Article 14(9) and Article 14a(10), the competent authority of the home Member State or, where different, the competent authority of the qualifying venture capital fund, shall ensure that the final information on the basis of which the registration was granted as set out in Article 14(1) and (2) and Article 14a(2) is made available to ESMA in a timely manner after the registration. Such information shall be made available by means of the procedure referred to in Article 22.

2. In order to ensure the uniform application of this Article, ESMA may develop draft regulatory technical standards to further specify the information to be made available to ESMA in accordance with paragraph 1.

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

**▼ M1**

3. In order to ensure the uniform application of this Article, ESMA shall develop draft implementing technical standards on standard forms, templates and procedures for the provision of information to be made available to ESMA in accordance with paragraph 1.

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

*Article 17*

1. ESMA shall maintain a central database that is publicly accessible on the internet and that lists all managers of qualifying venture capital funds that use the designation 'EuVECA' and the qualifying venture capital funds for which they use that designation, as well as the countries in which those funds are marketed.

2. On its website, ESMA shall provide weblinks to the relevant information regarding third countries that fulfil the applicable requirement under point (d)(iv) of the first paragraph of Article 3.

**▼ B***Article 18*

1. The competent authority of the home Member State shall supervise compliance with the requirements laid down in this Regulation.

**▼ M1**

1a. For managers as referred to in Article 2(2), the competent authority of the home Member State shall be responsible for supervising the compliance with and the adequacy of the arrangements and of the organisation of the manager, so that that manager is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the qualifying venture capital funds that it manages.

1b. For a qualifying venture capital fund managed by a manager as referred to in Article 2(2), the competent authority of the qualifying venture capital fund shall be responsible for supervising the qualifying venture capital fund's compliance with the rules laid down in Articles 5 and 6 and in points (c) and (i) of Article 13(1). The competent authority of the qualifying venture capital fund shall also be responsible for supervising that fund's compliance with the obligations set out in the fund's rules or instruments of incorporation.

**▼ B**

2. Where there are clear and demonstrable grounds that lead the competent authority of the host Member State to believe that the manager of a qualifying venture capital fund is in breach of this Regulation within its territory, it shall promptly inform the competent authority of the home Member State accordingly. The competent authority of the home Member State shall take appropriate measures.

**▼B**

3. If the manager of a qualifying venture capital fund persists in acting in a manner that is clearly in breach of this Regulation despite measures taken by the competent authority of the home Member State or because that competent authority has failed to take measures within reasonable time, the competent authority of the host Member State may, after informing the competent authority of the home Member State, take all the appropriate measures in order to protect investors, including prohibiting the manager of a qualifying venture capital fund from carrying out any further marketing of its qualifying venture capital funds within the territory of the host Member State.

*Article 19*

Competent authorities shall, in accordance with national law, have all supervisory and investigatory powers that are necessary for the exercise of their functions. They shall, in particular, have the power to:

- (a) request access to any document in any form, and to receive or take a copy thereof;
- (b) require the manager of a qualifying venture capital fund to provide information without delay;
- (c) require information from any person related to the activities of the manager of a qualifying venture capital fund or of the qualifying venture capital fund;
- (d) carry out on-site inspections with or without prior announcement;
- (e) take appropriate measures to ensure that a manager of a qualifying venture capital fund continues to comply with this Regulation;
- (f) issue an order to ensure that a manager of a qualifying venture capital fund complies with this Regulation and desists from a repetition of any conduct that may consist of a breach of this Regulation.

**▼M1**

ESMA shall organise and conduct peer reviews in accordance with Article 30 of Regulation (EU) No 1095/2010 in order to strengthen the consistency of the processes in relation to supervisory and investigatory powers carried out by competent authorities pursuant to this Regulation.

**▼B***Article 20*

1. Member States shall lay down the rules on administrative penalties and other measures applicable to breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The administrative penalties and other measures provided for shall be effective, proportionate and dissuasive.

**▼ B**

2. By ►**M1** 2 March 2020 ◀ the Member States shall notify the Commission and ESMA of the rules referred to in paragraph 1. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

**▼ M1**

3. Managers as referred to in Article 2(1) shall comply at all times with this Regulation and shall also be liable for any infringements of this Regulation, including for any losses or damages resulting therefrom.

Managers as referred to in Article 2(2) shall comply at all times with Directive 2011/61/EU. They shall be responsible for ensuring compliance with this Regulation and shall be liable in accordance with Directive 2011/61/EU. Those managers shall also be liable for any losses or damages resulting from the infringement of this Regulation.

**▼ B***Article 21***▼ M1**

1. While respecting the principle of proportionality, the competent authority shall take the appropriate measures referred to in paragraph 2, as applicable, where the manager of a qualifying venture capital fund:

**▼ B**

- (a) fails to comply with the requirements that apply to portfolio composition, in breach of Article 5;
- (b) markets, in breach of Article 6, the units and shares of a qualifying venture capital fund to non-eligible investors;

**▼ M1**

- (c) uses the designation ‘EuVECA’ but is not registered in accordance with Article 14, or the qualifying venture capital fund is not registered in accordance with Article 14a;

**▼ B**

- (d) uses the designation ‘EuVECA’ for the marketing of funds which are not established in accordance with point (b)(iii) of Article 3;

**▼ M1**

- (e) has obtained registration through false statements or any other irregular means, in breach of Article 14 or Article 14a;

**▼ B**

- (f) fails to act honestly, fairly or with due skill, care or diligence, in conducting their business, in breach of point (a) of Article 7;
- (g) fails to apply appropriate policies and procedures for preventing malpractices, in breach of point (b) of Article 7;
- (h) repeatedly fails to comply with the requirements under Article 12 regarding the annual report;
- (i) repeatedly fails to comply with the obligation to inform investors in accordance with Article 13.

**▼ M1**

2. In the cases referred to in paragraph 1, the competent authority shall, as appropriate:
- (a) take measures to ensure that the manager of a qualifying venture capital fund concerned complies with Articles 5 and 6, points (a) and (b) of Article 7 and Articles 12 to 14a, as applicable;
  - (b) prohibit the manager of the qualifying venture capital fund concerned from using the designation ‘EuVECA’ and remove that manager, or the qualifying venture capital fund concerned, from the register.
3. The competent authority referred to in paragraph 1 shall inform any other relevant competent authority, the competent authorities of any host Member States in accordance with point (d) of Article 14(1), and ESMA, without delay of the removal of a manager of a qualifying venture capital fund or of a qualifying venture capital fund from the register.
4. The right to market one or more qualifying venture capital funds under the designation ‘EuVECA’ in the Union shall expire with immediate effect from the date of the decision of the competent authority referred to in point (b) of paragraph 2.
5. The competent authority of the home Member State or of the host Member State, as applicable, shall inform ESMA without delay if it has clear and demonstrable grounds for believing that the manager of a qualifying venture capital fund has committed any of the breaches referred to in points (a) to (i) of Article 21(1).

ESMA may, while respecting the principle of proportionality, issue recommendations in accordance with Article 17 of Regulation (EU) No 1095/2010 addressed to the competent authorities concerned to take any of the measures referred to in paragraph 2 of this Article, or to refrain from taking such measures.

*Article 21a*

The powers conferred on competent authorities in accordance with Directive 2011/61/EU, including those related to penalties, shall also be exercised with respect to the managers referred to in Article 2(2) of this Regulation.

**▼ B***Article 22*

1. Competent authorities and ESMA shall cooperate with each other for the purpose of carrying out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010.
2. Competent authorities and ESMA shall exchange all information and documentation necessary to carry out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010, in particular to identify and remedy breaches of this Regulation.

**▼B***Article 23*

1. All persons who work or who have worked for the competent authorities or for ESMA, as well as auditors and experts instructed by the competent authorities or by ESMA, are bound by the obligation of professional secrecy. No confidential information which those persons receive in the course of their duties shall be divulged to any person or authority whatsoever, save in summary or aggregate form such that managers of qualifying venture capital funds and qualifying venture capital funds cannot be individually identified, without prejudice to cases covered by criminal law and proceedings under this Regulation.
2. The competent authorities of the Member States or ESMA shall not be prevented from exchanging information in accordance with this Regulation or other Union law applicable to managers of qualifying venture capital funds and qualifying venture capital funds.
3. Where competent authorities or ESMA receive confidential information in accordance with paragraph 2, they may use it only in the course of their duties and for the purpose of administrative and judicial proceedings.

*Article 24*

In the event of disagreement between competent authorities of Member States on an assessment, action or omission of one competent authority in areas where this Regulation requires cooperation or coordination between competent authorities from more than one Member State, competent authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010, in so far as the disagreement is not related to point (b)(iii) or to point (d)(iv) of Article 3 of this Regulation.

## CHAPTER IV

**TRANSITIONAL AND FINAL PROVISIONS***Article 25*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 9(5) shall be conferred on the Commission for a period of four years from 15 May 2013. The Commission shall draw up a report in respect of the delegation of powers not later than nine months before the end of the four-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

**▼B**

3. The delegation of power referred to in Article 9(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 9(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

*Article 26*

1. The Commission shall review this Regulation in accordance with paragraph 2. The review shall include a general survey of the functioning of the rules in this Regulation and the experience acquired in applying them, including:

- (a) the extent to which the designation ‘EuVECA’ has been used by managers of qualifying venture capital funds in different Member States, whether domestically or on a cross-border basis;
- (b) the geographical and sectoral distribution of investments undertaken by qualifying venture capital funds;
- (c) the appropriateness of the information requirements under Article 13, in particular whether they are sufficient to enable investors to take an informed investment decision;
- (d) the use of the different qualifying investments by managers of qualifying venture capital funds and, in particular, whether there is a need to adjust the qualifying investments in this Regulation;
- (e) the possibility of extending the marketing of qualifying venture capital funds to retail investors;
- (f) the effectiveness, proportionality and application of administrative penalties and other administrative measures provided for by Member States in accordance with this Regulation;
- (g) the impact of this Regulation on the venture capital market;



**▼B**

- (h) the possibility of allowing venture capital funds established in a third country to use the designation ‘EuVECA’, taking into account experience in applying the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters;
- (i) the appropriateness of complementing this Regulation with a depositary regime;
- (j) an evaluation of any barriers that may have impeded investment into funds using the designation ‘EuVECA’, including the impact on institutional investors of other Union law of a prudential nature.

2. The review referred to in paragraph 1 shall be conducted:

- (a) by ► **M1** 2 March 2022 ◀ as regards points (a) to (g), (i) and (j);  
and
- (b) by 22 July 2015 as regards point (h).

3. Following the review referred to in paragraph 1, and after consulting ESMA, the Commission shall submit a report to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal.

**▼M1**

4. In parallel with the review in accordance with Article 69 of Directive 2011/61/EU, in particular as regards managers registered under point (b) of Article 3(2) of that Directive, the Commission shall analyse:

- (a) the management of qualifying venture capital funds and the appropriateness of introducing changes to the legal framework, including the option of a management passport; and
- (b) the suitability of the definition of marketing for qualifying venture capital funds and the impact that that definition and differing national interpretations thereof have on the operation and viability of qualifying venture capital funds and on the cross-border distribution of such funds.

Following that review, the Commission shall submit a report to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal.

**▼B***Article 27*

1. By 22 July 2017, the Commission shall start a review of the interaction between this Regulation and other rules on collective investment undertakings and their managers, in particular those laid down in Directive 2011/61/EU. That review shall address the scope of this Regulation. It shall gather data for assessing whether it is necessary to extend the scope to allow for managers of venture capital funds with assets under management that in total exceed the threshold provided for in Article 2(1) to become managers of qualifying venture capital funds in accordance with this Regulation.

**▼B**

2. Following the review referred to in paragraph 1, and after consulting ESMA, the Commission shall submit a report to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal.

*Article 28*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the 22 July 2013, except for Article 9(5), which shall apply from 15 May 2013.

This Regulation shall be binding in its entirety and directly applicable in all Member States.