



2016/0221(COD)

13.12.2016

*****I**

DRAFT REPORT

on the 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 (COM(2016)0461 – C8-0320/2016 – 2016/0221(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Sirpa Pietikäinen

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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 (COM(2016)0461 – C8-0320/2016 – 2016/0221(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0461),
 - having regard to Article 114 and Article 294(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0320/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2016),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) Regulation (EU) No 345/2013 of the European Parliament and of the Council¹⁹ and Regulation (EU) No 346/2013 of the European Parliament and of the Council²⁰ 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 Council²¹ qualify for the use of the ‘EuVECA’ and ‘EuSEF’ labels respectively.

¹⁹ 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).

²⁰ 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).

²¹ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund

Amendment

(1) Regulation (EU) No 345/2013 of the European Parliament and of the Council¹⁹ and Regulation (EU) No 346/2013 of the European Parliament and of the Council²⁰ 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 **and management** 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 Council²¹ qualify for the use of the ‘EuVECA’ and ‘EuSEF’ labels respectively.

¹⁹ 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).

²⁰ 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).

²¹ 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).

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).

Or. en

Justification

EuVECA managers should in addition to marketing also be permitted to manage funds located in another Member State through the passport. This clarification would be in line with the objectives of the Capital Markets Union.

Amendment 2

Proposal for a regulation Recital 5 a (new)

Text proposed by the Commission

Amendment

(5 a) A threshold of EUR 100 000 minimum entry ticket for non-professional investors is maintained for investing in EuVECA funds. It is questionable whether venture capital funds would be suitable for retail investor even in the case where investor protection rules would be strengthened, in particular due to the long-term and illiquid nature of venture capital funds. However, it might be worth considering in the future whether a special possibility for retail investors could be opened through the use of a feeder fund under Regulation (EU) No 345/2013 for those EuVECA funds that wish to opt for enlarging their investor basis. During the next review of that Regulation, the Commission should also investigate whether lowering the relatively high threshold might be beneficial, especially as it can be seen as a potential barrier to more investment in such funds. Even though venture capital remains a highly risky form of investment, it should be recalled that, increasingly, similarly risky, unregulated forms of investment are available to consumers.

Such forms of investment, for example crowd funding, currently fall outside the regulated space whereas the EuVECA regime is regulated and supervised.

Or. en

Amendment 3

Proposal for a regulation Recital 5 b (new)

Text proposed by the Commission

Amendment

(5 b) For EuSEF funds, the threshold of EUR 100 000 should in any case be lowered to EUR 50 000. This is in line with the objectives of the Capital Markets Union, increasing access to funding especially for smaller and socially engaged firms which are less bankable due to the fact that they re-invest their profits into their projects and as such do not meet the minimum required return for bank capital requirements. This would also allow the spectrum of investment possibilities for non-professional investors to be widened and would allow such investors to support firms with a positive social impact.

Or. en

Amendment 4

Proposal for a regulation Recital 6 a (new)

Text proposed by the Commission

Amendment

(6 a) In order to ensure effective supervision of the uniform requirements set out in this Regulation, ESMA should supervise compliance of managers of qualifying venture capital funds with

those requirements. Managers that intend to establish or market their qualifying funds under the designations 'EuVECA' or 'EuSEF' should inform ESMA of that intention. ESMA should register the manager if all necessary information has been provided and if suitable arrangements are in place to comply with the requirements set out in this Regulation. Such registration should be valid for funds established or marketed across the entire Union. Registrations made with the home authorities of managers of qualifying venture capital funds prior to the entry into force of this Regulation should remain valid.

Or. en

Amendment 5

Proposal for a regulation Recital 7 a (new)

Text proposed by the Commission

Amendment

(7 a) In order to make the framework more appealing and to further increase the supply of capital to social businesses, the range of eligible undertakings in which qualifying social entrepreneurship funds can invest should be expanded by extending the definition of positive social impact. The current, detailed language on positive social impact under the definition of qualifying portfolio undertaking is difficult to quantify and thus both for the funds and the regulators to interpret, apply or supervise. Moreover, there is a discrepancy between what constitutes positive social impact in different EU contexts that complicates the regulatory landscape of social entrepreneurship funds further and e.g. makes the participation of institutional investors in EuSEF funds more difficult.

Amendment 6**Proposal for a regulation****Recital 10**

Text proposed by the Commission

(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.

Amendment

(10) ***Fees and other charges imposed on qualifying venture capital fund managers by host Member States contribute to regulatory divergence and act as a disincentive to firms to operate in other Member States. Such fees impede the free flow of capital across Union borders, thus undermining the principles of the internal market.*** It is *thus* 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.

Or. en

Amendment 7**Proposal for a regulation****Recital 11**

Text proposed by the Commission

(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

Amendment

(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. ***In order to develop an appropriate and proportionate capital treatment for qualifying venture capital fund managers and for qualifying social***

Authority ('ESMA') should be required to draw up draft regulatory technical standards which prescribe the methodologies to determine what constitutes sufficient own funds.

entrepreneurship fund managers, the level of own fund requirements in the context of those two fund structures should be significantly lower and less complex than the amounts laid down in Article 9 of Directive 2011/61/EU to take into account the specificities, nature and small size of these funds, and to respect the principle of proportionality. This should, in particular, apply for the smaller EuVECA and EuSEF funds, for which the level of own capital should be set in this Regulation to ensure a consistent understanding across the Union of what constitutes sufficient own funds for those managers. *For funds exceeding EUR 250 000 000*, 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

Or. en

Amendment 8

Proposal for a regulation Recital 12 a (new)

Text proposed by the Commission

Amendment

(12 a) The appropriateness of the definition of marketing and discrepancies as interpreted by national competent authorities were identified as one of the significant barriers to cross-border investments as part of the Commission's work on a Capital Markets Union. In order to facilitate the efficient cross-border marketing of qualifying venture capital and social entrepreneurship funds, and to take into account the specificities of EuVECA and EuSEF funds and their capital fundraising process, the circulation of draft fund documentation that does not include subscription

documents, that is where no subscription is possible at that point in time. should not be considered to be marketing. Marketing should be deemed only to start at the point at which final legal documents relating to a fund are no longer negotiable.

Or. en

Amendment 9

Proposal for a regulation Recital 13 a (new)

Text proposed by the Commission

Amendment

(13 a) This Regulation should be without prejudice to the application of state aid rules to qualifying venture capital funds. Such funds may serve as vehicles for state aid to promote risk capital investments in SMEs through, for example, more favourable treatment of private investors than of the State, provided the aid is compatible with state aid rules and in particular with Article 21 of Commission Regulation (EU) No 651/2014 of 17 June 2014;

Or. en

Amendment 10

Proposal for a regulation Article 1 – paragraph 1 – point -1 (new) Regulation (EU) No 345/2013 Article 1 – paragraph 1

Present text

Amendment

"This Regulation lays down uniform requirements and conditions for managers of collective investment undertakings that

(-1) in Article 1, the first paragraph is replaced by the following:

"This Regulation lays down uniform requirements and conditions for managers of collective investment undertakings that

wish to use the designation 'EuVECA' in relation to the marketing of qualifying venture capital funds in the Union, thereby contributing to the smooth functioning of the internal market."

wish to use the designation 'EuVECA' in relation to the marketing **and management** of qualifying venture capital funds in the Union, thereby contributing to the smooth functioning of the internal market."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Justification

EuVECA managers should in addition to marketing also be permitted to manage funds located in another Member State through the passport. This clarification would be in line with the objectives of the Capital Markets Union.

Amendment 11

Proposal for a regulation

Article 1 – paragraph 1 – point -1 a (new)

Regulation (EU) No 345/2013

Article 1 – paragraph 2

Present text

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

Amendment

(-1a) Article 1, the second paragraph is replaced by the following:

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

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Justification

EuVECA managers should in addition to marketing also be permitted to manage funds located in another Member State through the passport. This clarification would be in line with the objectives of the Capital Markets Union.

Amendment 12

Proposal for a regulation

Article 1 – paragraph 1 – point 2 a (new)

Regulation (EU) No 345/2013

Article 7 – point f

Present text

"(f) treat their investors fairly;"

Amendment

(2 a) in Article 7 point (f) is replaced by the following:

"(f) treat their investors fairly. ***This shall not preclude more favourable treatment of private investors than of a state investor, provided it is compatible with state aid rules and in particular with Article 21 of Commission Regulation (EU) No 651/2014 of 17 June 2014.***"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Amendment 13

Proposal for a regulation

Article 1 – paragraph 1 – point 2 b (new)

Regulation (EU) No 345/2013

Article 10 – paragraph 2a (new)

Text proposed by the Commission

Amendment

(2b) in Article 10, the following paragraph is added:

2a. Where the value of the qualifying venture capital funds managed by the manager of qualifying venture capital funds is below EUR 250 000 000, own fund requirements shall represent one eighth of the preceding year's fixed

overheads of the same manager;

Or. en

Justification

The level of own fund requirements in the context of EuVECA should be significantly lower and less complex than the one set forth in the AIFMD to take into account the specificities, nature and small size of venture capital businesses and their funds, and to respect the principle of proportionality. Especially smaller venture capital fund managers should be protected from too high capital requirements and should be subject to a proportionate regime.

Amendment 14

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 345/2013

Article 10 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

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

Amendment

3. ***Where the value of the qualifying venture capital funds managed by the manager of qualifying venture capital funds exceeds EUR 250 000 000, ESMA shall develop draft regulatory technical standards specifying the methodologies to determine what constitutes sufficient own funds. Those methodologies shall:***

Or. en

Justification

The level of own fund requirements in the context of EuVECA should be significantly lower and less complex than the one set forth in the AIFMD to take into account the specificities, nature and small size of venture capital businesses and their funds, and to respect the principle of proportionality. Especially smaller venture capital fund managers should be protected from too high capital requirements and should be subject to a proportionate regime.

Amendment 15

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 345/2013
Paragraph 10 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(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;

deleted

Or. en

Amendment 16

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 345/2013

Article 10 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(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;

(b) take into account ***and be proportionate to the size, complexity, structure*** 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;

Or. en

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 345/2013

Article 10 – paragraph 3 – point c

Text proposed by the Commission

Amendment

(c) ensure that the amounts resulting from the application of those

(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.

methodologies *remain significantly lower than* the amounts laid down in Article 9 of Directive 2011/61/EU.

Or. en

Amendment 18

Proposal for a regulation

Article 1 – paragraph 1 – point 3 a (new)

Regulation (EU) No 345/2013

Article 14 – paragraph 1 – introductory part

Present text

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

Amendment

(3 a) in Article 14 (1) the introductory part is replaced by the following:

"1. Managers of qualifying venture capital funds that intend to use designation 'EuVECA' for the marketing of their qualifying venture capital funds shall inform *ESMA* of their intention and shall provide the following information:"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Justification

Regulation (EU) No 345/2013 establishes a “single rule book” for EuVECA funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 19

Proposal for a regulation

Article 1 – paragraph 1 – point 3 b (new)

Regulation (EU) No 345/2013

Article 14 – paragraph 1 – point b

Present text

Amendment

(3b) in Article 14 (1), point b is

"(b) the identity of the qualifying venture capital funds, the units or shares of which are to be marketed and their investment strategies;"

replaced by the following:

"(b) the identity of the qualifying venture capital funds, the units or shares of which are to be marketed, ***including the Member State where the qualifying venture capital funds are or will be established***, and their investment strategies;"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Justification

Regulation (EU) No 345/2013 establishes a “single rule book” for EuVECA funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 20

Proposal for a regulation

Article 1 – paragraph 1 – point 3 c (new)

Regulation (EU) No 345/2013

Article 14 – paragraph 1 – point e

Present text

Amendment

(3c) in Article 14 (1), point e is deleted.

"(e) a list of Member States where the manager of a qualifying venture capital fund has established, or intends to establish, qualifying venture capital funds."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Justification

Regulation (EU) No 345/2013 establishes a “single rule book” for EuVECA funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 21

Proposal for a regulation

Article 1 – paragraph 1 – point 3 d (new)

Regulation (EU) No 345/2013

Article 14 – paragraph 2 – introductory part

Present text

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

Amendment

(3d) *Article 14 (2) is replaced by the following:*

"2. *ESMA* shall only register the manager of a qualifying venture capital fund if the following conditions are met:"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Justification

Regulation (EU) No 345/2013 establishes a “single rule book” for EuVECA funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 22

Proposal for a regulation

Article 1 – paragraph 1 – point 3 e (new)

Regulation (EU) No 345/2013

Article 14 – paragraph 2a (new)

Text proposed by the Commission

Amendment

(3e) *in Article 14, the following paragraph is inserted:*

“2a. *ESMA shall inform the competent authority of the home Member State of the manager of a qualifying venture capital fund when informed of intention to use designation 'EuVECA' by a manager in accordance with paragraph 1. ESMA may require the competent authority to provide information about the manager to allow ESMA to determine whether the conditions set out in*

paragraph 2 are met;”

Or. en

Justification

Regulation (EU) No 345/2013 establishes a “single rule book” for EuVECA funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 23

Proposal for a regulation

Article 1 – paragraph 1 – point 3 f (new)

Regulation (EU) No 345/2013

Article 14 – paragraph 3

Present text

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

Amendment

(3f) in Article 14 (3) is replaced by the following:

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

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Justification

EuVECA managers should in addition to marketing also be permitted to manage funds located in another Member State through the passport. This clarification would be in line with the objectives of the Capital Markets Union.

Amendment 24

Proposal for a regulation

Article 1 – paragraph 1 – point 4

Regulation (EU) No 345/2013

Article 14 – paragraph 3a

Text proposed by the Commission

Amendment

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.

3a. The managers referred to in paragraph 1 shall be informed by **ESMA** 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.

Or. en

Justification

Regulation (EU) No 345/2013 establishes a “single rule book” for EuVECA funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 25

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) No 345/2013

Article 14a – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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:

2. The application for registration referred to in paragraph 1 shall be made to **ESMA** and shall include the following:

Or. en

Justification

Regulation (EU) No 345/2013 establishes a “single rule book” for EuVECA funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 26

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) No 345/2013

Article 14a – paragraph 3

Text proposed by the Commission

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).

Amendment

3. ***ESMA*** 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).

Or. en

Justification

Regulation (EU) No 345/2013 establishes a “single rule book” for EuVECA funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 27

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) No 345/2013

Article 14a – paragraph 4

Text proposed by the Commission

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.

Amendment

4. The managers referred to in paragraph 1 shall be informed by ***ESMA*** 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.

Or. en

Justification

Regulation (EU) No 345/2013 establishes a “single rule book” for EuVECA funds to be

marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 28

Proposal for a regulation

Article 1 – paragraph 1 – point 5 a (new)

Regulation (EU) No 345/2013

Article 15 – introductory part

Present text

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

Amendment

(5 a) in Article 15, the introductory part is replaced by the following:

"Managers of qualifying venture capital funds shall inform *ESMA* where they intend to:"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Amendment 29

Proposal for a regulation

Article 1 – paragraph 1 – point 5 b (new)

Regulation (EU) No 345/2013

Article 15 – point a

Present text

"(a) a new qualifying venture capital fund; or"

Amendment

(5b) in Article 15, point a is replaced by the following:

"(a) *establish or market* a new qualifying venture capital fund; or"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Amendment 30

Proposal for a regulation

Article 1 – paragraph 1 – point 5 c (new)

Regulation (EU) No 345/2013

Article 15 – point b

Present text

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

Amendment

(5c) in Article 15, point b is replaced by the following:

"(b) **market** an existing qualifying venture capital fund in a Member State not mentioned in the list referred to in point (d) of Article 14(1)."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Amendment 31

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 345/2013

Article 16 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

ESMA shall notify the competent authorities of the host Member States immediately of any registration of a manager of a qualifying venture capital fund, any **establishment** of a new qualifying venture capital fund, any **establishment** 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.

Or. en

Justification

Regulation (EU) No 345/2013 establishes a “single rule book” for EuVECA funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 32

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 345/2013

Article 16 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.

Amendment

For the purposes of the first subparagraph, ***ESMA shall immediately notify the registration*** of a qualifying venture capital fund that has been registered in accordance with Article 14a to the competent authority of the home Member State of the manager of that qualifying venture capital fund.

Or. en

Justification

Regulation (EU) No 345/2013 establishes a “single rule book” for EuVECA funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 33

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 345/2013

Article 16 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

Without prejudice to the generality of the first subparagraph, the requirements or administrative procedures referred to in ***that*** subparagraph shall include fees and other charges.

Justification

Fees and other charges imposed on qualifying venture capital fund managers by host Member States contribute to regulatory divergence and act as a disincentive to firms to operate in other Member States. Such fees restrict the free flow of capital across EU borders, thus undermining the principles of the EU single market

Amendment 34**Proposal for a regulation****Article 1 – paragraph 1 – point 7**

Regulation (EU) No 345/2013

Article 17

Text proposed by the Commission

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.;

Amendment

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 ***and managed.***;

Justification

EuVECA managers should in addition to marketing also be permitted to manage funds located in another Member State through the passport. This clarification would be in line with the objectives of the Capital Markets Union.

Amendment 35**Proposal for a regulation****Article 1 – paragraph 1 – point 9 – point -a (new)**

Regulation (EU) No 345/2013

Article 21 – paragraph 1 – introductory part

*Present text**Amendment*

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

"1. **The competent authority of the home Member State** shall, while respecting the principle of proportionality, take the appropriate measures referred to in paragraph 2 where a manager of a qualifying venture capital fund:"

"1. **ESMA** shall, while respecting the principle of proportionality, take the appropriate measures referred to in paragraph 2 where a manager of a qualifying venture capital fund:"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Amendment 36

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point b a (new)

Regulation (EU) No 345/2013

Article 21 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

(b a) In Article 21(1), the following subparagraph is added:

“The competent authorities of the home or the host Member State shall inform ESMA without delay if they believe the manager of a qualifying venture capital fund has committed any of the breaches in points (a) to (i) of Article 21(1).”

Or. en

Amendment 37

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point b b (new)

Regulation (EU) No 345/2013

Article 21 – paragraph 2 – introductory part

Present text

Amendment

"2. In the cases referred to in paragraph 1 **the competent authority of the home**

(b b) in paragraph 2 the introductory part is replaced by the following:

"2. In the cases referred to in paragraph 1 **ESMA** shall, as appropriate:"

Member State shall, as appropriate:"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Amendment 38

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point c a (new)

Regulation (EU) No 345/2013

Article 21 – paragraph 3

Present text

"3. *The competent authority of the home Member State* shall inform the competent authorities of the host Member States in accordance with point (d) of Article 14(1) *and ESMA*, without delay, of the removal of the manager of a qualifying venture capital fund from the register referred to in point (b) of paragraph 2 of this Article."

Amendment

(c a) paragraph 3 is replaced by the following:

"3. *ESMA* shall inform the competent authorities of the *home and the* host Member States in accordance with point (d) of Article 14(1) without delay, of the removal of the manager of a qualifying venture capital fund from the register referred to in point (b) of paragraph 2 of this Article."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Amendment 39

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point c b (new)

Regulation (EU) No 345/2013

Article 21 – paragraph 4

Present text

"4. The right to market one or more qualifying venture capital funds under the designation 'EuVECA' expires with

Amendment

(c b) paragraph 4 is replaced by the following:

"4. The right to market one or more qualifying venture capital funds under the designation 'EuVECA' expires with

immediate effect from the date of the decision of *the competent authority* referred to in point (b) of paragraph 2."

immediate effect from the date of the decision of *ESMA* referred to in point (b) of paragraph 2."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0345&from=EN>)

Amendment 40

Proposal for a regulation

Article 2 – paragraph 1 – point -1 (new)

Regulation (EU) No 346/2013

Article 1 – paragraph 1

Present text

"This Regulation lays down uniform requirements and conditions for managers of collective investment undertakings that wish to use the designation 'EuSEF' in relation to the marketing of qualifying social entrepreneurship funds in the Union, thereby contributing to the smooth functioning of the internal market."

Amendment

(-1) in Article 1, the first paragraph is replaced by the following:

"This Regulation lays down uniform requirements and conditions for managers of collective investment undertakings that wish to use the designation 'EuSEF' in relation to the marketing *and management* of qualifying social entrepreneurship funds in the Union, thereby contributing to the smooth functioning of the internal market."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0346&from=EN>)

Justification

EuSEF managers should in addition to marketing also be permitted to manage funds located in another Member State through the passport. This clarification would be in line with the objectives of the Capital Markets Union.

Amendment 41

Proposal for a regulation

Article 2 – paragraph 1 – point -1 a (new)

Regulation (EU) No 346/2013

Article 1 – paragraph 2

Present text

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

Amendment

(-1a) in Article 1, the second paragraph is replaced by the following:

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

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0346&from=EN>)

Justification

EuSEF managers should in addition to marketing also be permitted to manage funds located in another Member State through the passport. This clarification would be in line with the objectives of the Capital Markets Union.

Amendment 42

Proposal for a regulation

Article 2 – paragraph 1 – point 2 – point -a (new)

Regulation (EU) No 346/2013

Article 3 – paragraph 1 – point d – point ii – first indent

Present text

"– provides services or goods **to vulnerable or marginalised, disadvantaged or excluded persons,**"

Amendment

(-a) in paragraph 1 point d (ii) first indent is replaced by the following:

"– provides services or goods **which generate a social return,**"

Or. en

Justification

The uptake of the current EuSEF regime has clearly been unsatisfactory. One of the problems has been the detailed definition of what constitutes "positive social impact" which is very difficult to quantify and thus both for the funds and the regulators to interpret, apply or supervise. The amendment seeks to align the definition with the one used by the European investment Fund and in the EU Social Business Initiative.

Amendment 43

Proposal for a regulation

Article 2 – paragraph 1 – point 2 a (new)

Regulation (EU) No 346/2013

Article 6 – paragraph 1 – point a

Present text

Amendment

"(a) commit to investing a minimum of EUR **100 000**; and"

(2 a) Article 6(1), point (a) is replaced by the following:

"(a) commit to investing a minimum of EUR **50 000**; and"

Or. en

Justification

The lower threshold is in line with the objectives of the CMU, as it seeks to increase access to funding for especially the smaller and socially engaged firms. This would also allow for widening the spectrum of investment possibilities for non-professional investors and allow them to support firms with a positive social impact.

Amendment 44

Proposal for a regulation

Article 2 – paragraph 1 – point 2 a (new)

Regulation (EU) No 346/2013

Article 11 – paragraph 2a (new)

Text proposed by the Commission

Amendment

(2a) in Article 11, the following paragraph is added:

“2a. Where the value of the qualifying social entrepreneurship funds managed by the manager of qualifying social entrepreneurship funds is below EUR 250 000 000, own fund requirements shall represent one eighth of the preceding year's fixed overheads of the same manager.”

Or. en

Justification

The level of own fund requirements in the context of EuSEF should be significantly lower and less complex than the one set forth in the AIFMD to take into account the specificities, nature and small size of these funds, and to respect the principle of proportionality. Especially smaller social entrepreneurship fund managers should be protected from too high capital requirements and should be subject to a proportionate regime.

Amendment 45

Proposal for a regulation

Article 2 – paragraph 1 – point 3

Regulation (EU) No 346/2013

Article 11 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

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

Amendment

3. Where the value of the qualifying social entrepreneurship funds managed by the manager of qualifying social entrepreneurship funds exceeds EUR 250 000 000, ESMA shall develop draft regulatory technical standards specifying the methodologies to determine what constitutes sufficient own funds. Those methodologies shall:

Or. en

Justification

The level of own fund requirements in the context of EuSEF should be significantly lower and less complex than the one set forth in the AIFMD to take into account the specificities, nature and small size of these funds, and to respect the principle of proportionality. Especially smaller social entrepreneurship fund managers should be protected from too high capital

requirements and should be subject to a proportionate regime.

Amendment 46

Proposal for a regulation

Article 2 – paragraph 1 – point 3

Regulation (EU) No 346/2013

Article 11 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(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;*

deleted

Or. en

Amendment 47

Proposal for a regulation

Article 2 – paragraph 1 – point 3

Regulation (EU) No 346/2013

Article 11 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(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;

(b) take into account ***and be proportionate to the size, complexity, structure*** 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;

Or. en

Amendment 48

Proposal for a regulation

Article 2 – paragraph 1 – point 3

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Text proposed by the Commission

(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.

Amendment

(c) ensure that the amounts resulting from the application of those methodologies **remain significantly lower than** the amounts laid down in Article 9 of Directive 2011/61/EU.

Or. en

Amendment 49

Proposal for a regulation

Article 2 – paragraph 1 – point 3 a (new)

Regulation (EU) No 346/2013

Article 15 – paragraph 1 – introductory part

Present text

"1. Managers of qualifying social entrepreneurship funds that intend to use of the designation 'EuSEF' for the marketing of their qualifying social entrepreneurship funds shall inform **the competent authority of their home Member State** of their intention and shall provide the following information:"

Amendment

(3 a) in Article 15(1), the introductory part is replaced by the following:

"1. Managers of qualifying social entrepreneurship funds that intend to use of the designation 'EuSEF' for the marketing of their qualifying social entrepreneurship funds shall inform **ESMA** of their intention and shall provide the following information:"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0346&from=EN>)

Amendment 50

Proposal for a regulation

Article 2 – paragraph 1 – point 3 b (new)

Regulation (EU) No 346/2013

Article 15 – paragraph 1 – point b

Present text

Amendment

"(b) the identity of the qualifying social entrepreneurship funds, the units or shares of which are to be marketed and their investment strategies;"

(3b) in Article 15(1), point b is replaced by the following:

"(b) the identity of the qualifying social entrepreneurship funds, the units or shares of which are to be marketed, **including the Member State where the qualifying social entrepreneurship funds are or will be established** and their investment strategies;"

Or. en

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0346&from=EN>

Justification

Regulation (EU) No 346/2013 establishes a “single rule book” for EuSEF funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 51

Proposal for a regulation

Article 2 – paragraph 1 – point 3 c (new)

Regulation (EU) No 346/2013

Article 15 – paragraph 1 – point e

Present text

Amendment

"(e) **a list of Member States where the manager of a qualifying social entrepreneurship fund has established, or intends to establish, qualifying social entrepreneurship funds.**"

(3c) in Article 15(1), point e is deleted.

Or. en

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0346&from=EN>

Justification

Regulation (EU) No 346/2013 establishes a “single rule book” for EuSEF funds to be

marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 52

Proposal for a regulation

Article 2 – paragraph 1 – point 3 d (new)

Regulation (EU) No 346/2013

Article 15 – paragraph 2 – introductory part

Present text

Amendment

"2. ***The competent authority of the home Member State*** shall register the qualifying social entrepreneurship fund manager only if the following conditions are met:"

(3d) in Article 15(2), the introductory part is replaced by the following:

"2. ***ESMA*** shall register the qualifying social entrepreneurship fund manager only if the following conditions are met:"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0346&from=EN>)

Justification

Regulation (EU) No 346/2013 establishes a “single rule book” for EuSEF funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 53

Proposal for a regulation

Article 2 – paragraph 1 – point 3 e (new)

Regulation (EU) No 346/2013

Article 15 – paragraph 2a (new)

Text proposed by the Commission

Amendment

(3e) In Article 15, the following paragraph is inserted:

"2a. ESMA shall inform the competent authority of the home Member State of the manager of a qualifying social entrepreneurship fund when informed by such a manager in accordance with

paragraph 1. ESMA may require the competent authority to provide information to allow ESMA to determine whether the conditions in paragraph 2 are met;"

Or. en

Justification

Regulation (EU) No 346/2013 establishes a "single rule book" for EuSEF funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 54

Proposal for a regulation

Article 2 – paragraph 1 – point 3 f (new)

Regulation (EU) No 346/2013

Article 15 – paragraph 3

Present text

"3. Registration under this Article shall be valid in the entire territory of the Union and shall allow managers of qualifying social entrepreneurship funds to market qualifying social entrepreneurship funds under the designation 'EuSEF' throughout the Union."

Amendment

(3f) Article 15(3) is replaced by the following:

"3. Registration under this Article shall be valid in the entire territory of the Union and shall allow managers of qualifying social entrepreneurship funds to market **and manage** qualifying social entrepreneurship funds under the designation 'EuSEF' throughout the Union."

Or. en

(http://ec.europa.eu/finance/investment/docs/venture_capital/160714-proposal_en.pdf)

Justification

EuSEF managers should in addition to marketing also be permitted to manage funds located in another Member State through the passport. This clarification would be in line with the objectives of the Capital Markets Union.

Amendment 55

Proposal for a regulation

Article 2 – paragraph 1 – point 4

Regulation (EU) No 346/2013

Article 15 – paragraph 3a

Text proposed by the Commission

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.

Amendment

3a. The managers referred to in paragraph 1 shall be informed by **ESMA** 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.

Or. en

Justification

Regulation (EU) No 346/2013 establishes a “single rule book” for EuSEF funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 56

Proposal for a regulation

Article 2 – paragraph 1 – point 5

Regulation (EU) No 346/2013

Article 15a – paragraph 2 – introductory part

Text proposed by the Commission

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:

Amendment

2. The application for registration referred to in paragraph 1 shall be made to **ESMA** and shall include the following:

Or. en

Justification

Regulation (EU) No 346/2013 establishes a “single rule book” for EuSEF funds to be marketed across Europe. The amendment enforces this European approach by handing over

to ESMA the responsibility for registering these funds.

Amendment 57

Proposal for a regulation

Article 2 – paragraph 1 – point 5

Regulation (EU) No 346/2013

Article 15a – paragraph 3

Text proposed by the Commission

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).

Amendment

3. **ESMA** 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).

Or. en

Justification

Regulation (EU) No 346/2013 establishes a “single rule book” for EuSEF funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 58

Proposal for a regulation

Article 2 – paragraph 1 – point 5

Regulation (EU) No 346/2013

Article 15a – paragraph 4

Text proposed by the Commission

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.

Amendment

4. The managers referred to in paragraph 1 shall be informed by **ESMA** 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.

Or. en

Justification

Regulation (EU) No 346/2013 establishes a “single rule book” for EuSEF funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 59

Proposal for a regulation

Article 2 – paragraph 1 – point 5 a (new)

Regulation (EU) No 346/2013

Article 16 – introductory part

Present text

"Managers of qualifying social entrepreneurship funds shall inform *the competent authority of the home Member State* where they intend to *market*:"

Amendment

(5a) in Article 16, the introductory part is replaced by the following:

"Managers of qualifying social entrepreneurship funds shall inform **ESMA** where they intend to:"

Or. en

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0346&from=EN>

Justification

Regulation (EU) No 346/2013 establishes a “single rule book” for EuSEF funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 60

Proposal for a regulation

Article 2 – paragraph 1 – point 5 b (new)

Regulation (EU) No 346/2013

Article 16 – point a

Present text

"(a) a new qualifying social entrepreneurship fund; or"

Amendment

(5b) in Article 16, point a is replaced by the following:

"(a) **establish or market** a new qualifying social entrepreneurship fund; or"

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0346&from=EN>)

Justification

Regulation (EU) No 346/2013 establishes a “single rule book” for EuSEF funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 61

Proposal for a regulation

Article 2 – paragraph 1 – point 5 c (new)

Regulation (EU) No 346/2013

Article 16 – point b

Present text

"(b) an existing qualifying social entrepreneurship fund in a Member State not mentioned in the list referred to in point (d) of Article 15(1)."

Amendment

(5c) in Article 16, point b is replaced by the following:

"(b) **market** an existing qualifying social entrepreneurship fund in a Member State not mentioned in the list referred to in point (d) of Article 15(1)."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0346&from=EN>)

Justification

Regulation (EU) No 346/2013 establishes a “single rule book” for EuSEF funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 62

Proposal for a regulation

Article 2 – paragraph 1 – point 6

Regulation (EU) No 346/2013

Article 17 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The competent authorities of the home

Amendment

ESMA shall notify the competent

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.

authorities of the host Member States immediately of any registration of a manager of a qualifying social entrepreneurship fund, any **establishment** 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.

Or. en

Justification

Regulation (EU) No 346/2013 establishes a “single rule book” for EuSEF funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 63

Proposal for a regulation

Article 2 – paragraph 1 – point 6

Regulation (EU) No 346/2013

Article 17 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.

Amendment

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

Or. en

Justification

Regulation (EU) No 346/2013 establishes a “single rule book” for EuSEF funds to be marketed across Europe. The amendment enforces this European approach by handing over to ESMA the responsibility for registering these funds.

Amendment 64

Proposal for a regulation

Article 2 – paragraph 1 – point 6

Regulation (EU) No 346/2013

Article 17 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

Without prejudice to the generality of the first subparagraph, the requirements or administrative procedures referred to in **that** subparagraph shall include fees and other charges.

Or. en

Justification

Fees and other charges imposed on qualifying social entrepreneurship fund managers by host Member States contribute to regulatory divergence and act as a disincentive to firms to operate in other Member States. Such fees restrict the free flow of capital across EU borders, thus undermining the principles of the EU single market

Amendment 65

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point -a (new)

Regulation (EU) No 346/2013

Article 22 – paragraph 1 – introductory part

Present text

"1. ***The competent authority of the home Member State*** shall, while respecting the principle of proportionality, take the appropriate measures referred to in paragraph 2 where a manager of a qualifying social entrepreneurship fund:"

Amendment

(-a) in paragraph 1 the introductory part is replaced by the following:

"1. ***ESMA*** shall, while respecting the principle of proportionality, take the appropriate measures referred to in paragraph 2 where a manager of a qualifying social entrepreneurship fund:"

Or. en

Amendment 66

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b a (new)

Regulation (EU) No 346/2013

Article 22 – paragraph 1 – subparagraph 1a (new)

Text proposed by the Commission

Amendment

(b a) in paragraph 1 the following subparagraph is added:

The competent authorities of the home or the host Member State shall inform ESMA without delay if they believe the manager of a qualifying social entrepreneurship fund has committed any of the breaches in points (a) to (i) of Article 22(1)

Or. en

Amendment 67

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b b (new)

Regulation (EU) No 346/2013

Article 22 – paragraph 2 – introductory part

Present text

Amendment

(b b) paragraph 2 is replaced by the following:

"2. In the cases referred to in paragraph 1, *the competent authority of the home Member State* shall, as appropriate:"

"2. In the cases referred to in paragraph 1, *ESMA* shall, as appropriate:"

Or. en

Amendment 68

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point c a (new)

Regulation (EU) No 346/2013

Article 22 – paragraph 3

Present text

"3. *The competent authority of the home Member State* shall inform the competent authorities of the host Member States in accordance with point (d) of Article 15(1) *and ESMA*, without delay, of the removal of the manager of a qualifying social entrepreneurship fund from the register referred to in point (b) of paragraph 2 of this Article."

Amendment

(c a) paragraph 3 is replaced by the following:

"3. *ESMA* shall inform the competent authorities of the *home and* host Member States in accordance with point (d) of Article 15(1) without delay, of the removal of the manager of a qualifying social entrepreneurship fund from the register referred to in point (b) of paragraph 2 of this Article."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0346&from=EN>)

Amendment 69

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point c b (new)

Regulation (EU) No 346/2013

Article 22 – paragraph 4

Present text

"4. The right to market one or more qualifying social entrepreneurship funds under the designation 'EuSEF' in the Union expires with immediate effect from the date of the decision of *the competent authority* referred to in point (b) of paragraph 2."

Amendment

(c b) paragraph 4 is replaced by the following:

"4. The right to market one or more qualifying social entrepreneurship funds under the designation 'EuSEF' in the Union expires with immediate effect from the date of the decision of *ESMA* referred to in point (b) of paragraph 2."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0346&from=EN>)

EXPLANATORY STATEMENT

The European venture capital funds ("EuVECA") and European social entrepreneurship funds ("EuSEF") Regulations established two new, voluntary fund structures that aim at offering new opportunities for market participants to raise and invest capital in innovative small and medium-sized enterprises and social undertakings throughout Europe. The two Regulations came into force in 2013.

The current proposal forms a part of the Capital Markets Union Action Plan. In order to make progress towards enhancing the CMU, the Commission decided to anticipate the reviews of Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013, originally provided for in these two Regulations for 2017.

There clearly is a case for improving the attractiveness of the two fund structures. This is especially true for the EuSEF-framework where the uptake has been unsatisfactory. As of the beginning of April 2016, there were 70 EuVECA funds and only 4 EuSEF funds registered in the ESMA database.

The gap in funding for small and growing businesses within the EU is still an obstacle that needs addressing. Compared to the US, EU venture capital markets are still lagging far behind: in terms of amounts invested, the market is about five times smaller in the EU. The Commission's proposal was accompanied by a larger package of suggestions that all seek to stimulate venture capital financing in the Union. That package includes proposals such as EU budgetary support to attract capital from major institutional investors through a pan-European venture capital fund of funds, and promoting best practices in national tax incentives for venture capital.

The Commission proposes to modify the Regulations in three main aspects: extend the range of managers eligible to market and manage EuVECA and EuSEF funds; increase the range of companies that can be invested in by EuVECA funds; and make the registration and cross border marketing of these funds easier and cheaper.

Your Rapporteur is by and large supportive of the changes that the Commission is proposing. However, some targeted amendments are suggested that seek to improve the frameworks further. Enhancing Capital Markets Union and its goals of reducing fragmentation in the capital markets, removing regulatory barriers to the financing of the economy and increasing the supply of capital to businesses, serve as a context for these amendments.

EuVECA/EuSEF as marketing and management passport

In line with the aims of these objectives of the CMU, your Rapporteur wishes to clarify that EuVECA/SEF frameworks should provide for both a marketing and a management passport. This would mean that a fund manager established in one Member State should be able to manage a fund established in another, while also marketing the fund across Europe.

There has been some ambiguity as to the question whether the current regime already provides for this possibility, and the amendments proposed by the Rapporteur seek to clarify

the situation.

Should EuVECA/EuSEF regime not provide for such a management passport, then the managers wanting to manage funds established in other Member state(s) would need to opt in to the AIFMD regime, which for smaller funds would often prove too burdensome. Ensuring the regime provides for both marketing and management passport would increase investor choice across the EU, one of the key aims of the CMU.

Broadened range of managers, broader investor basis, larger pool of eligible assets

The Commission proposes to broaden 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 (AIFMD). Your Rapporteur supports this proposal, as it will allow AIFMD-authorized managers to 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.

The Commission consultation suggests one of the potential stumbling blocks for greater take-up of EuVECA label could be that the definition of 'qualifying portfolio undertaking' is too restrictive. The Commission thus proposes to allow for investments to small mid-caps with up to 499 employees as well as to SMEs listed on SME growth market.

The Rapporteur supports this extension, but proposes furthermore to relax the definition of 'qualifying portfolio undertaking' under the EuSEF regime.

One of the problems under the EuSEF framework has been the detailed definition of positive social impact of the qualifying investment, which in addition to differing from e.g. a broader definition used in the EU Social Business Initiative, is also very difficult to quantify and thus both for the funds and the regulators to interpret, apply or supervise. The discrepancy of what constitutes "positive social impact" in different EU contexts complicates the regulatory landscape of social entrepreneurship funds and the participation of institutional investors to EuSEF funds. Following from this, the amendment proposed in this draft Report seeks to align the definition with the one used by the European Investment Fund and in the Social Business Initiative.

In addition, it seems appropriate to seek to enhance the EuSEF regime further by lowering the threshold of required minimum investment from EUR 100 000 to EUR 50 000. The Commission's consultation states that the threshold of EUR 100 000 minimum entry ticket for non-professional investors can act as a barrier for smaller funds, and as EuSEF funds tend to be smaller in size than the EuVECA funds, it seems appropriate to lower this threshold and increase the potential investor basis. This is in line with the objectives of the CMU, as it would work towards increasing access to funding for especially the smaller and socially engaged firms. This would also allow for widening the spectrum of investment possibilities for non-professional investors and allow them to support firms with a positive social impact.

Own funds requirements

Proportionality should be the guiding principle for the own funds requirements for EuVECA and EuSEF funds. The Commission review identifies the widely varying regulatory practices

regarding own funds requirements imposed by different Member states as one of the obstacles to cross-border activities EuVECA/EuSEF funds. It is due to this that the Commission is proposing that ESMA should be tasked with looking into the sufficient levels of own funds, to ensure consistent application of this requirement across the EU.

When looking at the own funds requirement, proportionality and suitability to these type of funds is of utmost importance. The average venture capital fund manager in the EU has around EUR70 million of assets under management and is more than 7 times smaller than fund managers regulated under the AIFMD. In addition, many venture capital fund managers are themselves small entities. The same goes for EuSEF funds. It is therefore crucial to ensure that any own fund requirements are proportionate to the size of EuVECA/EuSEF fund managers and the size and type of fund they manage, and also reflect the actual risk that they pose.

It is thus proposed in this draft report to differentiate between funds with less than EUR 250 000 000 under management where the level of own funds should be set in this regulation, and with bigger funds where ESMA should set additional own funds requirements.

ESMA powers

The two regulations establish “single rule books” for EuVECA and EuSEF funds to be marketed across Europe. Your Rapporteur suggests strengthening this EU-approach by handing over to ESMA the responsibility of registering such funds.

**ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities in the preparation of the draft report:

Entity
Invest Europe
Intesa Sanpaolo
Triodos Bank
CapMan