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## 'I' ITEM NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	COM(2016) 461 final
Subject:	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 - Negotiating mandate

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## I. INTRODUCTION

1. On 14 July 2016, the Commission transmitted to the Council its 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<sup>1</sup>. The proposal is a key part of the Capital Markets Union Action Plan, and aims at 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.

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<sup>1</sup> Doc. 11303/16 EF 242 ECOFIN 716 CODEC 1071

2. The European Central Bank adopted its opinion on 12 September 2016<sup>2</sup>. The opinion of the European Economic and Social Committee is still pending. The report of the European Parliament's ECON Committee is also still pending.

## II. STATE OF PLAY

3. The proposal has been examined by the Working Party on Financial Services in five meetings during the Slovak Presidency. Following deliberations in the Working Party on 29 November 2016, and a silence procedure within the framework of the Working Party, which ended on 5 December 2016, the latest Presidency compromise proposal for a negotiating mandate, as set out in Annex, is now supported by all delegations.

## III. CONCLUSION

4. Against this background it is recommended that the Permanent Representatives Committee:
  - agrees on the negotiating mandate with regard to the proposed Regulation, as set out in Annex, and
  - invites the incoming MT Presidency to start, when practicable, negotiations with the European Parliament on the basis of that mandate with a view to reaching an agreement at first reading.

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<sup>2</sup> Doc. 12112/16 EF 268 ECOFIN 788 CODEC 1236

**ANNEX**

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)

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>3</sup>

Having regard to the opinion of the European Economic and Social Committee<sup>4</sup>,

Acting in accordance with the ordinary legislative procedure<sup>5</sup>,

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<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ C , , p. .

<sup>5</sup> Position of the European Parliament of ..... (.....) and decision of the Council of .....

Whereas:

- (1) Regulation (EU) No 345/2013 of the European Parliament and of the Council<sup>6</sup> and Regulation (EU) No 346/2013 of the European Parliament and of the Council<sup>7</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>8</sup> qualify for the use of the ‘EuVECA’ and ‘EuSEF’ labels respectively.
- (2) The Communication on the Investment Plan for Europe of 16 November 2014<sup>9</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>10</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

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<sup>6</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>7</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>8</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>9</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>10</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).

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. The competent authorities on which Directive 2011/61/EU confers the supervisory powers should also exercise the powers with respect to those managers.
- (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) not admitted to trading on a regulated market or on a multilateral trading facility, 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. Moreover, the investments from qualifying venture capital funds in qualifying portfolio undertakings will not per se disqualify those qualifying portfolio undertakings from being eligible in public programmes. It is also recalled that to enhance investments further, setting up a fund of funds structure within this regulation should remain possible.
- (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 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 in relation to the managing of the qualifying venture capital funds or qualifying social entrepreneurship funds. Registration decisions and failures to register under Regulation (EU) No 345/2013 or Regulation (EU) No 346/2013 should, where appropriate, be subject to administrative or judicial review according to the national law.
- (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 for the marketing of those funds if no supervisory task has to be performed.

- (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, which are not authorised in accordance with Directive 2011/61/EU have sufficient own funds at all times. To ensure a consistent understanding across the Union of what constitutes sufficient own funds for those managers, it is necessary to provide for the application of minimum capital requirements and additional 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 European Securities and Markets Authority (‘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. This Regulation should apply as of three months after its entry into force. In order to avoid any potential market disruption it is necessary to provide existing managers of existing qualifying venture capital funds and existing qualifying social entrepreneurship funds during those funds' existing terms with a derogation from rules on own funds under this Regulation. Such managers should nevertheless ensure that they are able to justify at all times the sufficiency of their own funds to maintain operational continuity.
- (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.

- (15) 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 3, 4, 5, 6, 12, points (c) and (j) of Article 13(1), 14a, 14b, 15, 16, 18a, 21 and Article 21a of this Regulation shall apply to managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU that manage portfolios of qualifying venture capital funds and intend to use the designation ‘EuVECA’ in relation to the marketing of those funds in the Union.“

- (2) Article 3 is amended as follows:

- (a) 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<sup>11</sup>, and employs up to 499 persons;
- the undertaking is a small and medium-sized enterprise as defined in point (13) of Article 4(1) of Directive 2014/65/EU which is listed on a SME growth market as defined in point (12) of Article 4(1) of that Directive.

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<sup>11</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).



(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 venture capital funds, the competent authority of the Member State in which the qualifying venture capital fund is established;”

(c) 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;“

(d) Point (n) is added:

„(n) „competent authorities of the host Member state“ means the authority of the Member State in which the qualifying venture capital fund is marketed;“

(3) In Article 10, paragraph 2 is deleted and the following paragraphs are inserted:

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

3. The own funds shall never be less than one sixth of the preceding year's fixed overheads of the same manager. The competent authorities may adjust the requirement in the event of a material change in a firm's business since the preceding year. Where a manager of a qualifying venture capital fund has not completed a year's business, the requirement shall be a sixth of the fixed overheads projected in his business plan, unless an adjustment to that plan is required by the competent authority of the home Member State of the manager.

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

5. Managers of qualifying venture capital funds may not to provide up to 50 % of the additional amount of own funds referred to in paragraph 4 if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in a Member State, or in a third country where it is subject to prudential rules considered by the competent authorities as equivalent to those laid down in Union law.

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

(4) In Article 12 the following paragraph 4 is inserted:

„4. The competent authority of the home Member State shall ensure that all information gathered under paragraph 1 in respect of managers referred to in Article 2(2) is made available to relevant competent authorities of qualifying venture capital funds by means of the procedures set out in Article 22 on supervisory cooperation.”

(5) In Article 13, paragraph 1, point (b) is replaced by following:

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

(6a) In Article 14 the following paragraphs 3a, 3b and 3c are inserted:

„3a. The managers referred to in Article 2(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 in relation to the management of qualifying venture capital funds.

3c. The managers of qualifying venture capital funds referred to in this Article shall notify the competent authority of their home Member State of any material changes to the conditions for initial registration of the manager according to this Article before such changes are implemented.

If the competent authority of the home Member State decides to impose restrictions or reject those changes, it shall, within 1 month of receipt of that notification, inform the managers of the qualifying venture capital fund. The competent authority may extend that period for up to 1 month where it considers this to be necessary due to the specific circumstances of the case and after having notified the managers of the qualifying venture capital fund. The changes shall be implemented if the relevant competent authority does not oppose the changes within the relevant assessment period.“;

- (6b) In Article 14 the paragraph 1, point (e) is deleted;
- (7) 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);
  - (d) a list of Member States where those managers have established, or intend to establish, qualifying venture capital funds.

For the purposes of point (c) of the first subparagraph, the information on the arrangements made for complying with the requirements of Chapter II 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).

2a. The competent authority of the qualifying venture capital fund shall ask the competent authority of the manager for an information whether qualifying venture capital fund fall within the scope of the manager's authorisation to manage AIFs and whether conditions laid down in point (a) of Article 14 (2) are fulfilled. The competent authority of the qualifying venture capital fund may ask the competent authority of the manager for clarification and information as regards the documentation referred to in first subparagraph.

The competent authority of the manager shall provide an answer within 1 month after receiving the request submitted by the competent authority of the qualifying venture capital fund.

3. After receiving the information referred to in paragraph 2a, 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

Member States shall ensure that 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 a national judicial, administrative or other authority. This right of appeal shall also apply in respect of registration where no decision on registration has been taken within two months after the managers of the qualified venture capital fund provided all of the required information. Member States may require that the persons concerned exhaust any administrative preliminary remedy provided for in accordance with national law before exercising the above mentioned right of appeal.“;

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

„1. The competent authority of the home Member State shall notify the competent authorities of the host Member States and ESMA immediately of any registration or removal of a manager of a qualifying venture capital fund, any addition or removal of a new qualifying venture capital fund or of any addition or removal 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 including fees or charges in relation to the marketing of their qualifying venture capital funds, nor shall they require any approval of that marketing prior to its commencement.“

(9) 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.”;

(10) The following article 18a is inserted:

„Article 18a

“1. The competent authority of the manager referred to in Article 2(2) shall be responsible for supervising the adequacy of the arrangements and organisation of the manager of the qualifying venture capital fund so that the manager of the qualifying venture capital fund is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the qualifying venture capital funds that it manages.

The competent authority of the manager referred to in Article 2(2) shall be responsible for supervising compliance of the manager of the qualifying venture capital fund with this Regulation.

2. The competent authority of the qualifying venture capital fund shall be responsible for supervising the qualifying venture capital fund's compliance with the rules laid down in Articles 5, 6 and points (c) and (j) of Article 13 (1). The competent authority of the qualifying venture capital fund shall also be responsible for supervising the qualifying venture capital fund's compliance with the obligations set out in the rules or instruments of incorporation of the qualifying venture capital fund.

(11) 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]" and new paragraph 3 is inserted:

„3. Managers referred to in Article 2 (1) shall comply at all times with this Regulation and shall also be liable for any infringements of this Regulation. Those managers shall also be liable for losses or damages resulting from non-compliance with this Regulation.

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

(12) 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. For the managers referred to in Article 2(2) the competent authority of the qualifying venture capital fund shall, as appropriate take measures to ensure the qualifying venture capital fund’s compliance with the rules laid down in Articles 5, 6 and points (c) and (j) of Article 13 (1).“

(13) The following Article 21a is inserted:

„Article 21a

1. The powers conferred on competent authorities in accordance with Directive 2011/61/EU, including those related to penalties, shall also be exercised with respect to the managers as referred to in Article 2(2) of this Regulation.
2. The competent authority of the qualifying venture capital fund managed by managers as referred to in Article 2(2) of this Regulation, shall prohibit the use of the designation ‘EuVECA’ and remove the qualifying venture capital fund from the register in the event that the qualifying venture capital fund no longer complies with this Regulation.



3. The competent authority of the qualifying venture capital fund managed by managers as referred to in Article 2(2) of this Regulation, shall inform the competent authority of the home Member State, competent authorities of host Member States in accordance with point (d) of Article 14(1) and ESMA, without delay, of the removal of the qualifying venture capital fund from the register. “

(13a) Article 26(2) is renumbered 26(3); Article 26(3) is renumbered 26(4) and a new Article 26(2) is inserted:

„2. Parallel to the review in accordance with Article 69 of the Directive 2011/61 EU, in particular as regards managers registered under point (b) of Article 3(2) of Directive, the Commission shall analyse the management of qualifying venture capital funds cross-border by managers referred to in this Regulation and the appropriateness of the legal framework.”

(14) 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 3, 4, 5, 6, 10, 13(2), points (d), (e) and (f) of Article 14(1), 15a, 15b, 16, 19a, 22 and Article 22a 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 (d), point (i) is replaced by the following:

“at the time of a first investment by the qualifying social entrepreneurship fund is not admitted to trading on a regulated market or on a multilateral trading facility (MTF) as defined in point (14) and point (15) of Article 4(1) of Directive 2004/39/EC;”

(b) 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;”

(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 social entrepreneurship funds, the competent authority of the Member State in which the qualifying social entrepreneurship fund is established;“

(d) Point (n) is added:

„(n) „competent authority of the host Member State “ means the authority of the Member State in which the qualifying social entrepreneurship fund is marketed;“

(3) In Article 11, the paragraph 2 is deleted and the following paragraphs are added:

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

3. The own funds shall never be less than one sixth of the preceding year's fixed overheads of the same manager. The competent authorities may adjust that requirement in the event of a material change in a firm's business since the preceding year. Where a manager of a qualifying social entrepreneurship fund has not completed a year's business, the requirement shall be a sixth of the fixed overheads projected in his business plan, unless an adjustment to that plan is required by the competent authority of the home Member State of the manager.

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

5. Managers of qualifying social entrepreneurship funds may not to provide up to 50 % of the additional amount of own funds referred to in paragraph 4 if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in a Member State, or in a third country where it is subject to prudential rules considered by the competent authorities as equivalent to those laid down in Union law.

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

(4) In Article 12 the following paragraph 4 is inserted:

„4. The competent authority of the home Member State shall ensure that all information gathered under paragraph 1 in respect of managers referred to in Article 2(2) is made available to relevant competent authorities of qualifying social entrepreneurship funds by means of the procedures set out in Article 23 on supervisory cooperation.”

(5) In Article 14, paragraph 1, point (b) is replaced by following:

„(b) the amount of own funds available to that manager for maintaining the adequate human and technical resources necessary for the proper management of its qualifying social entrepreneurship funds,”

(6a) In Article 15 the following paragraphs 3a, 3b and 3c are inserted:

„3a. The managers referred to in Article 2(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 in relation to the management of qualifying social entrepreneurship fund.

3c. The managers of qualifying social entrepreneurship funds referred to in this Article shall notify the competent authority of their home Member State of any material changes to the conditions for initial registration of the manager according to this Article before such changes are implemented.

If the competent authority of the home Member State decides to impose restrictions or reject those changes, it shall, within 1 month of receipt of that notification, inform the managers of the qualifying social entrepreneurship fund. The competent authority may extend that period for up to 1 month where it considers this to be necessary due to the specific circumstances of the case and after having notified the managers of the qualifying social entrepreneurship fund. The changes shall be implemented if the relevant competent authority does not oppose the changes within the relevant assessment period.“;

(6b) In Article 15 the paragraph 1, point (e) is deleted;

(7) 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 fund 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 14(1);
- (d) a list of Member States where those managers have established, or intend to establish, qualifying social entrepreneurship funds.

For the purposes of point (c) of the first subparagraph, the information on the arrangements made for complying with the requirements of Chapter II 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).

2a. The competent authority of the qualifying social entrepreneurship fund shall ask the competent authority of the manager for an information whether qualifying social entrepreneurship fund fall within the scope of the manager's authorisation to manage AIFs and whether conditions laid down in point (a) of Article 14 (2) are fulfilled. The competent authority of the qualifying social entrepreneurship fund may ask the competent authority of the manager for clarification and information as regards the documentation referred to in first subparagraph.

The competent authority of the manager shall provide an answer within 1 month after receiving the request submitted by the competent authority of the qualifying social entrepreneurship fund.

3. After receiving the information referred to in paragraph 2a, 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 14(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 fund 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

Member States shall ensure that 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 a national judicial, administrative or other authority .This right of appeal shall also apply in respect of registration where no decision on registration has been taken within two months after the managers of the qualified social entrepreneurship fund provided all the required information. Member States may require that the persons concerned exhaust any administrative preliminary remedy provided for in accordance with national law before exercising the above mentioned right of appeal“;

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

„1. The competent authority of the home Member State shall notify the competent authorities of the host Member States and ESMA immediately of any registration or removal of a manager of a qualifying social entrepreneurship fund, any addition or removal of a new qualifying social entrepreneurship fund, or of any addition or removal 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 including fees or charges in relation to the marketing of their qualifying social entrepreneurship funds, nor shall they require any approval of that marketing prior to its commencement.

(9) 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 social entrepreneurship 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.“;

(10) The following article 19a is inserted:



„Article 19a

“1. The competent authority of the manager referred to in Article 2(2) shall be responsible for supervising the adequacy of the arrangements and organisation of the manager of the qualifying social entrepreneurship fund so that the manager of the qualifying social entrepreneurship fund is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the qualifying social entrepreneurship funds that it manages.

The competent authority of the manager referred to in Article 2(2) shall be responsible for supervising compliance of the manager of the qualifying social entrepreneurship fund with this Regulation.

2. The competent authority of the qualifying social entrepreneurship fund shall be responsible for supervising the qualifying social entrepreneurship fund’s compliance with the rules laid down in Articles 5, 6 and points (c) and (j) of Article 14 (1). The competent authority of the qualifying social entrepreneurship fund shall also be responsible for supervising the qualifying social entrepreneurship fund’s compliance with the obligations set out in the rules or instruments of incorporation of the qualifying social entrepreneurship fund.

- (11) 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]“ and new paragraph 3 is inserted:

„3. Managers referred to in Article 2 (1) shall comply at all times with this Regulation and shall also be liable for any infringements of this Regulation. Those managers shall also be liable for losses or damages resulting from non-compliance with this Regulation.

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

(12) 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. For the managers referred to in Article 2(2) the competent authority of the qualifying social entrepreneurship fund shall, as appropriate take measures to ensure the qualifying social entrepreneurship fund’s compliance with the rules laid down in Articles 5, 6 and points (c) and (j) of Article 14 (1).“

(13) The following Article 22a is inserted:

„Article 22a

1. The powers conferred on competent authorities in accordance with Directive 2011/61/EU, including those related to penalties, shall also be exercised with respect to the managers as referred to in Article 2(2) of this Regulation.
2. The competent authority of the qualifying social entrepreneurship fund managed by managers as referred to in Article 2(2) of this Regulation, shall prohibit the use of the designation ‘EuSEF’ and remove the qualifying social entrepreneurship fund from the register in the event that the qualifying social entrepreneurship fund no longer complies with this Regulation.

3. The competent authority of the qualifying social entrepreneurship fund managed by managers as referred to in Article 2(2) of this Regulation, shall inform the competent authority of the home Member State, competent authorities of host Member States in accordance with point (d) of Article 15(1) and ESMA, without delay, of the removal of the qualifying social entrepreneurship fund from the register.“

(13a) Article 27(2) is renumbered 27(3); Article 27(3) is renumbered 27(4) and a new Article 27(2) is inserted:

„2. Parallel to the review in accordance with Article 69 of the Directive 2011/61 EU, in particular as regards managers registered under point (b) of Article 3(2) of Directive, the Commission shall analyse the management of qualifying social entrepreneurship funds cross-border by managers referred to in this Regulation and the appropriateness of the legal framework.”

(14) 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 apply as of [3 months after its entry into force].

Article 10 paragraphs 2 to 6 and point (b) of Article 13(1) of Regulation 345/2013 and Article 11 paragraphs 2 to 6 and point (b) of Article 14(1) of Regulation 346/2013 shall not apply to existing managers in relation to existing qualifying venture capital funds and qualifying social entrepreneurship funds, during their existing terms. Those managers shall ensure that they are able to justify at all times the sufficiency of their own funds to maintain operational continuity.

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*

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