Submission

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12 February 2014

To	**European Commission - Directorate-General for Competition, Unit A.3 State aid policy and scrutiny**
Re	**HT.3365 – SAM – GBER review** **Response to the Consultation on draft General Block Exemption Regulation (the GBER) on State aid measures**

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The European Private Equity and Venture Capital Association (EVCA) is a member-based, non-profit trade association that was established in 1983 in Brussels. EVCA is a member of the Transparency register (ID: 60975211600-74).

General remarks

The EVCA welcomes the publication by the European Commission of the final draft General Block Exemption Regulation (GBER) and the opportunity it is given to provide comments. The EVCA supports the greater flexibility reflected overall in the draft text of the GBER and the efforts made to simplify the Regulation. We hope these improvements may result in fewer formalities and pave the way for the future GBER to be more effective than the current regime. The EVCA welcomes numerous amendments which have been made to the previous draft GBER.

In particular, the EVCA welcomes and supports:

- The increase in the total amount of risk finance at the level of the eligible undertakings to EUR 15 million, from the level of EUR 10 million in the previous draft GBER. This figure more accurately reflects actual market failures and funding gaps.
- The additional flexibility introduced in the definition of eligible SME, and extension of the eligible time limit from 5 years to 7 for SMEs following their first commercial sale.
- More appropriate rules for treatment of early start-ups under the publication and information requirements. The information on each individual award shall be considered fulfilled if Member States publish the required information on individual aid amounts by range of EUR 2 million with a threshold of EUR 200,000, as contained both in the draft GBER and recently adopted Risk Finance Guidelines. This will protect sensitive business information.
- Increased percentages of first losses taken on by public investors in non-pari passu schemes.
- More workable and realistic provisions on management on a commercial basis and representation of investors in investment funds.
- The broadening of the scope of the provision relating to scouting costs in order to include formal due diligence in the eligible costs.
- The amended definition of “equity investment” which better reflects market realities, the amended definition of “independent private investor” which provides more guidance and clarity on the issue, and the deletion of the restrictive definition on scouting costs.

There remain some outstanding areas of concern for the EVCA. Specific comments are provided below regarding the scope of the GBER, publication, reporting and monitoring requirements, eligible SMEs, follow-on investments, replacement capital, notification thresholds, minimum private sector participation, general conditions, cumulation of aid, withdrawal of the block exemption, and definitions.

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Specific comments

1) Scope

As expressed in our previous response to draft GBER in June 2013, the EVCA welcomes the willingness of the Commission to provide for a wider scope for the GBER, allowing for a greater diversity of risk finance measures to be exempted from the notification requirement. We hope that national authorities will make use of this exemption which would result in fewer formalities and therefore a greater use of the possibilities that exist under the GBER. We understand that this does not exclude the possibility for additional types of risk finance measures to still be authorized after notification to the Commission, provided the conditions and requirements of the Risk Finance Guidelines are met.

Under the draft GBER, the risk finance measure may take the form of equity or quasi-equity investments made in funds; guarantees to investors or financial intermediaries to cover losses from risk finance provided to eligible SMEs; and loans to financial intermediaries providing risk finance to eligible SMEs. Notably, the ability to provide "fiscal incentives" to independent private investors that are natural persons providing risk finance to eligible SMEs, contained in the previous draft GBER has been replaced by "tax incentives" in Article 20(3).

The breadth of forms that the risk finance measure may take is a significant broadening from the current regime, which only allows for direct participation into a fund to potentially benefit from the exemption. However, the wording of the previous version of the draft GBER was clearer and more precise than the one now suggested under Article 20 paragraphs 2 to 4, in particular the current wording of Article 20(2), combined with the wide definitions of "loans" and "guarantees" (cf. points 72 and 76 of Annex I to the draft GBER). In that respect, we would suggest reverting to the wording of the previous draft GBER, which clearly identifies both the form of the risk finance measure and entities concerned by the risk finance measure. We also understand that the risk finance may be used to support follow-on investments, which is an additional and useful clarification.

The EVCA welcomes these changes, as well as the inclusion of **scouting costs**, which may also benefit from the exemption of the notification requirement within the limit of 50% of eligible costs, i.e. the same aid intensity as applied currently under the Guidelines. **We suggest that this intensity be raised to 75%.** We note and welcome the broadening of the scope of the provision relating to scouting costs so as to include formal due diligence in the eligible costs. We also welcome the deletion of scouting costs from the Annex as the proposed definition was more restrictive than that currently applied under the Guidelines.

We believe there is still room for improvement however, in particular regarding tax incentives. In the draft GBER, only tax incentives to independent private investors are covered. **This should be extended so as to include tax incentives to financial intermediaries (i.e. funds and managers).** Investors that choose to pool their investments and to benefit from the expertise and experience of professional fund managers should enjoy the same treatment as those private

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investors investing directly.[1] We note that “financial intermediaries” has been inserted into Article 20(13)(a) to stipulate that risk finance measures shall be implemented via one or more financial intermediaries, except for private investors. Similarly, we propose to insert “financial intermediaries” into this provision.

Despite the amendment of “fiscal incentives” to “tax incentives” in Article 20(3), we note that the reference to “fiscal incentive” is still maintained in Article 20(13)(a). In light of these issues, we suggest amending the GBER and have made specific drafting suggestions in the Annex.

2) Publication, reporting and monitoring

The EVCA has some concerns with the publication, reporting and monitoring requirements under Articles 9, 11 and 12. As expressed in our last response in June 2013, although the required information is to be provided to the Commission by the national authorities, the latter are likely to rely on the beneficiaries (funds/managers) of the measure to provide the information.

With regard to the publication requirement under Article 9(c) GBER, we would welcome a provision mirroring the one found under point 166 of the Risk Finance Guidelines, which provides that “*[s]uch a* [transparency] *requirement can be waived with respect to SMEs which have not carried out any commercial sale in any market and for investments below EUR 200 000 into a final beneficiary undertaking*;”. Such a provision is necessary to protect sensitive business information and to protect start-ups and SMEs.

As for the reporting and monitoring requirements, information regarding the investment at portfolio level may be provided by the relevant persons, but the **20-day time limit is likely to be problematic** (request from the Commission to the national authorities, request from the national authorities to the fund manager, who will then ask for the piece of information needed, and send it to the national authorities, who will then share it with the Commission; in some cases, an intermediate regional level may be present and add to the delay).

We therefore believe that at least 40 days should be allowed for this, at least where the national authority does not have the information and is required to approach beneficiaries. Further, fund managers may not always be fully aware of the way the GBER and State aid is to be applied and of the information which must be provided/may be requested. In any case, we consider that these provisions would result in an additional and burdensome requirement for fund managers.

3) Eligible SMEs

The EVCA is pleased with the additional flexibility introduced in the definition of eligible SME in Article 20(5). In particular, we welcome the fact that the GBER provides for alternative tests, rather than a one-size-fits-all definition.

Sub-paragraph (a)

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[1] As the European Commission Green Paper on Long Term Financing of the European Economy makes clear, for some investors, investing via a fund can have significant benefits compared to direct investment (e.g. access to a wider range of asset classes; diversification benefits). Such investment choices should be made by the market and not distorted by the application of different regulatory (including State aid) regimes.

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We see the logic in the insertion of this sub-paragraph to provide for seed/early start-up SMEs which have not yet brought a product/service to market.

Sub-paragraph (b)

We very much welcome the increase from 5 years to 7 years in the eligible time period in which an SME has been operating in any market following first commercial sale. This is a more prudent time scale to reflect the realities of the early life-cycle of a business rather than the artificial and arbitrary limitation of 5 years.

Venture capital funds do not invest solely to start a new company: the needs of SMEs are far more diverse than obtaining seed or start-up money, and it is critical for all SMEs to have access to venture capital funding at all stages of their life cycle. An SME may very well have a growth opportunity or an acceleration of its business activity which requires significant financing after 6 or 7 years of relatively slow development following their first commercial sale. This is especially true for some sectors such as biotechnology where it necessarily takes many years and several rounds of financing for a product to reach maturity.

Sub-paragraph (c)

We welcome the removal of condition (b) from the previous draft GBER which would have required SMEs to discontinue previous commercial activities. That being said, we are concerned that the new sub-paragraph (c) is very wide, and could apply potentially to any SME, since it requires "an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of their average annual turnover in the preceding 5 years."

This alternative provides for a mechanistic calculation with a percentage of the average annual turnover in proportion to the total financing provided under the risk finance measure. We do not consider that this criterion is appropriate to reflect the stage of development of an SME or its financing needs. The risk finance provisions of the draft GBER are designed to focus on SMEs which are facing difficulties in their access to capital. The drafting suggested under Article 20(5)(c) of the draft GBER could potentially go beyond risk finance and we therefore suggest to either clarify or remove it from the definition of eligible SMEs.

4) Follow-on investments

The EVCA welcomes the inclusion of follow-on investments in the scope of the GBER, and in particular the clarification provided under Article 20(6). However, we have significant concerns with the new conditions suggested for a follow-on investment to qualify, in particular regarding the condition that the follow-on investments should be "*foreseen in the original business plan*".

We consider the reference to the business plan to be entirely inappropriate in this context. Although the business plan will provide important information about the development of an undertaking, it is simply not possible to foresee all situations which may require follow-on investments.

In addition, reference is made to the *original* business plan which does not reflect the operational reality of such investments. Such a document, although a useful reference and benchmark, will

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never apply in this context as there may be situations/opportunities that were not anticipated in the business plan, and also the fact that the business plan itself is likely to evolve.

For these reasons, we believe that this condition is impractical and unrealistic, and should be removed from the text of the draft GBER.

5) Replacement capital

Article 20(7) requires that support for additional capital can only be provided if this capital is combined with new capital representing at least 50% of each investment round into the eligible undertakings. We feel that this 50% level is far too high as it is not appropriate from an economic perspective to request new capital on every occasion when replacement capital is delivered. **We therefore suggest that this level should be changed to 10% in order to avoid the risk of a dilution of the rights of minority investors.**

6) Notification thresholds

The EVCA welcomes the updated Article 20(9) which increases the total amount of risk finance at the level of the eligible undertakings to EUR 15 million, instead of EUR 10 million. This figure more accurately reflects actual market failures and funding gaps. The shift away from the current threshold (annual tranche of EUR 1.5 million) is an important step towards recognising that funding gaps are significantly higher than reflected in the current GBER.

This new higher figure will allow for a number of significantly larger initial investments to be made and for the aid measure to be exempt from notification. This is especially important for sectors that are capital-intensive. **However, we have some concerns regarding the absence of any time factor in assessing compliance with the notification threshold.**

In our opinion, this provision is also important because of its interaction with the Guidelines and the tendency to tailor schemes to fit within the general framework so as to avoid a detailed assessment. Under the current regime, annual investment limits provide a greater certainty in the calculation of the threshold. It means that there is a possibility for a "reset". Under the new proposals however, once the EUR 15 million cap is reached, there is no alternative or possibility to extend it. Although the draft GBER allows some flexibility for follow-on investments, this may be insufficient.

The lack of a time reference will make things difficult for companies looking to attract funding over a longer period of time. This would impact companies involved in more capital-intensive sectors e.g. renewable energy. Therefore, **we would welcome the inclusion of a time reference - EUR 15 million per SME over a two-year period specified in both the GBER and the Risk Finance Guidelines.**

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7) Minimum private sector participation

The EVCA welcomes the clarification and explanation of the calculation of the minimum private investor participation in Article 20(10) and (11) of the draft GBER.

In the draft GBER, we welcome the efforts made by the Commission to have a nuanced approach to the minimum private sector participation. The requirements vary from one stage to another (from 10% up to 60% depending on the characteristics of the SME which receives the financing). We welcome the low figure of 10% for seed capital and eligible SMEs prior to their first commercial sale on any market. We also welcome the possibility to calculate and demonstrate the minimum private sector participation at the level of the SME and not only at the level of the fund.

However, we have concerns regarding Article 20(11)(a), which only refers to undertakings as referred to in paragraph 10, letter (a) of Article 20. **We believe that this should at least include a reference to paragraph 10, letter (b) of Article 20, to ensure that the 40% requirement applies to the relevant category of investment in eligible undertakings.**

8) General conditions

The draft GBER includes a number of general requirements which must be met by the risk finance measure, the financial intermediary, the fund, the fund manager, etc. As highlighted in our previous response to the draft GBER consultation, it remains unclear how the selection of financial intermediaries, investors and managers may take place under the open, transparent and non-discriminatory call pursuant to Article 20(13)(b).

We note that the updated paragraph governs the selection of "financial intermediaries, as well as investors *or* fund managers" (emphasis added) in addition to excluding guarantees from the requirement. In our view, it is not clear how this selection requirement would apply in practice and **we consider that it should not apply to all risk finance measures, nor to all participants in the risk capital measure.** We believe that financial intermediaries and managers and investors should not systematically be subject to such a requirement.

Furthermore, as also expressed previously, there is an apparent lack of coherence and overlap between the categories identified under Article 20(13)(b), and the entities that may participate to the risk finance measure (cf. Article 20(2) and 20(3)). **In light of these reasons, we consider that sub-paragraph (b) of Article 20(13) should be completely removed**.

The EVCA welcomes the increase in Article 20(13), subparagraphs (c) and (d) in the percentage of the first loss assumed by the public investor in the case of asymmetrical loss-sharing between public and private investors, to 25% from the previous level of 20%. We also welcome the connected increase in the guarantee rate from the public investor to 80% from 50% and the increase in the total losses assumed by a Member State to 25% from the previous level of 20%. **Notwithstanding this, we are concerned at the addition of a market-conform guarantee premium.** We feel that this premium is counteractive to the public guarantee as it will financially penalise the financial intermediary for investing in the underlying guaranteed portfolio which suffers unexpected losses thus triggering the public guarantee. For this reason, we recommend the removal of the premium from this sub-paragraph.

We welcome the updated Article 20(15) to remedy the apparent contradiction between the previous sub-paragraphs (b) and (c) which required a manager to co-invest own resources on the

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same risk conditions as the public investor. As we expressed, market practices mean that this would be impractical as fund managers would be subject to a higher risk than the investors, since a hurdle rate applies before any benefit may be returned to the fund manager when co-investing.

The new sub-paragraph (c) in Article 20(15) requires the manager to co-invest "own resources so as to ensure that their interests are permanently aligned with the interests of the public investor." We feel that this is a more workable approach as it provides for flexibility in aligning with the interests of the public investor and avoids the unintended consequence of the previous version.

Finally, we welcome the amended wording in Article 20(15)(e) which provides for a broader diversity of practices which may exist amongst investment funds. It also deletes the previous reference to financial intermediary which would create confusion whether the criterion was to be assessed in respect of the fund or the management company. This new provision is welcome as brings clarity to the situation.

9) Cumulation of aid

The EVCA would like further clarity on the cumulation of aid rules. As we expressed in our previous response, our understanding from the current provisions is that aid under Article 20, Article 21 and Article 22 GBER may be cumulated with one another, provided the relevant requirements are met, and that it may also be cumulated with other State aid measures granted (including Article 23 GBER).

10) Withdrawal of the benefit of the block exemption

We feel that the potential removal of the benefit of the block exemption - for the non-fulfilment of the conditions set out in Chapters I and II to aid which would otherwise fulfil the requirements of the GBER - would be a weakening of the block exemption's legal certainty and is not warranted for the reasons contained in Article 10. The potential removal of the benefit may damage investor confidence. **For these reasons, we call for the removal of Article 10.**

11) Definitions

Definition of "unlisted SME"

We note that despite our flagging of this issue in our previous response, there has been no clarification regarding the "unlisted SME" requirement under Article 20(5). As per paragraph 83 of Annex I, "unlisted SME" means "an SME which is not listed on the official list of a stock exchange; for the purposes of this Regulation, an SME listed on an alternative trading platform specialized in SMEs is considered unlisted".

This definition has been amended since the previous version to inset a semi colon instead of "and", yet it remains unclear how an "alternative trading platform", which means "a stock market or investment vehicle specialised in the exchange of SME shares by facilitating the matching between

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investors and target SMEs", should be interpreted, for instance in regards to the MiFID Directive.[2] We call for clarity on whether this is meant to be an all-encompassing provision including all and any form of trading platform. We suggest that adding a cross-reference to the MiFID framework may prove useful, and help determine whether certain investments from venture capital funds benefitting from aid fall within Article 20(5)(b) or instead count towards the 30% limit of Article 20(8).

Definition of "equity investment"

The EVCA welcomes the amended definition in paragraph 66 of Annex I which provides that "equity investment" means "the provision of capital to an undertaking, invested directly or indirectly in return for partial ownership of that undertaking and where the equity investor may share the undertaking's profits". This is a much more workable and practical definition than that contained in the previous draft GBER as it deletes the reference to management control. The latter is not always relevant, especially for minority participations.

As a concept, we note that the reference to equity, which is mainly used under the current GBER to designate investments by funds into portfolio companies, is now also used to designate the capital contribution from investors (public, private) to the financial intermediaries (funds). A single concept is thus used to refer to two different movements of capital, whose forms may significantly differ.

Definition of "independent private investor"

We note the updated and expanded definition of "independent private investor" to provide more detail and guidance. We welcome the additional criteria which will bring clarity to the manner in which it will be interpreted in the context of Article 20(10).

Definition of "scouting costs"

We welcome the deletion of the previous definition of scouting costs from Annex 1. As we expressed in our previous response, the proposed definition was more restrictive than that applied under the current Guidelines as it excluded the legal and administrative costs of both the investment fund and managers.

Definition of "financial intermediaries"

We note that the current definition of "financial intermediaries" does not include venture capital funds. We would welcome the inclusion of a reference to venture capital funds in the definition of "financial intermediaries", since they are specialized in funding and growing young, innovative companies and correspond to the main objective of the legal framework, which aims to encourage and incentivise private sector participation in risk capital.

[2] Directive 2004/39/EC on Markets in Financial Instruments.

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Annex - Suggestions for amendments[3]

Article 20 - Risk finance aid

1. Risk finance aid schemes in favour of SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. At the level of the financial intermediaries, the risk finance aid to independent private investors may take the forms of:

(a) equity or quasi-equity, or financial endowment to provide risk finance investments directly or indirectly to eligible undertakings; or

(b) loans to provide risk finance investments directly or indirectly to eligible undertakings; or

(c) guarantees to cover losses from risk finance investments directly or indirectly to eligible undertakings.

3. At the level of the independent private investors **<u>or investment funds and/or their managers providing risk finance to eligible SMEs</u>**, risk finance aid may take the forms mentioned in paragraph 2 of this Article, or tax incentives in so far as the private investors are natural persons providing risk finance directly or indirectly to eligible undertakings.

4. At the level of the eligible undertakings, the risk finance aid may take the form of equity, quasi-equity investments, loans, guarantees, or a mix thereof.

5. Eligible undertakings shall be undertakings which at the time of the initial risk finance investment are unlisted SMEs and fulfill one of the following conditions:

(a) they have not been operating in any market;

(b) they have been operating in any market for less than 7 years following their first commercial sale;

~~(c) they require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of their average annual turnover in the preceding 5 years;~~

6. The risk finance aid may also cover follow-on investments made in eligible undertakings, including after the 7-year period mentioned in paragraph 5(b) of this Article, if the following cumulative conditions are fulfilled:

(a) the total amount of risk finance mentioned in paragraph 9 is not exceeded;

[3] Words bolded and underlined/barred indicate amendments.

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~~**(b) the follow-on investments were foreseen in the original business plan;**~~

(b) the undertaking receiving follow-on investments has not become linked, within the meaning of Article 3 of Annex II, with another undertaking other than the financial intermediary or the independent private investor providing risk finance under the measure, unless the new entity fulfils the conditions of the SME definition within the meaning of Annex II.

7. For equity and quasi-equity investments in eligible undertakings, the risk finance measure may provide support for replacement capital only if the latter is combined with new capital representing at least ~~**[50]**~~ **[10]**% of each investment round into the eligible undertakings.

8. For equity and quasi-equity investments falling under paragraph 2(a) of this Article, no more than 30% of the financial intermediary's aggregate capital contributions and uncalled committed capital may be used for liquidity management purposes.

9. The total amount of risk finance referred to in paragraph 4 of this Article shall not exceed EUR 15 million per eligible undertaking under any risk finance measure **over a two-year period**.

10. For risk finance measures providing equity, quasi-equity or loan investments to eligible undertakings, the risk finance measure shall leverage additional finance from independent private investors at the level of the financial intermediaries or the eligible undertakings, so as to achieve an aggregate private participation rate reaching the following minimum thresholds:

(a) [10%] of the risk finance provided to the eligible undertakings prior to their first commercial sale on any market;

(b) [40%] of the risk finance provided to the eligible undertakings referred to in paragraph 5 (b) of this Article;

(c) [60%] of the risk finance for investment provided to eligible undertakings mentioned in paragraph 5, letter (c) of this Article and for follow-on investments in eligible undertakings after the 7-year period mentioned in paragraph 5, letter (b) of this Article.

11. In case the risk finance measure is designed to target eligible undertakings at different development stages as referred to in paragraph 10, letters (a) to (c) of this Article, the measure shall achieve an aggregate private participation rate that represents at least:

(a) 40% where the underlying portfolio includes investments in undertakings as referred to in paragraph 10, letter (a) **and (b)** of this Article; or

(b) a weighted average that would result from the application of the minimum participation rates to individual investments in the underlying portfolio, as referred to in paragraph 10, letters (a) to (c) of this Article.

12. The risk finance measure shall not discriminate between financial intermediaries on the basis of their place of establishment or incorporation in any Member State. Financial intermediaries may be required to fulfill predefined criteria objectively justified by the nature of the investments.

13. The risk finance measure shall fulfill the following conditions:

(a) it shall be implemented via one or more financial intermediaries, except for fiscal tax incentives to private investors in respect of their direct investments into eligible undertakings;

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~~**(b) financial intermediaries, as well as investors or fund managers shall be selected through an open, transparent and non-discriminatory call which is made in accordance with applicable Union and national laws and aimed at establishing appropriate risk-reward sharing arrangements whereby, for investments other than guarantees, asymmetric profit sharing shall be given preference over downside protection;**~~

(b) in the case of asymmetrical loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at [25%] of the total investment;

(c) in the case of guarantees falling under point (c) of paragraph 2, the guarantee rate shall be limited to [80]% and total losses assumed by a Member State shall be capped at [25]% of the underlying guaranteed portfolio. ~~**Only guarantees covering the expected losses of the underlying guaranteed portfolio can be provided for free. If a guarantee also comprises coverage of unexpected losses, the financial intermediary shall pay, for the part of the guarantee covering unexpected losses, a market-conform guarantee premium.**~~

14. The following conditions shall be fulfilled in order to ensure profit-driven financing decisions:

(a) the financial intermediary shall be established according to the applicable laws and a due diligence process shall take place to ensure a commercially sound investment strategy, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of its portfolio of investments; and

(b) risk finance provided to the eligible undertakings shall be based on a viable business plan, containing details of product, sales and profitability development, establishing ex-ante financial viability; and

(c) a clear and realistic exit strategy shall exist for each equity and quasi-equity investment.

15. Financial intermediaries shall be managed on a commercial basis. This requirement is considered to be fulfilled when the financial intermediary and, depending on the type of risk finance measure, the fund manager, fulfil the following conditions:

(a) they shall be obliged by law or contract to act with the diligence of a professional manager in good faith and avoiding conflicts of interest; best practices and regulatory supervision shall apply;

(b) their remuneration shall conform to market practices. This requirement is presumed to be met when the manager or the financial intermediary is selected through an open, transparent and non-discriminatory competitive call, based on objective criteria linked to experience, expertise and operational and financial capacity;

(c) they shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources so as to ensure that their interests are permanently aligned with the interests of the public investor;

(d) they shall set out an investment strategy, criteria and the proposed timing of investments;

(e) investors shall be allowed to be represented in the governance bodies of the investment fund, such as the supervisory board or the advisory committee.

16. A risk finance measure providing guarantees or loans to eligible undertakings, shall fulfil the following conditions:

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(a) as a result of the measure, the financial intermediary shall undertake investments that would not have been carried out or would have been carried out in a restricted or different manner without the aid. The financial intermediary shall be able to demonstrate that it operates a mechanism that ensures that all the advantages are passed on to the largest extent to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates;

(b) in the case of loans, the nominal amount of the loan is taken into account in calculating the maximum investment amount for the purposes of paragraph 9 of this Article;

(c) in the case of guarantees, the nominal amount of the underlying guaranteed loan is taken into account in calculating the maximum investment amount for the purposes of paragraph 9 of this Article. The guarantee shall not exceed 80% of the underlying loan.

17. The Member State may entrust the implementation of the risk finance measure to an entrusted entity.

18. Risk finance aid for SMEs that do not fulfil the conditions laid down in paragraph 5 shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that

(a) at the level of the SMEs, the aid fulfils the conditions laid down in Regulation [replacing Regulation (EC) No 1998/2006]; and

(b) all the conditions laid down in the present Article, with the exception of those set out in paragraphs 5, 6, 9, 10, and 11, are fulfilled; and

(c) for risk finance measures providing equity, quasi-equity or loan investments to eligible undertakings, the measure shall leverage additional finance from independent private investors at the level of the financial intermediaries or the SMEs, so as to achieve an aggregate private participation rate reaching at least [60%] of the risk finance provided to the SMEs.

Article 23 - Aid for scouting costs

1. Aid covering part of scouting costs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. The aid intensity shall not exceed **~~[50]~~** **75**% of the eligible costs.

3. The eligible costs shall be the costs for initial screening and formal due diligence undertaken by managers of financial intermediaries or investors to identify eligible undertakings pursuant to Articles 20 and 21.

4. Aid may take the form of a grant.

Submission

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CREATING LASTING VALUE

Annex I - Definitions

69. 'financial intermediary' means any financial institution regardless of its form and ownership, including **venture capital funds,** fund-of-funds, private equity investment funds, public investment funds, banks, micro-finance institutions and guarantee societies;