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2016/0221 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EU) No 345/2013 on European venture capital funds and  
Regulation (EU) No 346/2013 on European social entrepreneurship funds**

(Text with EEA relevance)

{SWD(2016) 228 final}

{SWD(2016) 229 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

This proposal aims to amend Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds<sup>1</sup> ("Regulation (EU) No 345/2013") and Regulation (EU) 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds ("Regulation (EU) No 346/2013").<sup>2</sup>

This proposal should be seen in the broader context of work to unlock investment in growing and entrepreneurial businesses. The **Investment Plan for Europe**<sup>3</sup> provides a comprehensive strategy to promote jobs, growth and investment. A key strand of the Investment Plan is the **Capital Markets Union ("CMU") Action Plan**,<sup>4</sup> which aims to reduce fragmentation in the capital markets, remove regulatory barriers to the financing of the economy and increase the supply of capital to businesses through establishing a genuine single capital market. The Investment Plan for Europe aims to further mobilise additional private investment using public funds through the **European Fund for Strategic Investment ("EFSI")**<sup>5</sup>. In this framework, to catalyse private investment into venture capital markets in Europe, a **Pan-European fund-of-funds** investing in European venture capital is also being established. This will combine private sector capital with support from the EU to attract capital from major institutional investors to the European venture capital asset class and boost the impact of EU support for the European venture capital industry.

The **European venture capital funds ("EuVECA")** and **European social entrepreneurship funds ("EuSEF")** fund structures were created to offer new opportunities for market participants to raise and invest capital in innovative small and medium-sized enterprises ("SMEs") and social undertakings throughout Europe. SMEs are of great importance to the EU economy as a sector that can generate real growth and returns. While EuVECA funds support young and innovative companies, EuSEF funds focus on enterprises whose aim is to achieve positive social impact.

The source and the availability of financing for an SME are important factors behind its development, growth and success. In order to promote new areas of growth and move towards an innovation-led economy, there is a need to strengthen new avenues of financing to support start-ups, innovative SMEs and social enterprises. Since banks are typically in a less strong position to provide these types of financing, access to venture capital and social entrepreneurship capital is key to financing the growth of this segment of the EU economy.

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<sup>1</sup> Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

<sup>2</sup> Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment bank: An Investment Plan for Europe (COM(2014)0903 final).

<sup>4</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Action Plan on Building a Capital Markets Union (COM(2015)468 final).

<sup>5</sup> Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).

The gap in such funding has been cited repeatedly as an obstacle that needs to be addressed in order to promote EU economic growth. The EU is also falling further behind the US in terms of the venture capital market, rather than catching up. Despite a similar size of economy, the United States provide more risk capital to companies, including SMEs. The CMU Action Plan reported that if the EU venture capital markets were as deep as in the US, as much as €90 billion of funds would have been available to finance companies between 2009 and 2014. In 2014 around 90% of all EU venture capital investments were concentrated in eight Member States: UK, Germany, Sweden, Denmark, Finland, the Netherlands, France and Spain. But even in these more developed markets, venture capital represents less than 0.1% of GDP.

In order to further support the development of these markets, the Commission is seeking to ensure that the EuVECA and EuSEF frameworks work as well as possible in supporting venture capital and social investment. The Commission therefore decided to anticipate reviews required under both Regulations in 2017 by starting a legislative review as part of the 2016 Regulatory Fitness and Performance programme ("REFIT")<sup>6</sup> initiative. The aim of the review was to assess how the two frameworks have performed so far, in particular whether they have been effective, efficient, coherent, relevant, and have brought added value to the EU. The review identified a number of factors holding back the development of these funds, in particular the rules that govern the way the funds invest in assets, the way the managers run the funds, how both Regulations interact with other existing investment fund laws and the requirements funds comply with to benefit from the passport across borders.

This Proposal recognises that there are still other factors outside its scope which are holding back the development of venture capital sector in the EU, such as approach to non-bank finance or tax regimes which should be addressed through other dedicated initiatives by Member States. Moreover, these factors will also be addressed in the CMU Action Plan's comprehensive package of measures to support venture capital financing in the EU.

- **Consistency with existing policy provisions in the policy area**

This proposal is a part of the **CMU Action Plan**. The CMU Action Plan is a key priority for the Commission and contains a range of measures to remove capital market barriers and facilitate the financing of SMEs. These include, in particular, actions to strengthen feedback given by banks declining SME credit applications, to reinforce credit information on SMEs, to review the fiscal incentives and tax reliefs Member States offer to SMEs and investors in SMEs.

This proposal is a key part of the CMU Action Plan, helping to diversify funding sources and unlock capital by making it easier for investors, fund managers and portfolio undertakings to benefit from EuVECA and EuSEF funds. Capital markets offer access to a wide range of funding providers and provide an exit opportunity for venture capital and social impact investors, private equity or business angels, which invest in companies at an earlier stage of their development.

- **Consistency with other Union policies**

This proposal complements the other two pillars of the Investment Plan for Europe:

- Mobilising additional private investment using public funds. The **EFSI** has been created with the aim to mobilise at least €15 billion of additional investment by

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<sup>6</sup> Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook (COM(2014) 368 final).

2018. EFSI invests in a broad range of sectors, and provides direct financial support to SMEs, mostly through the European Investment Fund.

- Ensuring that investment finance reaches the real economy. The **European investment project portal** and a **European investment advisory hub** have been established to help investment finance reach the real economy.

This proposal also complements **Horizon 2020 Framework Programme for Research and Innovation**<sup>7</sup> which plays a significant role as driver of SME financing through **InnovFin – EU Finance for Innovators**, a series of integrated and complementary financing tools and advisory services offered by the European Investment Bank Group which covers the entire value chain of research and innovation. The Commission also manages a programme for the **Competitiveness of enterprises and SMEs (COSME)**<sup>8</sup> which provides SMEs with better access to finance, it delivers business support services and promotes entrepreneurship.

In the context of the **Single Market Strategy**<sup>9</sup> the Commission is seeking to reduce administrative burdens and make Europe a more attractive destination for innovators from both inside and outside the EU. In particular, the Commission will also launch a **Start-up initiative**, to initiate a broad assessment of requirements for start-ups and ways to reduce such requirements and, where this is not possible, to facilitate compliance.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

### • Legal basis

The legal basis for this proposal is Article 114 TFEU, which was the legal basis for Regulation (EU) 345/2013 and Regulation (EU) 346/2013. The analysis carried out as part of the Impact Assessment report identifies that elements of Regulation (EU) 345/2013 and Regulation (EU) 346/2013 need to be amended to improve and streamline the use of EuVECA and EuSEF funds. Only the EU co-legislators have the competence to make the necessary amendments.

### • Subsidiarity

Action at the EU level should be taken only when the objectives of the proposed action cannot be sufficiently achieved by Member States in the framework of their national constitutional systems.

The internal market for venture capital and social impact funds as laid down in Regulation (EU) 345/2013 and Regulation (EU) 346/2013 remains fragmented and further action is needed to reinforce the European framework for the cross-border fundraising of such funds. This proposal would further lead to convergence and a strengthened internal market for venture capital and social entrepreneurship funds. Therefore, the objectives of this Regulation can only be achieved by action at the Union level.

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<sup>7</sup> Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

<sup>8</sup> Regulation (EU) No 1287/2013 of the European Parliament and of the Council of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014 to 2020) and repealing Decision No 1639/2006/EC (OJ L 347/33, 20.12.2013).

<sup>9</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Upgrading the Single Market: more opportunities for people and business (COM(2015)0550 final).

The identified problems concern limitations and divergences in the application of Regulation (EU) 345/2013 and Regulation (EU) 346/2013 across Member States. Leaving such limitations and divergences risks generating more fragmentation and will lead to missed opportunities. Only co-ordinated EU intervention through this proposal can resolve these issues. Therefore, the EU level is the only appropriate level at which to address these problems in order to ensure uniform rules are applied consistently across all Member States.

- **Proportionality**

This proposal strengthens the use of EuVECA and EuSEF labels. Neither Regulation (EU) 345/2013 and Regulation (EU) 346/2013 nor this proposal confers exclusivity on the EuVECA and EuSEF funds in the sector of venture capital and social impact funds. This Regulation maintains the exclusive use of EuVECA and EuSEF labels by EuVECA and EuSEF funds respectively. The Member States under Directive 2011/61/EU on Alternative Investment Fund Managers ("AIFMD")<sup>10</sup> remain free to determine national regimes for venture capital and social impact funds.

This proposal strikes a balance between public interest, protection of investors, safety and trust considerations as well as related costs. Unnecessary burdens are avoided: it is proposed that management and marketing of funds covered by Regulation (EU) 345/2013 and Regulation (EU) 346/2013 be opened up to a new group of managers subject to AIFMD and only those requirements of Regulation (EU) 345/2013 and Regulation (EU) 346/2013 which are sector specific and not required under AIFMD, registration of funds is streamlined and it is clarified that fees and similar charges may not be imposed by competent authorities of host Member States.

- **Choice of the instrument**

The proposed instrument is a Regulation of the European Parliament and the Council.

### **3. RESULTS OF EX-POST REVIEW, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENT**

- **Review of existing legislation**

Regulation (EU) 345/2013 and Regulation (EU) 346/2013 were included in the European Commission's REFIT programme. Further details about this review can be found in the section "Regulatory fitness and simplification" below.

- **Ex-post evaluation/fitness check**

The Commission decided to accelerate the planned review of Regulation (EU) 345/2013 and Regulation (EU) 346/2013 scheduled for 2017 and to start a legislative review as part of the 2016 REFIT work programme.<sup>11</sup>

Given that Regulation (EU) 345/2013 and Regulation (EU) 346/2013 have only been applicable since mid-2013, a full evaluation could have not been possible as it is too early to firmly conclude on long-term impacts. Instead, the evaluation provides an assessment of the

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<sup>10</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

<sup>11</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Commission Work Programme 2016, No time for business as usual (COM(2015) 610 final).

initial impact of the Regulations, focusing on the potential factors that may have prevented the wider take-up of the funds, in comparison to initial expectations. The review is annexed to the Commission's Impact Assessment report and its conclusions are as follows:

Regarding the effectiveness of Regulation (EU) 345/2013 and Regulation (EU) 346/2013, while the take-up of the opportunities offered by the Regulation (EU) 345/2013 could still be further improved, the limited take-up under Regulation (EU) 346/2013 is clearly unsatisfactory. Both Regulation (EU) 345/2013 and Regulation (EU) 346/2013 are limited by a range of barriers, in particular limitations on large managers whose portfolios exceed €500 million that may not use the "EuVECA" and "EuSEF" labels, a €100,000 minimum entry ticket for non-professional investors and specific limitations on eligible investments (i.e. the definition of qualifying portfolio undertakings). For smaller funds the minimum €100,000 investment has been mentioned as a potential barrier, however smaller investments for non-professional investors are already available in SME assets, through a number of alternative tools (e.g. crowdfunding, IPOs etc). EuSEF and EuVECA funds are different instruments for the longer term (e.g. these funds have a minimum lock-up period of five years) which requires higher thresholds and more investor protection.

As of the beginning of April 2016 there were 70 EuVECA funds registered in the ESMA database. For EuSEF funds, there are four funds registered in only two Member States: one EuSEF fund registered in France and three EuSEF funds in Germany, with total assets under management of €32 million.

With regards to efficiency, the review identifies differing requirements in different jurisdictions, in particular set-up fees, additional costs charged by host Member States and the required levels of sufficient own funds. In some instances, such practices amount to gold-plating going beyond the requirements of the Regulations which in turn constitute an impediment to the setting up and cross-border marketing of both EuVECA and EuSEF funds. In terms of relevance, Regulation (EU) 345/2013 and Regulation (EU) 346/2013 are recognised as integral to the work on CMU. Regulation (EU) 345/2013 and Regulation (EU) 346/2013 form part of the Commission's initiative to increase non-bank finance for the economy, and are aligned with the objectives of the Investment Plan for Europe to increase competitiveness and stimulate investments for the purpose of job creation.

Coherence is achieved due to Regulation (EU) 345/2013 and Regulation (EU) 346/2013 being complementary to AIFMD, as they cover small managers whose portfolios are below €500 million with a view to give them the opportunity to market both EuVECA and EuSEF funds across borders.

In terms of their EU added value, Regulation (EU) 345/2013 and Regulation (EU) 346/2013 address a gap that existed in legislation before their adoption, which aimed to create the ability for small managers to market funds across borders and to increase the amount of non-bank capital available for investment in start-ups and social enterprises. Further EU added value derives from the Regulations, being "single rule books" aiming to ensure that investors have the best possible and most comparable information for investing in both EuVECA and EuSEF funds across Europe.

- **Stakeholder consultations**

This proposal builds on a number of public consultations, namely a public consultation launched by the Building a Capital Markets Union Green Paper (18 February 2015 to 13 May 2015), a public consultation on the review of Regulation (EU) 345/2013 and Regulation (EU) 346/2013 (30 September 2015 to 6 January 2016), a public consultation launched by the Call

for evidence: EU regulatory framework for financial services (30 September 2015 to 31 January 2016) and a targeted technical workshop (27 January 2016).

Results of the consultations suggest that there is widespread support for broadening the range of managers permitted to manage and market funds using the "EuVECA" and "EuSEF" labels by including managers authorised under Article 6 of Directive 2011/61/EU. This proposal opens up the market for EuVECA and EuSEF funds to AIFMD-authorised managers so that they can offer a full range of products to clients from their home and other Member States which in turn would increase the overall penetration of such funds. Those managers will have to continue complying with the AIFMD requirements and also be compliant with selected rules of Regulation (EU) 345/2013 and Regulation (EU) 346/2013 respectively.

Stakeholders expressed mixed views over reducing the minimum €100,000 investment required to invest in EuVECA and EuSEF funds by non-professional investors. Some respondents were in favour of reducing this minimum entry ticket. They suggested broadening the range of potential investors in order to increase choice for non-professional investors. Other respondents considered the risk profile, contractual obligations and illiquid nature of investing in venture capital and social enterprises to not necessarily be suitable for retail investors with less capital. Others noted that additional tailored investor protection rules would be necessary to support this group of investors, the cost of which would not offset potential increases in investor base. A portfolio approach for individual investors similar to that of Regulation (EU) 2015/760 on European long-term investment funds<sup>12</sup> was cited as an example of the level of protection that might be required. With consideration of the above arguments, this proposal maintains the entry ticket of €100,000 for the following reasons: the reduced minimum investment would introduce significant investor protection risks and might, in turn, hamper investor confidence in EuVECA and EuSEF funds. Lowering the investment threshold would inevitably need to be coupled by additional retail investor protection measures which would both introduce costs and detract from the ultimate benefit of more flexible EuVECA and EuSEF fund regimes.

The indirect costs on managers for registering EuVECA and EuSEF funds include own funds requirements. Respondents stressed that competent authorities vary in their interpretation of "sufficient own funds", with some competent authorities applying the full requirements for authorised managers under AIFMD. Respondents also questioned the compatibility of additional fees charged by some host Member States with Regulation (EU) 345/2013 and Regulation (EU) 346/2013. This proposal tackles the goldplating issue by requesting the European Securities and Markets Authority ("ESMA") to develop regulatory technical standards on methodologies for determining the amounts of sufficient own funds. It also clarifies that host Member States may not charge fees on cross-border EuVECA and EuSEF funds.

Regulation (EU) 345/2013 and Regulation (EU) 346/2013 prohibit the imposition of any requirements or administrative procedures in relation to the marketing of qualifying venture capital funds in host Member States. To ensure that the prohibition is consistently observed in all Member States, this Regulation explicitly provides that host Member States may not impose fees and other charges.

The majority of responses supported an expansion of the range of assets eligible for investment by EuVECA funds, with the argument made that the definition of qualifying portfolio undertakings under Regulation (EU) 345/2013 is too restrictive. Reasons for this

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<sup>12</sup> Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2013 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).

included the difficulty for managers in identifying sufficient investments within the definition and the attractiveness of making follow-on investments. Responses also suggested increasing the limit on employee numbers and removing the turnover and balance sheet limits. This proposal permits investments in undertakings with up to 499 employees (small mid-caps). This modification aligns the scope of eligible investments under Regulation (EU) 345/2013 with venture capital programmes managed by the European Investment Fund and supported by EU financial programmes such as the InnovFin facility. In addition, this proposal also permits investment in small and medium-sized enterprises listed on a SME growth market as defined in Directive 2014/65/EU on markets in financial instruments,<sup>13</sup> to allow growth stage entities that have already access to other sources of financing to also receive capital from EuVECA funds. This proposal also permits follow-on investments in a given undertaking which after the first investment does not meet the definition of the qualifying portfolio undertaking any more.

- **Collection and use of expertise**

The Commission has relied on information provided by ESMA. The Commission also organised a targeted technical workshop on 27 January 2016, bilateral meetings, teleconferences with stakeholders and used statistics provided by industry associations.

- **Impact assessment**

This proposal is accompanied by an Impact Assessment report that considers a range of policy options, namely whether to allow AIFMD-authorized managers to use the "EuVECA" and "EuSEF" labels, whether to expand the definition of qualifying portfolio undertakings in Regulation (EU) 345/2013, whether to maintain the minimum entry ticket, and whether to specify administrative processes and additional measures imposed by host Member States.

The Regulatory Scrutiny Board delivered a positive opinion with recommendations to further improve the draft Impact Assessment report on 13 May 2016. The draft report has subsequently been modified to take into account comments from the Board.<sup>14</sup> The main changes related to the context and timing of the legislative revision, the presentation of the preferred options and simplification elements and administrative cost savings. The revised Impact Assessment report and an Executive summary of the Impact Assessment report are published with this proposal.<sup>15</sup>

The table below provides a summary of the different measures chosen, together with an assessment of their impact on relevant stakeholders, benefits and proportionality.

Preferred policy options	Cost impacts	Benefits for managers managing EuVECA and EuSEF funds, investors and portfolio undertakings	Proportionality
Allow AIFMD-authorized managers to use the "EuVECA" and "EuSEF" labels	As the main features of the regime have been preserved, there will be no additional costs for asset managers.	The main features of the regime have been preserved for small asset managers and will be further reinforced.	The preferred options take account of the principle of proportionality, as enshrined in Article 5(4) TEU, being adequate to reach the objectives and not going beyond what is
Expand the definition of qualifying portfolio undertakings in Regulation (EU)	The costs are likely to be lower than currently as the adapted	The balanced approach between investor protection and lower	

<sup>13</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).

<sup>14</sup> The opinion of the Regulatory Scrutiny Board is available at: [...]

<sup>15</sup> The Impact Assessment report and the Executive summary are available at: [...]



<p>345/2013</p> <p>Maintain the €100,000 minimum investment</p> <p>Explicit provisions in Regulation (EU) 345/2013 and Regulation (EU) 346/2013 to avoid burdensome administrative processes and additional measures (including fees imposed by host Member States) and non-proportionate requirements imposed by home Member States.</p>	<p>rules will explicitly specify how proportionality is to be achieved in the requirements.</p> <p>Allowing AIFMD-authorized managers to use the "EuVECA" and "EuSEF" labels is likely to have a positive impact on fees paid by investors to managers, as AIFMD-authorized managers rely on more economies of scale.</p> <p>Maintaining the €100,000 threshold also ensures new consumer protection requirements, such as depositary or diversification rules, are not required. These would otherwise increase costs for the asset managers and indirectly increase the fees paid by investors.</p> <p>No impact on the EU budget.</p>	<p>cost and flexibility of the regime is preserved.</p> <p>There are no additional risks for investors.</p> <p>AIFMD-authorized managers will benefit from the EuVECA and EuSEF funds frameworks and will be able to market EuVECA and EuSEF funds to non-retail investors and other investors able to commit €100,000. They may also target institutional investors such as insurance companies that are already incentivised to invest in this fund framework under Solvency II Delegated Acts.</p> <p>As more asset managers will be able to use EuVECA and EuSEF labels, this in turn will have a positive impact on investment in SMEs, small mid-caps and social undertakings.</p> <p>Broadening the definition of qualifying portfolio undertaking to include larger entities will permit portfolios of EuVECA funds to be diversified and allow small mid-cap entities to have access to EuVECA financing.</p> <p>Expanding the definition of qualifying portfolio undertaking in Regulation (EU) 345/2013 by allowing investment in SME growth markets will foster the development of these markets.</p> <p>Investors will have access to EuVECA portfolios with greater diversification, and potentially lower risk.</p> <p>The administrative burden on EuVECA and EuSEF managers will be reduced.</p> <p>The preferred options are coherent with other legislation and initiatives, in particular AIFMD, SME growth markets under Directive 2014/65/EU, CMU, and reinforce EU financing programmes, including Competitiveness of enterprises and SMEs (COSME), Horizon 2020 and European Fund for Strategic Investments.</p>	<p>necessary in doing so.</p> <p>The selected policy options seek to strike the right balance between public interest, protection of investors, safety and trust considerations as well as related costs. Unnecessary burdens are avoided.</p> <p>The proposed rules do not go beyond what is necessary to achieve a common legal framework for EuVECA and EuSEF funds. They have been carefully considered and tailored to support the specific features, growth potential and innovativeness of the EuVECA and EuSEF sectors.</p>
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- ### Regulatory fitness and simplification

Regulation (EU) No 345/2013 or Regulation (EU) 346/2013 are voluntary fund frameworks so their take up depends on stakeholder interest in setting up such fund vehicles. This proposal reduces unnecessary burdens and costs for managers willing to set-up EuVECA and EuSEF funds.

Managers of EuVECA and EuSEF funds are currently subject to registration processes under Regulation (EU) No 345/2013 or Regulation (EU) 346/2013 and Directive 2011/61/EU. This proposal avoids such duplicative requirements. The review of Regulation (EU) 345/2013 and Regulation (EU) 346/2013 reveals that for the same size of fund, sufficient own funds can

range across Member States from €6,500 to €25,000, the upper threshold being in line with the full capital requirements on AIFMD-authorized managers. To avoid such goldplating, this proposal lays down that the methodologies for determining the amount of sufficient own funds should be developed in regulatory technical standards by ESMA. In addition, the review also reveals that some competent authorities charge fees for marketing of cross-border EuVECA and EuSEF funds on their territories. The annual fees range from €300 to €3,000, being the same levels as for cross-border alternative investment funds marketed by AIFMD-authorized managers. In addition, some host Member States also charge one-off fees ranging from €300 to €3,000 when cross-border marketing commences. This proposal prohibits this practice.

In this respect, the IA Report suggests around €40,500 of cost savings per year per EuVECA and EuSEF fund marketed in 27 Member States and total of €32 million in five years in cost savings for all new EuVECA funds.

- **Fundamental rights**

This Regulation respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. It is in line with Article 16 on freedom to conduct a business as it opens up marketing of funds under EuVECA and EuSEF labels to other regulated managers. It also promotes Article 47 on the right to remedy and to a fair trial as it ensures the right of appeal before courts, including situations where no decision is taken by competent authorities.

This Regulation has to be applied in accordance with those rights and principles.

#### **4. BUDGETARY IMPLICATIONS**

This proposal has no implications for the budget of the European Union.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The amended Regulation (EU) 345/2013 and Regulation (EU) 346/2013 will be evaluated four years after they enter into force.

Monitoring and evaluation will focus on four issues: (i) whether the modified frameworks are attractive for AIFMD-authorized managers to market EuVECA and EuSEF funds, (ii) whether the frameworks have contributed to an increase in assets under management in EuVECA and EuSEF funds, and more broadly to assets invested in venture capital and social impact companies, (iii) whether the modified qualifying portfolio undertaking criteria increased the capital raised, and investments undertaken, by EuVECA funds, and (iv) whether explicit provisions on the prohibition for host Member States to impose fees and sufficient own funds have decreased administration and marketing costs for EuVECA and EuSEF funds.

Indicators for this monitoring would include (i) overall data on EU venture and social impact capital sectors, including venture and social impact capital funds which are neither EuVECA nor EuSEF funds, (ii) the number of EuVECA and EuSEF funds and the number of AIFMD-authorized managers managing and marketing EuVECA and EuSEF funds as well as the number of EuVECA and EuSEF managers registered under Regulation (EU) 345/2013 and Regulation (EU) 346/2013, (iii) value of assets under management in EuVECA and EuSEF funds and average size of such funds, (iv) the cost of marketing of cross-border EuVECA and EuSEF funds, (v) consistency of level of own funds held by EuVECA and EuSEF managers and (vi) cost of setting up funds. Monitoring will be conducted in co-operation with ESMA,

tasked with keeping a register of EuVECA and EuSEF managers and EuVECA and EuSEF funds and, where available, based on the reporting under AIFMD. Commercial data and reports concerning the EuVECA and EuSEF funds and EU venture capital and social impact companies will also be reviewed to capture the impacts of EuVECA and EuSEF funds in a broader perspective.

- **Detailed explanation of the specific provisions of the proposal**

Point (1) of Article 1 and Point (1) of Article 2 allow managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU that manage portfolios of qualifying venture capital and qualifying social entrepreneurship funds to use the ‘EuVECA’ and ‘EuSEF’ designations respectively in relation to the marketing of those funds in the Union. Such managers will have to register their EuVECA and EuSEF funds and comply with specific provisions under Regulation (EU) No 345/2013 or Regulation (EU) 346/2013 respectively, in particular 30% threshold for non-qualifying investments, rules on eligible investors, specific disclosures to investors and notifications. Such managers managing EuSEF funds will also have to comply with provisions setting out procedures to measure the extent to which the qualifying portfolio undertakings in which those funds invest achieve measurable positive social impacts.

Point (2) of Article 1 redefines the qualifying portfolio undertaking's definition in Regulation (EU) No 345/2013 and includes either unlisted undertakings which employ up to 499 persons or small and medium-sized enterprises listed on a SME growth market which are defined in points (12) and (13) of Article 4(1) of Directive 2014/65/EU. It also permits follow-on investments in qualifying portfolio undertakings, namely undertakings that do not meet the definition criteria but met them at the time of the first investment by the qualifying venture capital fund in those undertakings. Point (2) of Article 1 and Point (2) of Article 2 modify the definition of the competent authority and the definition of the home Member State.

Point (3) of Article 1 and Point (3) of Article 2 entrust ESMA with the development of draft regulatory technical standards specifying the methodologies for the determination of sufficient own funds. The methodologies have to distinguish between internally and externally managed EuVECA and EuSEF funds, take into account the size and internal organisation of the managers registered under Regulation (EU) No 345/2013 or Regulation (EU) 346/2013 and managers authorised under Article 6 of Directive 2011/61/EU and ensure that the amounts constituting sufficient own funds do not exceed the amounts laid down in Article 9 of Directive 2011/61/EU.

Point (4) of Article 1 and Point (4) of Article 2 aim to streamline the registration process. Firstly, the provisions establish that the competent authority of the home Member State informs managers on whether they have been registered no later than two months after they have provided all the required information. Secondly, the provisions aim to avoid duplicative registration processes under Regulation (EU) No 345/2013 or Regulation (EU) 346/2013 and Directive 2011/61/EU.

Point (5) of Article 1 and Point (5) of Article 2 lay down the conditions for registration of EuVECA and EuSEF funds by managers authorised under Article 6 of Directive 2011/61/EU. This Regulation permits the registration of EuVECA and EuSEF funds by those managers in Member States other than the Member States in which those managers are authorised. Points (5) ensure that any refusal to, or failure to act, register the managers or EuVECA and EuSEF funds must be substantiated, notified and subject to a right of appeal before the courts.

Point (6) of Article 1 and Point (6) of Article 2 explicitly provide that fees and other charges may not be imposed by competent authorities of host Member States in relation to cross-border marketing of EuVECA and EuSEF funds. They also extend the cross-border notifications between national supervisory bodies as regards EuVECA and EuSEF funds registered and marketed by managers authorised in accordance with Article 6 of Directive 2011/61/EU.

Point (7) of Article 1 and Point (7) of Article 2 ensure that ESMA database includes information concerning all managers of EuVECA and EuSEF funds and the funds that they market.

Point (8) of Article 1 and Point (8) of Article 2 modify a date by which Member States should notify rules applicable to breaches of Regulation (EU) No 345/2013 and Regulation (EU) 346/2013, including breaches by managers authorised under Article 6 of Directive 2011/61/EU that use the 'EuVECA' and 'EuSEF' designations in relation to the marketing of EuVECA and EuSEF funds.

Point (9) of Article 1 and Point (9) of Article 2 ensure the enforcement of Regulation (EU) No 345/2013 or Regulation (EU) 346/2013 *vis-à-vis* managers authorised under Article 6 of Directive 2011/61/EU that manage qualifying venture capital and qualifying social entrepreneurship funds and use the 'EuVECA' and 'EuSEF' designations respectively in relation to the marketing of those funds.

Point (10) of Article 1 and Point (10) of Article 2 lay down the review of Regulation (EU) No 345/2013 and Regulation (EU) 346/2013 would take place four years after the Regulations' entry into application.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EU) No 345/2013 on European venture capital funds and  
Regulation (EU) No 346/2013 on European social entrepreneurship funds**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank,<sup>16</sup>

Having regard to the opinion of the European Economic and Social Committee<sup>17</sup>,

Acting in accordance with the ordinary legislative procedure<sup>18</sup>,

Whereas:

- (1) Regulation (EU) No 345/2013 of the European Parliament and of the Council<sup>19</sup> and Regulation (EU) No 346/2013 of the European Parliament and of the Council<sup>20</sup> lay down uniform requirements and conditions for managers of collective investment undertakings that wish to use in the Union the ‘EuVECA’ or ‘EuSEF’ designations for the marketing of qualifying venture capital funds and qualifying social entrepreneurship funds. Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013 contain rules governing, in particular, qualifying investment, qualifying portfolio undertaking and eligible investors. Under Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013, only managers with assets under management that in total do not exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU of the European Parliament and of the Council<sup>21</sup> qualify for the use of the ‘EuVECA’ and ‘EuSEF’ labels respectively.

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<sup>16</sup> OJ C [...], [...], p. [...].

<sup>17</sup> OJ C , , p. .

<sup>18</sup> Position of the European Parliament of ..... (.....) and decision of the Council of .....  
<sup>19</sup> Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

<sup>20</sup> Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

<sup>21</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

- (2) The Communication on the Investment Plan for Europe of 16 November 2014<sup>22</sup> provides a comprehensive strategy to tackle the lack of finance which is holding back Europe's potential to grow and to provide jobs for its citizens. It aims at unlocking private investment by using public funding and by improving the legal framework for the investment environment.
- (3) The Communication on the Capital Markets Union of 30 September 2015<sup>23</sup> is an important element of the Investment Plan. It aims at reducing fragmentation in the financial markets and increasing supply of capital to businesses through the establishment of a genuine single capital market. The Communication specifies that Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013 need to be amended to ensure that the frameworks are best able to support investment in SMEs.
- (4) The market of qualifying venture capital funds and qualifying social entrepreneurship funds should be opened to increase scale effects, to reduce transaction and operational costs, to improve competition and to strengthen investor choice. Enlarging the base of prospective managers contributes to opening up that market. It should benefit undertakings seeking investment by giving them access to financing from a greater and more varied range of risk investment sources. The scope of Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013 should therefore be extended by opening up the use of the 'EuVECA' and 'EuSEF' labels to managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU.
- (5) In order to keep a high level of investor protection, those managers should continue to be subject to the requirements of Directive 2011/61/EU while complying with certain provisions of Regulation (EU) No 345/2013 or Regulation (EU) No 346/2013, namely the provisions concerning eligible investments, targeted investors and information requirements.
- (6) In order to ensure that competent authorities know about every new use of the 'EuVECA' and 'EuSEF' labels, managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU should register each qualifying venture capital fund or qualifying social entrepreneurship fund they intend to manage and market. This should ensure that those managers may maintain their business models by being able to manage collective investment undertakings established in other Member States while further widening the range of products they offer.
- (7) The range of eligible undertakings in which qualifying venture capital funds can invest should be expanded to further increase supply of capital to businesses. The definition of qualifying portfolio undertakings should therefore include companies with up to 499 employees (small mid-caps) and small and medium enterprises listed on SME growth markets. The new investment options should also allow growth stage entities that have already access to other sources of financing, such as SME growth markets, to receive capital from qualifying venture capital funds which in turn should contribute to the development of the SME growth markets.
- (8) Qualifying venture capital funds should be allowed to participate on the longer term in the funding ladder for unlisted SMEs, unlisted small-midcaps and SMEs listed on

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<sup>22</sup> Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment bank: An Investment Plan for Europe (COM(2014)903 final).

<sup>23</sup> Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: Action Plan on Building a Capital Markets Union (COM(2015)468 final).

SME growth markets, to further enhance their potential for making returns from high-growth companies. Therefore, follow-on investments subsequent to the first investment should be allowed.

- (9) Registration procedures should be cost-effective. Therefore, a registration of a manager in accordance with Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013 should also serve the purpose of the registration referred to in Directive 2011/61/EU. Registration decisions and failures to register under Regulation (EU) No 345/2013 or Regulation (EU) No 346/2013 should, where appropriate, be subject to judicial review.
- (10) It is necessary to clarify that the prohibition for the host Member State to impose requirements or administrative procedures in relation to the marketing of qualifying venture capital funds and qualifying social entrepreneurship funds in its territory includes the prohibition to impose fees and other charges on the managers of those funds.
- (11) Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013 now require that managers of qualifying venture capital funds and qualifying social entrepreneurship funds have sufficient own funds at all times. To ensure a consistent understanding across the Union of what constitutes sufficient own funds for those managers, the European Supervisory Authority ('ESMA') should be required to draw up draft regulatory technical standards which prescribe the methodologies to determine what constitutes sufficient own funds.
- (12) Since this Regulation opens up the use of the 'EuVECA' and 'EuSEF' labels to managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU, the central database, maintained by ESMA in accordance with Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013, should also include information concerning the qualifying venture capital funds and qualifying social entrepreneurship funds that are managed and marketed by those managers.
- (13) Since the objectives of this Regulation, namely to further strengthen an internal market for qualifying venture capital funds and qualifying social entrepreneurship funds by strengthening the use of 'EuVECA' and 'EuSEF' labels, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, this Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with Article 5(4) of the Treaty on European Union.
- (14) Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013 should be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EU) No 345/2013 is amended as follows:

- (1) In Article 2, paragraph 2 is replaced by the following:

“2. Articles 5 and 6, points (c) and (i) of Article 13(1) and Article 14a 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.”

(2) Article 3 is amended as follows:

(a) Point (k) is replaced by the following:

“(k) ‘home Member State’ means the Member State where the manager of a qualifying venture capital fund has its registered office;”

(b) In point (d), point (i) is replaced by the following:

“(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 (MTF) as defined in points (21) and (22) of Article 4(1) of Directive 2014/65/EU of the European Parliament and the Council\*, and employs up to 499 persons;

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

(c) Point (m) is replaced by the following:

“(m) ‘competent authority’ means:

(i) for managers referred to in Article 2(1) of this Regulation, the competent authority referred to in Article 3(3)(a) of Directive 2011/61/EU;

(ii) for managers 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 has its registered office or head office;”

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\* 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).

(3) In Article 10, the following paragraph 3 is inserted:

“3. ESMA shall develop draft regulatory technical standards specifying the methodologies to determine what constitutes sufficient own funds. Those methodologies shall:

(a) distinguish between what constitutes sufficient own funds for internally managed qualifying venture capital funds and sufficient own funds for managers of qualifying venture capital funds which are external managers;

(b) take into account the size and internal organisation of the managers referred to in paragraph 1 of Article 2 in order to ensure neutral conditions of competition between those managers and managers referred to in paragraph 2 of that Article;



- (c) ensure that the amounts resulting from the application of those methodologies do not exceed the amounts laid down in Article 9 of Directive 2011/61/EU.

ESMA shall submit those draft regulatory technical standards to the Commission by [18 months after the date of entry into application of this Regulation].

Power is delegated to the Commission to adopt 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.”;

- (4) In Article 14 the following paragraphs 3a and 3b are inserted:

“3a. The managers referred to in paragraph 1 shall be informed by the competent authority of their home Member State on whether they have been registered as a manager of a qualifying venture capital fund no later than two months after they have provided all the information referred to in paragraph 1.

3b. A registration in accordance with this Article shall constitute a registration for the purposes of Article 3(3) of Directive 2011/61/EU.”;

- (5) The following Articles 14a and 14b are inserted:

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

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

3. The competent authority of the qualifying venture capital fund shall register every fund as a qualifying venture capital fund if the manager of the fund meets the conditions laid down in Article 14(2).

4. The managers referred to in paragraph 1 shall be informed by the competent authority of the qualifying venture capital fund on whether that fund has been registered as a qualifying venture capital fund no later than two months after those managers have provided all the information referred to in paragraph 2.

5. Registration of qualifying venture capital funds under paragraphs 1, 2 and 3 shall be valid in the entire territory of the Union and shall allow marketing of those funds under the designation ‘EuVECA’ throughout the Union.

#### Article 14b

Any refusal to register the managers referred to in Article 14 and the funds referred to in Article 14a shall be substantiated, notified to the managers referred to in those Articles and subject to a right of appeal before the courts. This right of appeal shall also exist where no decision on a registration has been taken two months after it has been applied for.”;

- (6) In Article 16, paragraphs 1 and 2 are replaced by the following:

“1. The competent authorities of the home Member States shall notify the competent authorities of the host Member States and ESMA immediately of any registration of a manager of a qualifying venture capital fund, any addition of a new qualifying venture capital fund, any addition of a new domicile for the establishment of a qualifying venture capital fund or of any addition of a new Member State in which a manager of a qualifying venture capital fund intends to market those funds.

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 that registration to the competent authority of the home Member State of the manager of that qualifying venture capital 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.

The requirements or administrative procedures referred to in the first subparagraph shall include fees and other charges.”

- (7) Article 17 is replaced by the following:

“Article 17

ESMA shall maintain a central database, publicly accessible on the internet, listing all managers of qualifying venture capital fund using the designation 'EuVECA' and the qualifying venture capital funds for which they use it, as well as the countries in which those funds are marketed.”;

- (8) In Article 20(2), the date of “16 May 2015” is replaced by that of “[24 months after the date of entry into application of this Regulation]”;

- (9) Article 21 is amended as follows:

- (a) Point (c) of paragraph 1 is replaced by the following:

“(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) Point (e) of paragraph 1 is replaced by the following:

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

- (c) Point (a) of paragraph 2 is replaced by the following:

“(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;”

- (10) In Article 26(2)(a), the date of “22 July 2017” is replaced by that of “[48 months after the date of entry into application of this Regulation]”.

## *Article 2*

Regulation (EU) No 346/2013 is amended as follows:

- (1) In Article 2, paragraph 2 is replaced by the following:
- “2. Articles 5 and 6, 10, 13(2), points (d), (e) and (f) of Article 14(1) and Article 15a 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 social entrepreneurship funds and intend to use the designation ‘EuSEF’ in relation to the marketing of those funds in the Union.”
- (2) Article 3 is amended as follows:
- (a) Point (k) is replaced by the following:
- “‘home Member State’ means the Member State where the manager of a qualifying social entrepreneurship fund has its registered office;”
- (b) Point (m) is replaced by the following:
- “‘(m) competent authority’ means:
- (i) for managers referred to in Article 2(1) of this Regulation, the competent authority referred to in Article 3(3)(a) of Directive 2011/61/EU;
- (ii) for managers 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 social entrepreneurship funds, the competent authority of the Member State in which the qualifying social entrepreneurship fund has its registered office or head office;”
- (3) In Article 11, the following paragraph 3 is added:
- “3. ESMA shall develop draft regulatory technical standards specifying the methodologies to determine what constitutes sufficient own funds. Those methodologies shall:
- (a) distinguish between what constitutes sufficient own funds for internally managed qualifying social entrepreneurship funds and sufficient own funds for managers of qualifying social entrepreneurship funds which are external managers;
- (b) take into account the size and internal organisation of the managers referred to in paragraph 1 of Article 2 in order to ensure neutral conditions of competition between those managers and managers referred to in paragraph 2 of that Article;
- (c) ensure that the amounts resulting from the application of those methodologies do not exceed the amounts laid down in Article 9 of Directive 2011/61/EU.
- ESMA shall submit those draft regulatory technical standards to the Commission by [18 months after the date of entry into application of this Regulation].

Power is delegated to the Commission to adopt 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.”;

- (4) In Article 15 the following paragraphs 3a and 3b are inserted:

“3a. The managers referred to in paragraph 1 shall be informed by the competent authority of their home Member State on whether they have been registered as a manager of a qualifying social entrepreneurship fund no later than two months after they have provided all the information referred to in paragraph 1.

3b. A registration in accordance with this Article shall constitute a registration for the purposes of Article 3(3) of Directive 2011/61/EU.”;

- (5) The following Articles 15a and 15b are inserted:

#### “Article 15a

1. Managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU shall apply for registration of the qualifying social entrepreneurship funds for which they intend to use the designation ‘EuSEF’.

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

- (a) the fund rules or instruments of incorporation of the qualifying social entrepreneurship fund;
- (b) the information on the identity of the depositary;
- (c) the information referred to in Article 15(1).

For the purposes of point (c) of the first subparagraph, the information on the arrangements made for complying with the requirements of Chapter II of this Regulation shall refer to the arrangements made for complying with Articles 5, 6 and 10, Article 13(2) and points (d), (e) and (f) of Article 14(1).

3. The competent authority of the qualifying social entrepreneurship fund shall register every fund as a qualifying social entrepreneurship fund if the manager of the fund meets the conditions laid down in Article 15(2).

4. The managers referred to in paragraph 1 shall be informed by the competent authority of the qualifying social entrepreneurship fund on whether that fund has been registered as a qualifying social entrepreneurship fund no later than two months after those managers have provided all the information referred to in paragraph 2.

5. Registration of qualifying social entrepreneurship funds under paragraphs 1, 2 and 3 shall be valid in the entire territory of the Union and shall allow marketing of those funds under the designation ‘EuSEF’ throughout the Union.

#### Article 15b

Any refusal to register the managers referred to in Article 15 and the funds referred to in Article 15a shall be substantiated, notified to the managers referred to in those Articles and subject to a right of appeal before the courts. This right of appeal shall also exist where no decision on a registration has been taken two months after it has been applied for.”;

- (6) In Article 17, paragraphs 1 and 2 are replaced by the following:

“1. The competent authorities of the home Member States shall notify the competent authorities of the host Member States and ESMA immediately of any registration of a manager of a qualifying social entrepreneurship fund, any addition of a new qualifying social entrepreneurship fund, any addition of a new domicile for the establishment of a qualifying social entrepreneurship fund or of any addition of a new Member State in which a manager of a qualifying social entrepreneurship fund intends to market those funds.

For the purposes of the first subparagraph, the competent authority of a qualifying social entrepreneurship fund that has been registered in accordance with Article 15a shall immediately notify that registration to the competent authority of the home Member State of the manager of that qualifying social entrepreneurship fund.

2. The competent authorities of the host Member States shall not impose on the managers of qualifying social entrepreneurship funds any requirements or administrative procedures in relation to the marketing of their qualifying social entrepreneurship funds, nor shall they require any approval of that marketing prior to its commencement.

The requirements or administrative procedures referred to in the first subparagraph shall include fees and other charges.”;

- (7) Article 18 is replaced by the following:

“Article 18

ESMA shall maintain a central database, publicly accessible on the internet, listing all managers of qualifying venture capital fund using the designation 'EuSEF' and the qualifying social entrepreneurship funds for which they use it, as well as the countries in which those funds are marketed.”;

- (8) In Article 21(2), the date of “16 May 2015” is replaced by that of “[24 months after the date of entry into application of this Regulation]”;

- (9) Article 22 is amended as follows:

- (a) Point (c) of paragraph 1 is replaced by the following:

“(c) uses the designation ‘EuSEF’ but is not registered in accordance with Article 15, or the qualifying social entrepreneurship fund is not registered in accordance with Article 15a;”

- (b) Point (e) of paragraph 1 is replaced by the following:

“(e) has obtained registration through false statements or any other irregular means, in breach of Article 15 or Article 15a;”

- (c) Point (a) of paragraph 2 is replaced by the following:

“(a) take measures to ensure that the manager of a qualifying social entrepreneurship fund concerned complies with Articles 5 and 6, points (a) and (b) of Article 7 and Articles 13 to 15a;”

- (10) In Article 27(2)(a), the date of “22 July 2017” is replaced by that of “[48 months after the date of entry into application of this Regulation]”.

*Article 3*

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

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*