# Consultation Paper

## State aid to support SME access to risk capital

The purpose of the present consultation is to invite both **Member States** and **other stakeholders** to provide comments on the application of the **Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises** and on SME access to finance at large. Those comments will provide valuable input for the review of the above-mentioned guidelines in 2013. The Commission invites Member States and stakeholders to submit their comments to DG Competition by **05.10.2012**.

## 1. Introduction

The Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises (the Risk Capital Guidelines[1]) set out the conditions that Member States should respect when granting State aid to promote access to risk capital[2] for SMEs[3] in their early development stages, particularly with a view to ensuring that such aid targets a proven equity gap and does not crowd out financial markets. The Risk Capital Guidelines apply from 18 August 2006.

Since 29 August 2008, certain provisions of the Risk Capital Guidelines have been included in Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation, the GBER)[4].

Three years after their entry into force, the Commission carried out a mid-term review of the Risk Capital Guidelines.[5] The Communication from the Commission amending the Risk Capital Guidelines[6] increased the maximum level of the safe-harbour investment tranches to EUR 2.5 million per target SME over each period of 12 months. The amendments apply from 1 January 2011.

In view of the expiry of the Risk Capital Guidelines and the GBER on 31 December 2013, the purpose of the present consultation is to invite Member States and other stakeholders, such as investors, financial intermediaries and final recipients, to provide input for the revision of the Risk Capital Guidelines, notably information on market developments concerning the supply of equity and debt finance to viable SMEs, feedback on the application of the Risk Capital Guidelines and their effects in terms of facilitating SME access to risk capital.

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[1] OJ C 194, 18.8.2006, p. 2.

[2] Risk capital refers to equity/quasi-equity investments in SMEs in seed, start-up and expansion stages. Risk capital investments could be made by professional investors (VC funds), informal investors (business angels) or investments through alternative stock markets specialised in SMEs.

[3] "SME" stands for small and medium-sized enterprises which employ fewer than 250 employees and have an annual turnover not exceeding EUR 50 million and/or an annual balance sheet total not exceeding EUR 43 million and are autonomous enterprises as defined in EU law.

[4] OJ L 214, 9.8.2008, p. 3. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008R0800:EN:NOT

[5] http://ec.europa.eu/competition/consultations/2010_temporary_measures/index.html

[6] OJ C 329, 7.12.2010, p.4.

## 2. How to contribute to the consultation

Member States and other interested parties are invited to respond to the questionnaire hereunder. Replies can be submitted in all official EU languages. Given the possible delays in translating comments submitted in certain languages, translations of the replies in one of the Commission's working languages (preferably English) would be welcome to enable the Commission to process them more swiftly.

Certain questions are intended specifically for public authorities, others are aimed at all stakeholders. Respondents, therefore, are not required to address every question. If you are not concerned by a particular question, please reply "not applicable".

Any comments and information submitted beyond the scope of the questionnaire will be welcome, in particular other relevant documents, reports, studies, data sources.

The deadline for the replies is **05.10.2012**. Replies should be sent to the European Commission, DG COMP, State aid registry, B-1049 Brussels, **"HT.347",** preferably via e-mail to Stateaidgreffe@ec.europa.eu.

For the sake of transparency, the Commission services plan to make the replies to this questionnaire accessible on its website http://ec.europa.eu/competition/consultations/open.html. Therefore, if respondents do not wish their identity or parts of their responses to be divulged, this should be clearly indicated and a non-confidential version should be submitted at the same time. In the absence of any indication of confidential elements, DG COMP will assume that the response contains none and that it can be published in its entirety.

# QUESTIONNAIRE

## About You

**Specific privacy statement**: Received contributions, together with the identity of the contributor, will be published on the Internet, unless the contributor objects to publication of the personal data on the grounds that such publication would harm his or her legitimate interests. In this case the contribution may be published in anonymous form.

For rules on data protection on the EUROPA website, please see: http://ec.europa.eu/geninfo/legal_notices_en.htm#personaldata

a. Do you object to the disclosure of your identity?

   Yes☐ **No X**

b. Does any of the exceptions foreseen in Article 4 of Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents[7] apply to your response? If so, please indicate clearly which parts should not be divulged, justify the need for such confidential treatment and provide also a non-confidential version of your response for publication on our website.

**Please provide your contact details below:**

| | |
|---|---|
| Name | Marcel Roy, Secretary General |
| Organisation represented | AECM, European Association of Mutual Guarantee Societies |
| Location (country) | Belgium |
| E-mail address: | info@aecm.be ; marcel.roy@aecm.be |

**Please describe the main activities of your organisation:**

a. Please identify whether you can be considered as being active on the financing supply or demand side or representing public authorities or other stakeholders.

   *AECM member organizations mainly supply loan default guarantees, some of them are also providers of guarantees for risk capital, mezzanine finance, etc.*

b. Please indicate the size of your company (in terms of turnover and number of employees) or your organization (in terms of members).

   *AECM represents 38 members in 20 MS, Turkey, Montenegro and Russia, with a total of € 78 bn guarantees in portfolio and € 28 bn issued p.a. (figures 31st December 2011). Its members are both private sector (mutual and other organizational forms) and public sector guarantee institutions. For more information, please refer to the AECM web-site: www.aecm.be*

[7] OJ L 145, 31 May 2001, p. 43.

c. If applicable, please provide the NACE[8] code relevant for the activity of your company.

***NOTE: Sections B and C follow the structure of the Risk Capital Guidelines and the General Block Exemption Regulation (GBER). You are requested to follow the order of the questions, even though you are not required to reply to all questions. You can also submit additional information that you consider relevant and which does not fit any specific question.***

## A. General questions – fact finding

*For all questions in this section, please substantiate your answer as much as possible by referring to appropriate statistics, reports or studies.*

### A.1. SME financing needs

a. In your experience, what are ***SMEs' financing needs in their seed, start-up, early expansion and growth stages***?[9] Is financing sought for investment purposes and/or working capital or both? To what extent do financing needs vary according to (i) the size of a business, (ii) the development stage (i. e. seed, start-up, early expansion and growth) and growth prospects of a business, (iii) the sector in which the business is active and/or (iv) the nature of activities for which financing is sought?

   *In the experience of AECM member organizations, there is a great demand from companies for working capital. This has been particularly an acute need during the financial and economic crises of 2008-2010, but even in a „normal“ economic climate, an SME investment loan (e.g. for real estate or machinery), provided by a partner bank and subject to support from a SME credit guarantee scheme, usually involves a reasonable, proportionate, additional amount of working capital. For instance, all investments defined in Art. 12 of the GBER (setting up of a new establishment, extension of an existing establishment, diversification and modification of production processes, etc.), but also other types of SME support measures taken up in the GBER, are usually characterized by a higher demand for working capital.*

   *Without this working capital, the investment cannot be undertaken. Furthermore, in the context of a high labour division, it can be more advantageous for a company to rely on an external provider for his product idea. As a result, there is a higher prefinancing need, which cannot be eligible under the current GBER. We therefore suggest to include working capital (alone or as a proportional part of a financing program comprising investments) in the list of eligible expenditures for all state aid categories regarding SMEs.*

b. In your experience, to what extent do SMEs in their early development and growth stages rely on ***external financing and on what types of financial instruments***, i.e. equity financing, debt financing or a mixture of equity and debt financing? To what extent does the type of financing instruments depend on the development stage and/or

[8] NACE is the European industry standard classification system.

[9] Point 2.2 (g) and (h) of the Risk Capital Guidelines provides the definition of early stage and expansion stage. In general terms, a growth stage refers to expansion operations or entry into new markets by more established businesses.

the sector in which the SME is active and/or the nature of activities for which external financing is sought?

*AECM members consider that debt finance, risk capital, and mezzanine finance (in form of subordinated debt) are all relevant to the financing mix of SMEs, especially for more high-growth-oriented or innovative companies. Guarantee instruments can be provided for all of these sources of finance, depending on the relative market needs and failures in the respective national / regional markets. By sharing in the risk of the investor / lender, the presence of a guarantee will allow supporting an economically reasonable project adding to innovation, GDP-growth and overall employment. In the case of the German guarantee system, the positive macroeconomic externalities and added-value for the public authorities have been studied by the University of Trier: http://www.aecm.be/en/inmit-study-on-the-macroeconomic-benefits-of-the-german-guarantee-banks.html?IDC=31&IDD=183 .*

*The development stage of the beneficiary SME is a key element in the market failure with regard to access to finance. Typically, in the early stage, SMEs will have more difficult access to loan finance, due to a lack of track record and missing collateral (which can be supplemented by a guarantee). For a fast-growing SME, risk capital and mezzanine finance at the early stage are of crucial importance, since the additional funding will give the SME further leverage for debt finance and boost its growth perspectives.*

c. In your experience, how does ***the ratio between equity and debt financing instruments*** change over the lifetime of a typical SME from early stage (seed and start-up) to expansion and growth stage? Please specify whether the financial structure depends on the sector in which the SME is active and/or the nature of activities for which external financing is sought.

*See answer above. It is difficult to specify a specific ratio from the perspective of a European Association, as the market conditions vary from Member State to Member State (and region to region).*

## A.2. Existence and size of an SME financing gap

### *A.2.1 Equity financing gap* [10]

a. In your experience, is there an equity financing gap that might constrain the supply of external equity/quasi-equity financing for businesses that have valuable business models and fulfil all standard equity investment criteria[11]?

*AECM refers to a report by the 5th Round Table between banks and SMEs, dating back to 2007:* http://ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=1065

[10] An equity financing gap is a shortage of external equity/quasi-equity financing that an undertaking might encounter at a particular stage of development which cannot be filled by Venture Capitalists, Business Angels, Private Equity Firms, Banks or any other non-public Investor.

[11] Good Business Management by the entrepreneurial team, patented technology or other valuable intangibles, Existence of an addressable market of sufficient size, potential to produce an attractive financial return (as substantiated by a credible business plan), also VC investment criteria as defined by EVCA.

*The report states on page 15, first paragraph that "As stated by a European expert group, there is currently a clear demand for more risk-taking capital in the €200,000 and €2.5million range. Due to recent developments (after Basel II) there is now also a clear need for more risk related finance below € 200,000."*

*We are aware of the fact, that the findings related to the market failure regarding mezzanine finance are not recent, however, in our perception this market gap persists.*

b. What is, in your experience, the size of the equity financing gap (in absolute terms or relative to the size of the company)?

*See answer to question above.*

c. In your experience, how does the equity gap depend on the size of a business (SMEs or larger companies[12]), its development stage (seed, start-up, early expansion or growth stage), its "age" (for example, number of years since the start-up, the first commercialisation of a product or service), the sector and regional characteristics (for instance, assisted areas[13])?

*See answers to questions above.*

d. In your experience, what type of equity/quasi-equity financing instruments are used to address the equity financing gap, notably: common shares, preference shares and cumulative preference shares, convertible bonds, other hybrid structures different from a standard debt (please specify).

*Risk capital, mezzanine finance (in form of subordinated loans), guarantee instruments in support of the former. See answers to questions above.*

### *A.2.2 Debt financing gap[14]*

a. In your experience, is there a debt financing gap that might constrain the supply of external debt financing for businesses that have valuable business models and fulfil all standard credit risk assessment criteria?

*As mentioned above, due to lack of collateral and track record, and despite a sustainable and promising business plan, particularly start-ups (both traditional and innovative/high-growth SMEs) typically have difficulties in accessing debt finance. The presence of a guarantee, paired with the additional qualitative risk assessment of the guarantee institution, will usually substitute the missing collateral and information. For more innovative/high-growth-oriented companies, the provision of mezzanine finance (in form of subordinated loans, paired with a guarantee), will remedy to a possible shortfall of traditional debt finance. (See answers above).*

[12] Larger companies are considered to be companies that do not fulfil the SME definition.
[13] Assisted areas means regions falling within the scope of the derogations contained in Article 107(3)(a) or (c) TFEU.
[14] A debt financing gap is shortage of external debt financing that an undertaking might encounter at a particular stage of development which cannot be filled by banks, non-banking lending institutions or any other non-public lender.

b. In your experience, what is the size of the debt financing gap (in absolute terms or relative to the size of the company)?

*AECM refers to a report by the 5th Round Table between banks and SMEs:* http://ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=1065

c. In your experience, how does the debt financing gap depend on the size of a business (SMEs or larger companies), its development stage (seed, start-up, early expansion or growth stage), its "age" (for example, number of years since the creation of the start-up or since the first commercialisation of a product or service), the sector and regional characteristics (for instance, assisted areas)?

d. In your experience, what type of debt financing instruments are used to address the debt financing gap, notably: standard debt, subordinated debt, credit enhancement instruments (e.g. guarantees) or other (please specify).

*Please see answer to question A.2.2.a*

## A.3. Underlying reasons for the SME equity financing gap

### *A.3.1 Demand-side constraints*

a. In your experience, to what extent can the equity financing gap be attributed to demand-side problems? In your answer please consider the following challenges faced by enterprises looking for equity financing:

- The enterprise's understanding of the benefits and risks associated with external equity financing
- The capacity of the enterprise to prepare sound business plans, including the enterprise's ability to present itself as an investment opportunity to investors
- The quality of the enterprise's key management
- The enterprise's (un)willingness to share control with outside investors who usually have an influence over company decisions in addition to providing funding
- The size of the investment needed
- Legal, regulatory or fiscal constraints on the side of the enterprise

b. In your experience, do these demand-side constraints reflect structural or rather transitional factors (due to the financial crisis)? If possible, please provide parameters that delimit the effects of the current economic conditions and contrast them with normal (cyclical) market circumstances, and this for each of the company development stages where it is relevant.

### *A.3.2 Supply-side constraints*

a. In your experience, to what extent can the equity financing gap be attributed to supply-side problems? In your answer please consider the following challenges faced by investors willing to provide equity financing to SMEs in early development and growth stages:

- The (un)attractiveness of investments in risk capital compared to other asset classes.
- The (lack of) interest of investors to invest in a particular investment size or participation ratio
- Restrictions imposed on cross-border investments
- The need for investors to make a careful analysis of the entire business strategy in order to estimate the possibilities of making a profit on the investment and the risks associated with it
- The need for investors to be able to monitor that the business strategy is well implemented by the enterprise's managers
- The need for investors to plan and execute an exit strategy, in order to generate a risk-adjusted return on investment from selling its equity stake in the company in which the investment is made. Please explain if there are constraints related to the absence of an initial public offering (IPO) or secondary market potential.

b. In your experience, do these supply-side constraints reflect structural or rather transitional factors (due to the financial crisis)? If possible, please provide parameters (such as IPO activity in a particular sector) that delimit the effects of the current economic conditions and contrast them with normal (cyclical) market circumstances and this for each of the company development stages where it is relevant.

c. In your experience, what are the key characteristics of the European venture capital (VC) market, such as the size of the European VC asset class compared to the European private equity and public equity asset class, average fund size, key VC companies (private VC managers, publicly-owned VC companies) and key investors active in the market?

d. What has been the performance of the European VC industry in terms of profitability compared to other asset classes, the minimum/average value of deals and the type of capital investment (early stage, expansion or growth capital)?

e. What are the key characteristics of business angel finance in Europe, such as the nature and geographical profile of investors, the minimum/average value of deals, syndication deals? What are the key barriers hindering business angel financing?

f. In your experience, what are the key constraints affecting the supply of equity finance to SMEs through alternative stock markets specialised in SMEs?

g. What are the key fundraising constraints of the European VC industry? What makes a VC fund attractive for investors? Is it important for VC funds to diversify their investments across equity and debt instruments, sectors, regions and/or countries and SMEs and larger companies?

### *A.3.3 Regulatory constraints*

a. To what extent existing regulations restrict investors (for instance because of high capital requirements) from investing in the European VC asset class and how does this contribute to an equity financing gap?

b. To what extent is the fiscal environment contributing to the equity financing gap? Are specific risk capital investments facing tax hurdles that do not exist or are less relevant for other types of investment?

c. In your experience, are there regulatory offering / placement restrictions in the retail or wholesale equity capital markets that might contribute to the equity financing gap?

## A.4. Underlying reasons for the SME debt financing gap

### *A.4.1 Demand-side constraints*

a. In your experience, to what extent can a potential debt financing gap be attributed to demand-side problems? In your answer please consider the following potential challenges faced by enterprises looking for debt financing:

- Riskiness of the enterprise's business model, including a lack of collateral and a financial track record

  *As mentioned in the answers above, lack of collateral as well as of a track record is a problem, particularly for start-ups and business transfers.*

- The enterprise's understanding of the importance of preparing sound business plans and capacity to prepare such plans, including the enterprise's ability to present itself as a financing opportunity to lenders

- The size of the debt financing needed

  *In certain markets, financial institutions have become more conservative regarding the loan size and criteria.*

- Legal, regulatory or fiscal constraints preventing the enterprise from raising adequate debt finance

b. In your experience, do demand side constraints reflect structural or rather transitional factors (due to the financial crisis)? If possible, please provide parameters that delimit the effects of the current economic conditions and contrast them with normal (cyclical) market circumstances, and this for each of the company development stages where it is relevant.

*Lack of collateral as well as of a track record have predated the crisis as problem factors for access to finance. However, the financial crisis, which has spilled over in the sovereign debt crisis, has seriously worsened the situation of access to finance for SMEs. The impact is still very acute in many Member States. Lending volumes have gone down in general and lending criteria have become more conservative. However, one can notice both demand and supply effects, with many SMEs more reluctant to undertake investments in an uncertain economic environment. The crisis has accentuated the need for adequate working capital finance.*

*AECM member organizations made an important contribution to fight the effects of the financial and economic crisis since 2008. The impact of the specific crisis instruments, which have been launched by AECM member organisations towards the end of 2008 and the beginning of 2009, in form of new products or modified existing products has been considerable:*

*With a total volume of € 11,2 billion, guarantees issued under the specific crisis programmes make up about a third of the total guarantee activity in 2009. 67 % of the total volume of these specific crisis guarantees has been dedicated to short term, working capital loans.*

*Keeping in mind that short term working capital guarantees had hardly been offered before the crisis as a stand-alone product, the massive demand shows the need to fill a crisis-related market gap. However, we also see a relative need for this type of instrument in a more normal market environment.*

*The specific crisis guarantee instruments have provided **over 120.000 SMEs** with crucial access to finance and thus contributed to maintaining **more than 851.000 jobs***

*Many AECM member organizations used the Temporary State Aid Framework as well as the De Minimis Regulation and GBER to manage these anti-crisis measures. For more details, please refer to the AECM Brochure on the anti-crisis measures:*

*http://www.aecm.be/en/guarantees-and-the-recovery-the-impact-of-anti-crisis-guarantee-measures.html?IDC=31&IDD=182*

### *A.4.2 Supply-side constraints*

a. In your experience, to what extent can a potential debt financing gap for SMEs be attributed to supply-side problems? In your answer please consider the following challenges faced by lenders looking to provide external debt financing:

- The need for lenders to comprehend the credit history of the company
- The attractiveness of providing debt capital to SMEs in their early stages of development compared to other asset classes
- The interest and capacity of lenders to provide a particular loan size
- Restrictions imposed on cross-border lending activities
- Refinancing costs for lenders

b. In your experience, do supply side constraints reflect structural or rather transitional factors (due to the financial crisis and decline in bank lending)? If possible, please provide parameters (such as credit spreads for specific default risk and recovery rates) that delimit the effects of the current economic conditions and contrast them with normal (cyclical) market circumstances, and this for each of the company development stages where it is relevant.

*Please see answer to question A.4.1*

### *A.4.3 Regulatory constraints*

a. To what extent are lenders restricted from holding debt of unrated companies or companies without credit history? Does this contribute to the debt financing gap?

b. Is the fiscal environment contributing to a debt financing gap?

c. In your experience, are there regulatory offering / placement restrictions in the retail or wholesale debt capital markets that might contribute to a debt financing gap?

## B. Experience with the Risk Capital Guidelines

### B.1. General comments

*This section focuses on your overall experience with the application of the Risk Capital Guidelines.*

a. Based on your experience, does ***the current scope*** of the Risk Capital Guidelines appropriately facilitate SME access to risk capital?

b. Have you encountered any problems when applying the Risk Capital Guidelines to ***various support forms***, such as capital injection, guarantees and fiscal measures and ***various delivery modes***, such as investment funds (i. e. public funds capital invested in a VC fund), co-investment funds (i. e. public funds co-invested on a deal by deal basis) ?

c. What has been your overall experience with ***the two-stage assessment architecture*** (a "standard" assessment based on pre-defined eligibility and investment criteria as laid down in section 4.3 of the Risk Capital Guidelines, and a detailed effects-based assessment)?

d. What has been your experience with the ***cumulation*** of aid for risk capital with other types of aid covering the same costs?

### B.2. Presence of State aid

*This section seeks your views on the guidance provided by the Risk Capital Guidelines on the existence and absence of State aid within the meaning of Article 107(1) of the TFEU in risk capital measures.* [15]

a. In general, have you encountered any difficulties with designing ***market-conform measures aimed at facilitating SME access to risk capital*** e. g. as concerns aid presence at several levels of the funding architecture, the criteria for *pari passu* terms and market-conform management remuneration and their applicability to various forms of aid (capital investment, guarantees, fiscal incentives)?

b. In your experience, have the Risk Capital Guidelines (possibly together with other Commission's interpretative documents) provided sufficient legal certainty and clarity with regards to the deployment of various market-conform ***financial instruments (e. g. equity, debt, hybrid instruments)*** to support SME access to finance?

c. In your experience, have the Risk Capital Guidelines provided sufficient legal certainty for the ***presumption of no State aid to private investors***[16]? Have you experienced any difficulties as concerns the notion of "an independent private investor", independence of private investors, risk-sharing investment nature and the notion of private resources?

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[15] See section 3.2 of the Risk Capital Guidelines.

[16] According to point 3.2 of the Risk Capital Guidelines, there is a presumption of no aid to private investors when public and private investments are effected *pari pasu* and *normally where at least 50%* of the funding is provided by independent private investors, which is to ensure significant private participation.

d. As concerns ***State aid at the level of an investment fund,*** when the fund is set up to pool resources from investors and transfer them to investee companies, generally the Risk Capital Guidelines consider such funds not to be State aid recipient. In your experience, has this presumption provided sufficient legal certainty for excluding State aid to non-transparent investment companies that are granted special fiscal treatment?

e. The ***presumption of no State aid to fund managers*** is considered to be fulfilled when fund managers are chosen through an open and transparent tender procedure or do not receive any other advantages granted by the State. In your experience, has this provided sufficient legal safeguards?

f. In your experience, have the Risk Capital Guidelines provided sufficient legal certainty and safeguards as concerns ***the presumption of no aid to investee companies***[17]?

## B.3. Form of aid

*While Member States can choose the form of aid, the Risk Capital Guidelines provide guidance on the type of measures for facilitating risk capital investments in SMEs.* [18] *This section focuses on your experience with the various types of risk capital measures and their effectiveness.*

a. In your experience, what has been the main purpose of aid - to share investment risks with private investors and/or to provide liquidity in the form of capital injection? As for sharing investment risk, has the focus been on addressing upside risk by enhancing returns for private investors or on providing downside risk protection against worse than expected investment performance or potential losses?

b. In your experience, what types of State aid measures have been most commonly used (provision of public capital on non-*pari passu* terms, selective fiscal incentive schemes, guarantee schemes and measures targeting fund managers)?

c. What has been your experience with ***the provision of public capital on non-pari passu terms***? How often has it been used? What type of profit- and loss-sharing arrangements and level of subordination between public and private investments has been used? What limitations have been introduced to avoid over-compensation of the private investors?

d. What has been your experience with ***selective fiscal incentives to private investors and/or funds***? Which one has been used the most often? What safeguards have been introduced to minimise fiscal incentives to the minimum necessary to trigger private investments?

e. What has been your experience with ***guarantee schemes covering downside investment risks***? What type of transactions (e.g. mezzanine, equity transactions) have been covered and how have the risk-sharing instruments been designed to minimise distortions?

[17] According to point 3.2 of the Risk Capital Guidelines, there is a presumption of no aid to investee companies where normally there is no aid to investors or the investment fund/fund manager and where the investment is made on terms which would be acceptable to a private investor in a market economy in the absence of any State intervention.

[18] See section 4.2 of the Risk Capital Guidelines.

f. Have you implemented ***any measures targeting fund managers***? What has been the objectives of such measures (e.g. to address the problem of costly appraisals of potential investments and/or high fundraising costs) and their overall design (e. g. grant schemes covering certain investment management costs)?

g. Overall, ***how effective have been the various State aid measures*** in leveraging the private sector financing for risk capital investments and tackling the equity gap? Please provide evidence based on independent studies, if available.

h. How has each of the different types of measures (the provision of public capital on non-*pari passu* terms, selective fiscal incentive schemes, guarantee schemes and measures targeting fund managers) affected the selection process of target SMEs, i.e. will the measure still lead to the selection of the most promising SMEs – given the amount of information available – or is this selection process distorted?

## B.4. Conditions for compatibility: a standard assessment

*The Risk Capital Guidelines set out specific safe-harbour thresholds related to eligible recipients, development stages, the nature of the investment instrument, an annual investment tranche and the level of private investment.* [19] *Moreover, they set out a number of conditions to ensure that investment decisions are profit-driven and investments are managed on a commercial basis.*

### *B.4.1 Safe-harbour investment and eligibility conditions*

a. What has been your experience with the application of the Risk Capital Guidelines in view of the identified equity gap as concerns:

- the conditions related to ***business development stages (to seed, start-up and expansion stages) and business size (SMEs***)?

- ***the size of the annual investment tranche of EUR 2.5 million*** ? What has been your experience in applying the annual investment tranche requirement to the various forms of aid (fiscal incentives, guarantees, etc.)?

  *The maximum tranche of € 2,5 million for a 12-months period is too restrictive for early stage investments in many sectors (e.g. life science). In the context of a notification procedure, which in any case entails a long and extensive process, it should be possible to set this threshold at a higher level.*

- the requirement to invest at least ***70% of the fund's capital in the form of equity/quasi-equity in SMEs***? In your experience, has this restriction been applied to the total capital of the fund or for each investment deal?

b. The Risk Capital guidelines require ***a minimum participation of private investors*** according to the "assisted" or "non-assisted" status of the region concerned. In your experience, has it been difficult to attract the required private capital? If yes, please describe the difficulties encountered and explain whether meeting this requirement has proved to be more difficult depending on the development stage of a business and

[19] See section 4.3 of the Risk Capital Guidelines.

associated risks. Has the requirement been sufficiently clear with regard to the nature of investors operating under the market economy investor principle?

*The minimum requirement of a 50% co-investment by private investors does not correspond to the reality of publicly supported risk capital measures and lead to the fact that it is difficult to draft any feasible proposal. In coherence with the dispositions for guarantees (Commission Communication, OJ C 155/2008, 20/06/2008), the participation of private investors should be reduced to 20%. This should also be valid outside of "assisted" regions, since the funds are generally operating on a large scale (risk diversification).*

c. What has been your experience with ***the specific treatment of assisted regions*** where the private participation requirement is lower and support to medium-sized enterprises in expansion stage is allowed?

*Given the current difficulties encountered by SMEs in accessing finance, independently from their location, we would also suggest eliminating the restrictions for medium-sized companies (currently only eligible for seed and start-up finance outside of the "assisted" regions). See also of answer to question b. above.*

Other comment: *For comment on cumulation, see comments on GBER below.*

### *B.4.2 Profit-driven investment decisions*

a. What has been your experience with applying the ***conditions for profit-driven investments***[20] in terms of ensuring that publicly-supported risk capital investments are made in viable businesses and do not distort competition in the internal market by supporting inefficient businesses?

b. In your experience, ***how has the profit-driven requirement been reconciled with the preferential treatment of private investors*** compared to the public investment? In that respect, what incentives have been offered to the private investors to ensure their genuine interest in investment success, i. e. have the incentives focused on improving returns instead of providing downside risk protection?

### *B.4.3 Investment management on a commercial basis*

a. What has been your experience with applying ***the commercial management conditions*** in terms of ensuring that investments are managed on a commercial basis seeking to optimise investment returns? In your view, is ***the wording sufficiently clear*** to avoid misinterpretations?

b. In your experience, have risk capital measures been implemented mainly ***under direct management mode***, i. e. by the public authorities or their executive agencies providing equity finance directly to SMEs/financial intermediaries? If yes, what safeguards have been put in place to ensure that investments are managed on a commercial basis (e. g. relying on investment decisions of qualifying independent investors)?

c. In your experience with ***indirect management mode***, i. e. when implementation tasks are delegated to public or private entities that act on behalf of the public authorities

[20] Each investment decision must be based on a viable business plan with a clearly identified exit strategy and minimum level of private investment. See point 4.3.5 of the Risk Capital Guidelines

and have the necessary technical expertise to carry out investment appraisals, structure investment deals, supervise portfolio and ensure successful exits), have implementation tasks been delegated mainly to private operators or public in-house bodies, acting as entrusted entities? How the entrusted entities have been selected? In your experience, what has been the performance of public in-house management bodies?

d. In your experience, which ***management remuneration structure and performance incentives*** (carried interest arrangements or alike) have been used to align the interest of investment managers with those of public and private investors in order to maximise investment performance?

e. In your experience, have you encountered any difficulties applying ***the commercial management conditions to various forms of aid,*** such as setting up VC funds, co-investment funds, fiscal measures, guarantees?

## B.5. Conditions for compatibility: a detailed assessment

*Risk capital measures that do not fulfil all the standard assessment conditions may nevertheless be authorised after a detailed assessment.* [21]

a. In your experience, have the Risk Capital Guidelines provided sufficient ***clarity and predictability*** about the possible outcome of the Commission's assessment of measures subject to a detailed assessment? In your view, are the conditions for the assessment of the positive and negative effects of the aid appropriate and sufficiently clear?

### *B.5.1 Market failure and aid necessity*

a. What has been your experience concerning ***the burden of proof for substantiating market failure*** and providing relevant evidence?

b. In your experience, what ***eligibility criteria and investment restrictions*** have been introduced to ensure that risk capital investments target the identified equity gap?

c. In your experience, have you set out ***contractual requirements for intermediaries*** to verify the presence of a viability gap (insufficient viability to attract financing on commercial terms) in each deal?

### *B.5.2 Incentive effect*

a. What has been your overall experience in applying ***the conditions for the incentive effect of the aid*** as set out in the Risk Capital Guidelines?

b. In your experience, what ***type of incentives*** (non *pari passu* capital enhancing returns for private investors or sharing downside risk with private investors, fiscal incentives, guarantees, etc.) attracted the most private investors, such as large institutional investors, business angels as well as non-traditional alternative investors, such as sovereign wealth funds, endowment funds and charitable foundations?

[21] See chapter 5 of the Risk Capital Guidelines.

c. In your experience, what has been the appropriate ***balance*** between limiting incentives for the private investors to the minimum necessary and attracting their significant participation?

### *B.5.3 Proportionality*

a. What has been your experience in applying the conditions for ***the proportionality of the aid*** as set out by the Risk Capital Guidelines?

b. In your experience, what procedural safeguards and benchmarks have been used to ***avoid overcompensation of the private investors***, i. e. limiting their expected returns on investment to market levels?

c. In your experience, do you require that measures involving repayable financial instruments are ***financially self-sustainable***, i. e. at least the initial public capital must be repaid to the state?

d. In addition to the annual investment cap at SME level and a private-public investment deal ratio, what other safeguards have been used to ***limit the aid to investee companies***?

### *B.5.4 Delivery mode and decision-making*

a. In your experience, what ***procedure has been used to select financial intermediaries*** to manage the investments on behalf of public authorities? What minimum selection criteria have been used (skills, track record, a fee level)?

b. In your experience, has ***direct implementation*** (public authorities making investment decisions) been an exception and under what circumstances? How have you ensured that the public authorities undertaking direct implementation have the technical capacity to manage investments on a commercial basis?

c. What ***performance-based incentives for fund managers*** have been used to incentivise them to take investment decisions on a commercial basis to ensure self-sustainability of funds?

d. In your experience, how the ***private investors have been involved in decision-making*** of a public-private fund or a public fund co-investing with the private investors on a deal-by-deal basis?

e. In your experience, has ***the aid for management scouting costs been often used***? If not, why? Are the criteria well-designed to meet the needs of fund managers?

### *B.5.5 Minimising competition distortions*

a. In your experience, have ***the safeguards*** set out in the Risk Capital Guidelines provided sufficient legal certainty in order to ***minimise potential distortions of competition and trade***?

## C. Experience with the GBER

### C.1. GBER: risk capital measures

*Aid for risk capital investments is partly covered by the GBER, thereby allowing Member States to support risk capital investments without prior notification to the Commission.* [22]

a. In your experience, to what extent have the possibilities provided by the GBER been used? What proportion of aid for risk capital investments was granted under the GBER in comparison to the Risk Capital Guidelines? Please indicate the number of GBER aid measures and GBER aid amount as percentage of total risk capital aid.

b. What are the main factors that have possibly ***prevented your authorities from granting a larger proportion of risk capital aid through block-exempted measures***? Is it related to the type of measures (capital provision, fiscal incentives, guarantees), the size of the annual investment tranche, delivery mode (a public-private fund, a public fund co-investing with private investors on a deal-by-deal basis) or to other factors?

   *Type of measures: Aside from the currently exempted participations in Private-equity funds, other types of conditioned financing or guarantees in favor of risk capital investors / funds should be exempted as well.*

   *Equity and quasi-equity measures that directly target the beneficiary company are currently not included in the GBER. They should at least be available for existing aid forms, e.g. for young innovative companies (Art. 35 GBER) or more generally for company aid, that does not follow the principle of eligible costs.*

   *The annual risk capital tranche of €1,5 mio should be increased to the safe-harbour-threshold applicable under the risk capital guidelines. This would further simplify administrative effort related to the exemptions.*

   *Cumulation: In general, for standardized/simplified SME credit guarantee schemes, eligible for counter-guarantee schemes with state aid element and with microenterprises as main beneficiaries, we do not consider the cumulation rule as necessary, given that the size of the transaction and the aid component are too small for the disproportionately high administrative cost and burden in terms of IT programming and data storage for the bank, the guarantor and the counter-guarantor.*

   *The cumulation of state aid, which is aimed at the recipient company as a whole (promotion for companies that cannot necessarily be defined in single eligible cost categories, e.g. in case of risk capital or aid for young innovative entrepreneurs), with aid for defined eligible costs (promotion through projects) is difficult in practice. Due to the different approaches in financing, there should be no cumulation requirement for promotional measures aimed at SMEs that cannot be divided into single eligible cost categories.*

   *In the case of risk capital, the state aid element is relatively small due to the restrictive requirements of Art. 29 of the GBER (profit driven investments, high participation level of private investors). On the other hand, there are disproportionate restrictions for other SME support measures in terms of cumulation (reduction by up to 50%, with the exception of R&I). From an administrative point of view, it can already result as very difficult to identify risk capital measures that are relevant from a state aid perspective (e.g. for tax support measures in favour of a fund, the Commission also*

[22] See Section 6 of the GBER.

*suggests a state aid element in favour of the target companies). The reduced support for the 3 years after the first risk capital investment is difficult to communicate. In addition, there are slightly different cumulation requirements for notified risk capital measures.*

c. Have you encountered any difficulties with ***the types of measures*** that are currently exempted, namely the constitution of public-private funds?

d. What has been your experience with applying ***the investment restrictions*** set out in the GBER (the eligible beneficiaries, the annual investment tranche, the private investment ratio)?

*The requirements for private funding are hard to meet in some cases. Even in assisted areas it might be difficult, depending on the local economic background, to gather the required 30% of private funding to set up such an investment fund. It is therefore our view that these thresholds should be lowered to 20% (see also answer to B.4.1).*

e. In your experience, have the conditions related to ***profit-driven investment decisions and commercial management*** been sufficiently clear to implement block-exempted measures?

## D. Miscellaneous

### D.1. Questions aiming at all respondents

a. Do you have any other comments on the application of the Risk Capital Guidelines and the GBER (risk capital measures) on issues other than those covered in the previous questions?

b. Please provide copies of any documents or studies which may be relevant for assessing the application of the Risk Capital Guidelines and the GBER and contributing to the reflection on its future revision.

c. Please indicate whether the Commission services may contact you for further details on the information submitted, if required.

Yes☐ No☐

THANK YOU FOR RESPONDING TO THIS QUESTIONNAIRE.