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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on European Social Entrepreneurship Funds

(Text with EEA relevance)

{SEC(2011) 1512}

{SEC(2011) 1513}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The principal aim of this proposal is to provide support to the market for social businesses by improving the effectiveness of fundraising by investment funds that target these businesses.

Social businesses¹ are an emerging sector in the EU. Social businesses are undertakings whose primary objective is to achieve social impacts, rather than generate profits for shareholders or other stakeholders. In achieving social impacts, social business seeks to build on business techniques – including business finance. While the sector is new, it is characterised by rapid growth. According to the Global Enterprise Monitor 2009 report, between 3% and 7.5% of the workforce in selected EU Member States were employed in various forms of social businesses.

Social businesses are almost exclusively SMEs. The social mission of social businesses correlates with a strong focus on sustainable or inclusive development, and on tackling social challenges across EU societies: this means that investment in social businesses are likely to have a greater positive social impact than investment in SMEs more general. Given some estimates, such as by J. P. Morgan, suggest social investments could grow rapidly to become a market well in excess of EUR 100 billion, underlining the potential of this emerging sector.²

Ensuring this sector continues to grow and flourish would therefore be a valuable contribution to meeting the objectives of the Europe 2020 Strategy.

Social businesses derive significant proportions of their funding from grants, whether from foundations, individuals or from the public sector. As businesses, however, their sustainable growth depends on drawing on a wider range of investments and financing sources. In this regard, the EU market for investment funds has begun to play a significant role. A market for investment funds whose main objective is investing in social businesses has taken shape. In order to distinguish such targeted funds from social investment funds more widely, these targeted funds are referred to as social entrepreneurship funds in this proposal. The growth of social entrepreneurship funds reflects the increasing interest of many investors in making investments – typically as part of a wider portfolio – that aim to achieve positive social effects over and above the quest for financial returns.

Evidence on regulatory and market failings shows two problems are limiting the growth of social entrepreneurship funds.

Firstly, regulatory requirements at EU and national levels are not tailored to facilitate the raising of capital by these kinds of funds. Raising capital on a cross border basis is costly and complex due to the fragmentation of national rules that govern 'private placements'³ abroad.

¹ These are referred to as social undertakings in the legal text for reasons of clarity as to their form. They are also referred to as social enterprises. These different terms should be interpreted as being interchangeable in most contexts.

² See J.P.Morgan, *Impact Investments: An Emerging Asset Class*, 2011.

³ Private placements can be described as the sale of securities to a relatively small number of select investors as a way of raising capital. Investors involved in private placements are usually large banks, mutual funds, insurance companies and pension funds. Private placement is the opposite of a public issue, in which securities are made available for sale on the open market.

Compliance with a variety of national rules governing the activity of 'private placements' to select investor groups raises the cost of capital for these funds. Also, social entrepreneurship funds are not flourishing across all Member States, but currently are geographically uneven in their distribution.

Following consultations with Member States it is clear such social entrepreneurship funds are in most cases either governed by the general national rules applicable to private placements or, alternatively, by special legal provisions that are introduced for venture capital or private equity. A minority of Member States also has special rules for wider categories of social investment funds that are also open to retail investors. These wider social investment funds do not necessarily target their investments solely towards social businesses. Evidence in the impact assessment shows that the fragmentation of national rules on social entrepreneurship funds and a lack of tailoring of such rules to their needs has led to cost burdens and reduced efficient access to capital markets for such funds. Despite strong investor interest in social investment strategies, these regulatory burdens hinder the creation of efficiently sized social entrepreneurship funds (the average social entrepreneurship fund's assets under management rarely exceed EUR 20 million).

Secondly, potential investors in social entrepreneurship funds are faced with a wide range of different social investment propositions, different levels of information pertaining to social investments, the selection or screening of social undertakings, and approaches to the measurement of their social performance. Funds themselves and their target social businesses can face costs from the existence of overlapping or competing self-regulatory measures with respect to the issues mentioned above. Confidence and trust in the eyes of investors are undermined.

These difficulties hamper efficient flows of capital to social entrepreneurship funds, and thereby the flow of capital to social undertakings themselves, and constitute a barrier to the development of a single investment market in this area.

In these circumstances, the Commission, in the Single Market Act⁴ (SMA), undertook to put in train several measures to ensure EU social businesses can flourish, including by tackling such financing weaknesses. The current proposal on a European framework for social entrepreneurship funds is one initiative that delivers on that commitment; it forms part of the Commission's Social Business Initiative (COM(2011) 682/2), which aims to tackle wider issues in this sector.

The aim of the proposed Regulation is to create a legislative framework tailored to the needs of social undertakings, investors seeking to fund such undertakings, and the specialised investment funds that seek to mediate between the two. It aims to achieve a high level of clarity as to the characteristics that distinguish social entrepreneurship funds from the wider category of alternative investment funds. Only funds that comply with these characteristics shall be eligible to raise funds by virtue of the proposed European framework for social entrepreneurship funds.

The proposed Regulation addresses these problems. It introduces uniform requirements for the managers of collective investment undertakings that operate under the designation "European Social Entrepreneurship Fund". It introduces requirements as to the investment

⁴ http://ec.europa.eu/internal_market/smact/docs/20110413-communication_en.pdf

portfolio, investment techniques and eligible undertakings that a qualifying social entrepreneurship fund may target. It also introduces uniform rules on which categories of investors a qualifying social entrepreneurship fund may target and on the internal organisation of the managers that market such qualifying funds. As managers of collective investment undertakings that operate under the designation "European Social Entrepreneurship Fund" will be subject to identical substantive rules across the EU, they will benefit from uniform requirements for registration and an EU wide passport, which will help create a level playing field for all participants in the market for the funding of social entrepreneurs.

The proposed Regulation on European Social Entrepreneurship Funds (EuSEFs) is complementary to the proposed Regulation [...] on Venture Capital Funds. Both proposals aim to achieve different goals and both proposals, if adopted, will coexist as autonomous legal acts in mutual independence.

Venture capital funds focus on providing equity finance for SMEs, but typically do not meet the asset-based threshold that defines the passport available for large fund managers under Directive 2011/61/EC (on Alternative Investment Fund Managers). While social businesses are also SMEs, and the funds targeting social business also operate beneath the asset-based thresholds of Directive 2011/61/EC, the range of eligible financing tools proposed in the Regulation on European Social Entrepreneurship Funds go beyond equity finance - the typical instrument for start-up enterprises in the technology sector. Apart from equity finance social undertakings also have recourse to other forms of finance, combining public and private sector financing, debt instruments or small loans. The proposed rules on social entrepreneurship funds therefore provide for a larger range of qualifying investment tools that are available for venture capital funds.

In addition, the transparency issues raised by investments into social businesses are distinct from the general reporting obligations that are provided in the area of venture capital: investments into social entrepreneurship target a form of 'social return' or positive social impact. The proposed rules contain special sections that focus on information pertaining to social impacts, their measurement and the strategies employed to foster their achievement.

For these reasons, the preferred choice is that there should be two EU frameworks on venture capital and on social entrepreneurship that would operate autonomously alongside each other.

Further work should be undertaken to ensure that the rights assigned by this Regulation to EuSEF managers and the EuSEFs they manage are not undermined by tax obstacles. Appropriate taxation rules – though independent from this Regulation – are an important complement to it and aid the development of a fully functional market for EuSEFs within the EU. They could ensure efficient capital flows to EuSEFs and ultimately the qualifying portfolio undertakings in which the funds invest.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. Consultation with interested parties

On 13th July 2011, the Commission services launched a public consultation on possible measures to improve the access of social businesses to finance by means of investment funds,

which closed on 14th Sept 2011.⁵ Contributions received were 67 in total and can be consulted at the following website:

http://ec.europa.eu/internal_market/consultations/2011/social_investment_funds_en.htm.

In addition, regulators and supervisors were also consulted via the European Securities Committee (ESC), including through a questionnaire requesting details on existing national regimes for social investment funds more widely including on social entrepreneurship funds.

This falls within the wider context of the Commission's work and consultation on the Single Market Act, where the role of social businesses and their financing was also identified and explored with stakeholders and participants in that consultation. Following this the Commission launched a stand alone Social Business Initiative which offered further opportunities for discussions with stakeholders including through a workshop in May 2011.

2.2. Impact Assessment

In line with its policy on "better regulation", the Commission conducted an impact assessment on various policy alternatives.

This analysis identified two key problems: on the one hand, information made available to investors pertaining to social undertakings, the investment policies and screening procedures followed by social entrepreneurship funds and the measurement of social impacts is either insufficient or not presented in a comparable manner. On the other hand, regulatory approaches to the fundraising of organisations specialising in investments in social businesses were not sufficiently tailored to the specific needs of social entrepreneurship funds.

First, market participants lack confidence in the information available, are not readily able to identify those funds that target social businesses, and are not confident in the social impact they can achieve by investing in such funds. The second problem relates to regulatory failings: national systems that govern fundraising outside the open markets (private placements) are divergent and are not specifically tailored to the need of social entrepreneurship funds and their managers. This means cross-border fundraising is complex, marked by regulatory divergences. In the absence of uniform rules at EU level, social fundraising by social entrepreneurship funds is likely to remain national.

The analysis thereby identifies three key objectives: improving the clarity and comparability of investment funds targeting social businesses; improving tools for assessing and analysing social impacts; and better reflecting the needs of social entrepreneurship funds in the rules applying to such funds across the Union.

A wide range of options were examined against these objectives.

With respect to raising clarity and comparability of social entrepreneurship funds, the impact assessment explores different options for facilitating transparency through self-regulation (codes of conduct), the establishment of an EU label with harmonised and binding measures to enforce compliance. For improving tools for assessing or analysing social impacts, different options were examined, ranging from the establishment of stakeholder fora for discussion to launching further study in how such assessment tools can be harmonised at EU

⁵ See http://ec.europa.eu/internal_market/investment/social_investment_funds_en.htm.

level. In relation to improving cross-border fundraising by such funds and the regulatory environment that governs private placements abroad, options ranged from fostering mutual recognition between national private placement rules, the use of the venture capital rules to also foster fundraising by social entrepreneurship funds, the creation of a bespoke fundraising system for such funds and the creation of a self-standing European fund framework for such funds.

The impact assessment concluded in favour of a standalone framework for defining the funds and the rules applying to them, to facilitate national and cross border fund raising including the development of a European 'brand' of social entrepreneurship funds supported by strong transparency measures.

The impact of options, including benefits and costs for the fund industry, investors, social businesses, society, supervisors and other stakeholders were assessed. The preferred option was retained as offering the strongest potential to tackle the identified problems whilst being proportionate in relation to compliance costs incurred by those who want to benefit from the new framework.

The comments by the Impact Assessment Board expressed in their opinion of 18 November 2011 have been taken into account in the impact assessment report. The wider context for this initiative has been further clarified by showing how the different initiatives by the Commission in the field of social business link together to form a coherent strategy. The analysis of the problems has been further strengthened including a clearer explanation on the reasons why the initiative on venture capital funds will not be able to address the problems for social entrepreneurship funds. The intervention logic and the analysis of the different options, particularly with respect to possible categories of investors have been further clarified. The contents of the measures which are envisaged now and those which might be necessary at a later stage are set out in a clearer fashion. The assessment of impacts has been improved, including an assessment of the inter-dependence of measures in terms of their likely effectiveness. Finally, monitoring and compliance issues have been further clarified.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

The proposal is based on Article 114 TFEU as the most appropriate legal base in this field. The proposal aims principally at improving the reliability and legal certainty of marketing activities undertaken by operators using the designation "European Social Entrepreneurship Fund". In pursuing this aim, the proposal introduces uniform standards concerning the portfolio composition, eligible investment instruments, and eligible investment targets of collective investment funds that operate under that designation. The proposal also introduces rules on investor categories that are considered as eligible to invest in such investment funds.

A Regulation is considered to be the most appropriate legal instrument to introduce uniform requirements directed to all participants in the market for fundraising for social undertakings - investors, social entrepreneurship funds and the target companies of social entrepreneurship financing. A Regulation is also considered the most appropriate instrument to create uniform rules on who can be a social entrepreneurship fund investor, on who can use the designation "European Social Entrepreneurship Fund" and on the types of undertakings that can receive funding from such qualifying funds. Finally, a Regulation is considered to be the most appropriate instrument to ensure that all participants are subject to uniform requirements

regarding the subscription to "European Social Entrepreneurship Funds" and the investment strategies pursued and investment tools used by such funds.

Furthermore, the objectives of this Regulation relate to the uniform requirements on transparency in relation to social impacts, including reporting and social performance measurements. For this purpose, uniform requirements to this effect – e.g. details on how the information on social performance is presented – are necessary. If the choice of the precise measures for standardising these requirements was left to the national legislation of Member States, this would incur the risk that these requirements diverge from Member State to Member State. This would create uneven standards in an area which is key for the further development of the market of investment funds targeting social business. Such uneven standards would be detrimental to the aim of ensuring this is a market that investors can trust. Therefore, to boost investors' confidence it is necessary to ensure that fund managers follow the same rules in this key area.

3.2. Subsidiarity and proportionality

The proposal essentially aims at creating a trusted, safe and legally stable marketing environment for the marketing of "European Social Entrepreneurship Funds". The determination of the essential characteristics of such a fund, in terms of its portfolio composition, investment tools, investment targets and eligible investor groups, can not be left to the discretion of the Member States as this would give rise to different and inconsistent application of these defining requirements throughout the EU. Uniform definitions and operating requirements therefore must play a central role in establishing a set of common rules for the European market for these funds and their managers. Furthermore, all collective investment fund managers operating in this market using the designation "European Social Entrepreneurship Fund" must be subject to the same organisational, conduct of business and transparency requirements.

In respect of the registration and supervision of the managers of "European Social Entrepreneurship Funds" the proposal aims at striking a balance between the need for effective supervision, the interest of the competent national authorities where such funds are either domiciled or offered to the eligible categories of investors and the coordinating role of ESMA. In order to create a seamless process for supervision, the competent authority in the Member State where the manager of the qualifying "European Social Entrepreneurship Fund" is domiciled will verify the registration documents submitted by the applicant manager and, after having assessed whether the applicant provides sufficient guarantee of its ability to comply with the requirements of the Regulation, will register the applicant. In supervising the registered manager, the competent authority that has registered the manager will cooperate with the competent authorities in those Member States where the qualifying fund is marketed. ESMA will maintain a central database listing all registered managers that are eligible to use the designation European Social Entrepreneurship Fund.

As regards proportionality, the proposal strikes the appropriate balance between the public interest of promoting the development of more efficient markets for "European Social Entrepreneurship Funds" and the cost efficiency of the measures proposed. In providing for a simple registration system, the proposal has taken full account of the need to balance safety and reliability associated with the use of the designation "European Social Entrepreneurship Fund" with the efficient operation of the market and the cost for its various stakeholders.

3.3. Compliance with Articles 290 and 291 TFEU

On 23 September 2009, the Commission adopted proposals for Regulations establishing EBA, EIOPA, and ESMA. In this respect the Commission wishes to recall the Statements in relation to Articles 290 and 291 TFEU it made at the adoption of the Regulations establishing the European Supervisory Authorities according to which: "As regards the process for the adoption of regulatory standards, the Commission emphasises the unique character of the financial services sector, following from the Lamfalussy structure and explicitly recognised in Declaration 39 to the TFEU. However, the Commission has serious doubts whether the restrictions on its role when adopting delegated acts and implementing measures are in line with Articles 290 and 291 TFEU."

3.4. Presentation of the Proposal

Article 1 - Scope

Article 1 delineates the scope of the envisaged Regulation. The Article makes clear that the designation "European Social Entrepreneurship Fund" (EuSEF) shall be reserved to those fund managers that comply with a set of uniform quality criteria that apply to the marketing of their funds across the Union. In this respect, Article 1 underscores the aim to set out a uniform concept of what constitutes a EuSEF. This concept is developed in order to ensure the smooth marketing of such funds across the Union.

Article 2 - Scope of application

Article 2 specifies that this Regulation applies to managers of collective investment undertakings as defined in Article 3(1)(b) of this Regulation that are established in the Union and who are subject to registration with the competent authorities in their home member states in accordance with Article 3 (3) (a) of Directive 2011/61/EC, provided that they manage portfolios of EuSEFs whose assets under management in total do not exceed a threshold of EUR 500 million.

Article 3 - Definitions

Article 3 contains essential definitions delineating the scope of application for the proposed Regulation. Key concepts, such as the EuSEF itself, the EuSEF manager, the qualifying investment tools and the qualifying investment targets are defined. Essentially, these definitions aim to draw a clear demarcation line between a EuSEF and other funds which may pursue similar investment strategies but which are not targeting social undertakings.

In line with the aim of precisely circumscribing the funds under this Regulation, Article 3, paragraph 1(a) stipulates that a EuSEF shall be a fund that dedicates at least 70 percent of its aggregate capital contributions and uncalled committed capital to investments that are qualifying portfolio undertakings. This implies that e.g. operational expenses to be charged to the EuSEF as may be agreed with investors, must be borne out of the remaining 30 percent of committed capital contributions.

This Regulation takes also the special characteristics of social undertakings into account. Social undertakings have the achievement of positive social impact as their principle objective. Therefore, this Regulation requires that a qualifying portfolio undertaking should have a measurable and positive social impact, uses its profits to achieve its primary objective and that it is managed in an accountable and transparent way. Article 3 also specifies rules and procedures that must be in place to cover the circumstances in which a qualifying

portfolio undertaking wishes to distribute some its profits to its owners and shareholders. As explained in the recital, such distributions should not undermine effective achievement of the undertaking's primary objective.

Taking into account the funding needs of such undertakings the eligible investment tools are equally defined. These include equity instruments, debt instruments, investments into other EuSEFs and long and medium term loans.

Article 4 – Use of the designation "European Social Entrepreneurship Fund"

Article 4 contains the key principle that only funds that comply with the uniform criteria laid down by this Regulation are eligible to use the designation "European Social Entrepreneurship Fund" to market EuSEFs across the Union.

Article 5 – Portfolio composition

Article 5 contains detailed provision on the portfolio composition that characterises a EuSEF. In this respect, Article 5 contains uniform rules on the investment targets for EuSEF, eligible investment tools, rules on the limits by which a EuSEF manager can increase its exposure. In order to allow EuSEFs a certain degree of flexibility in their investment and liquidity management, other investments are permitted within a maximum threshold not exceeding 30 percent of aggregate capital contributions and uncalled capital investments that does not need to constitute qualifying investments.

Article 6 – Eligible investors

Article 6 contains detailed provisions on the investors eligible to invest in EuSEFs: according to this Article, the EuSEFs may only be marketed to investors recognised as professional investors in Directive 2004/39/EC. Marketing to other investors such as certain high-net worth individuals is only allowed if they commit a minimum 'ticket' of EUR 100 000 to the fund and if certain procedures are followed by the fund manager so that the fund manager is reasonably assured that these other investors are capable of making their own investment decisions and understanding the risks involved.

Article 7 – Rules of conduct

Article 7 contains general principles governing the behaviour of a EuSEF manager, notably in the conduct of its activities and its relationship to investors.

Article 8 – Conflicts of interest

Article 8 contains rules for the handling of conflicts of interest by the EuSEF manager. These rules also require the manager to have the necessary organisational and administrative arrangements in place to ensure a proper handling of conflicts of interest.

Article 9 – Measurement of positive social impacts

Article 9 requires EuSEF managers to have the necessary procedures in place in order to measure and monitor the positive social impacts the qualifying portfolio undertakings are committed to achieve.

Article 10 - Organisational requirements

Article 10 requires that a EuSEF manager maintains adequate human and technical resources as well as sufficient own funds as are necessary for the proper management of EuSEFs.

Article 11 – Valuation

Article 11 addresses the valuation of the assets of a EuSEF. Rules on this should be laid down in the statutory documents of each EuSEF.

Article 12 - Annual reports

Article 12 contains rules on annual reports EuSEF managers should prepare in relation to the EuSEF they manage. The report shall describe the composition of the portfolio of the fund and the activities of the past year. It shall also contain information regarding the social impact achieved by the investment policy of the fund.

Article 13 - Disclosure to investors

Article 13 contains certain key disclosure requirements that are incumbent on a EuSEF manager in relation to its investors. These requirements contain pre-contractual general disclosure obligations in relation to the investment strategy and the objectives of the EuSEF, information on costs and associated charges, and the risk/reward profile of the investment proposed by the EuSEF. Such requirements also include information about the way the remuneration of the EuSEF manager is calculated. At the same time, these requirements aim to ensure transparency in relation to the specific nature of EuSEFs, particularly as regards the positive social outcome which shall be achieved by the investment policy.

Article 14 – Supervision

Article 14 in order to ensure that the competent authority of the home Member State will be able to supervise compliance of the EuSEF manager with the uniform requirements set out in this Regulation; the EuSEF manager shall inform the competent authority of its intention to market EuSEFs under the designation "European Social Entrepreneurship Fund." The manager shall also provide the necessary information including about the arrangements to comply with this Regulation and the funds he intends to market. Once the competent authority is satisfied that the required information is complete and that the arrangements are suitable to comply with the requirements set out in this Regulation, it shall register the EuSEF manager. This registration shall be valid across the entire Union and allows the EuSEF manager to market EuSEFs under the designation "European Social Entrepreneurship Fund".

Article 15 – Update of information

Article 15 contains rules on circumstances when information supplied to the competent authority in the home Member State needs to be updated.

Article 16 - Cross-border notifications

Article 16 describes the cross-border notification process between the competent supervisory authorities that is triggered by the registration of the EuSEF manager.

Article 17 – ESMA database

Article 17 entrusts ESMA with the task to maintain a central database listing all EuSEFs that are registered across the Union.

Article 18 – Supervision by competent authority

Article 18 stipulates that the competent authority of the home Member State supervises the requirements of this Regulation.

Article 19 – Supervisory powers

Article 19 specifies a list of supervisory powers that competent authorities shall have at their disposal to ensure compliance with the uniform criteria contained in the Regulation.

Article 20 – Sanctions

Article 20 contains provisions on sanctions to ensure proper enforcement of the requirements of this Regulation.

Article 21 – Breach of key provisions

Article 21 specifies that the breach of key provisions of this Regulation such as on portfolio composition, the eligible investors and the use of the designation "European Social Entrepreneurship Fund" should be sanctioned by the prohibition of the use of the designation and the removal of the EuSEF manager of the register.

Article 22 – Supervisory cooperation

Article 22 contains rules on the exchange of supervisory information between the competent authorities in the home and host Member States and ESMA.

Article 23 - Professional secrecy

Article 23 contains provisions on the requisite level of professional secrecy that should apply to all relevant national authorities and to the European Securities and Markets Regulator (ESMA).

Article 24 – Conditions for empowerment

Article 24 sets out the conditions under which the Commission is empowered to adopt delegated acts.

Article 25 - Review

Article 25 contains clauses on the review of the proposed Regulation and possible Commission proposals to modify the latter.

4. BUDGETARY IMPLICATION

There are no budgetary implications.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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,⁶

Having regard to the opinion of the European Economic and Social Committee,⁷

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Increasingly, as investors also pursue social goals and are not only seeking financial returns, a social investment market has been emerging in the Union, comprised in part by investment funds targeting social undertakings. Such investment funds provide funding to social undertakings which are acting as drivers of social change by offering innovative solutions to social problems and making a valuable contribution to meeting the objectives of the Europe 2020 Strategy.
- (2) It is necessary to lay down a common framework of rules regarding the use of the designation "European Social Entrepreneurship Fund", in particular on the composition of the portfolio of funds that operate under this designation, their eligible investment targets, the investment tools they may employ and the categories of investors that are eligible to invest in such funds by uniform rules in the Union. In the absence of such a common framework, there is a risk that Member States take diverging measures at national level having a direct negative impact on, and creating obstacles to, the good functioning of the internal market, since funds that wish to operate across the Union would be subject to different rules in different Member States. Moreover, diverging quality requirements on portfolio composition, investment

⁶ OJ C ...p...

⁷ OJ C , , p. .

targets and eligible investors could lead to different levels of investor protection and generate confusion as to the investment proposition associated with a European Social Entrepreneurship Fund (EuSEF). Investors should, furthermore, be able to compare the investment propositions of different EuSEFs. It is necessary to remove significant obstacles to cross-border fundraising by EuSEFs and to avoid distortions of competition between those funds, and to prevent any further likely obstacles to trade and significant distortions of competition from arising in the future. Consequently, the appropriate legal basis is Article 114 TFEU, as interpreted in accordance with the consistent case law of the Court of Justice of the European Union.

- (3) It is necessary to adopt a Regulation establishing uniform rules applicable to EuSEFs and imposing corresponding obligations on their managers in all Member States that wish to raise capital across the Union using the designation "European Social Entrepreneurship Fund". These requirements should ensure the confidence of investors that wish to invest in such funds.
- (4) Defining the quality requirements for the use of the designation "European Social Entrepreneurship Fund" in the form of a Regulation should ensure that those requirements will be directly applicable to the managers of collective investment undertakings that raise funds using this designation. This would ensure uniform conditions for the use of this designation by preventing diverging national requirements as a result of the transposition of a Directive. This Regulation would entail that managers of collective investment undertakings that use this designation would need to follow the same rules in all of the Union, which would also boost confidence of investors that wish to invest in funds that focus on social undertakings. A Regulation would also reduce regulatory complexity and the manager's cost of compliance with often divergent national rules governing such funds, especially for those managers that want to raise capital on a cross-border basis. A Regulation should also contribute to eliminating competitive distortions.
- (5) In order to clarify the relationship between this Regulation and generally applicable Union rules on collective investment undertakings and their managers, it is necessary to establish that this Regulation should only apply to managers of collective investment undertakings other than UCITS in accordance with Article 1 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations, and administrative provisions, relating to undertakings for collective investment in transferable securities (UCITS)⁸ and who are established in the Union and are registered with the competent authority in their home Member State in accordance with Directive 2011/61/EC 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 1095/2010.⁹ Furthermore, this Regulation should only apply to managers who manage portfolios of EuSEFs whose assets under management in total do not exceed a threshold of EUR 500 million. In order to make the calculation of this threshold operational, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of specifying the calculation of this threshold. When exercising

⁸ OJ L 302, 17.11.2009, p.32.

⁹ OJ L 174, 1.7.2011, p.1.

¹² OJ L 145, 30.4.2004, p. 1.

this empowerment, the Commission should, in order to ensure consistency in rules on collective investment undertakings, take into account measures adopted by the Commission in accordance with point (a) of Article 3 (6) of Directive 2011/61/EC.

- (6) Where managers of collective investment undertakings do not wish to use the designation "European Social Entrepreneurship Fund" then this Regulation does not apply. In those cases, existing national rules and general Union rules should continue to apply.
- (7) This Regulation should establish uniform rules on the nature of EuSEFs, notably on the portfolio undertakings into which the EuSEFs are to be permitted to invest, and the investment instruments to be used. In order to ensure the necessary clarity and certainty this Regulation should also lay down uniform criteria to identify social undertakings as eligible qualifying portfolio undertakings. Social undertakings have the achievement of positive social impact as their principle objective rather than maximising their profits. Therefore, this Regulation should require that a qualifying portfolio undertaking should have the achievement of a measurable and positive social impact as its focus; that it uses its profits to achieve its primary objective and that it be managed in an accountable and transparent way. For the, in general, exceptional cases, in which a qualifying portfolio undertaking wishes to distribute profits to shareholders and owners, the qualifying portfolio undertaking should have predefined procedures and rules on how profits are distributed to shareholders and owners. Those rules should specify that distribution of profits does not undermine the primary social objective.
- (8) Social undertakings include a large range of undertakings, taking various legal forms, that provide social services or goods to vulnerable or marginalised persons. Such services include access to housing, healthcare, assistance for elderly or disabled persons, child care, access to employment and training as well as dependency management. Social undertakings also include undertakings that employ a method of production of goods or services with a social objective, but whose activities may be outside the realm of the provision of social goods or services. Those activities include social and professional integration by means of access to employment for people disadvantaged in particular by insufficient qualifications or social or professional problems leading to exclusion and marginalisation.
- (9) Taking into account the specific funding needs of social undertakings, it is necessary to achieve clarity regarding the types of instruments a EuSEF should use for such funding. Therefore, this Regulation should lay down uniform rules on the eligible instruments to be used by a EuSEF when making investments, which include equity instruments, debt instruments, investments into other EuSEFs and short and medium term loans.
- (10) To maintain the necessary flexibility in its investment portfolio, EuSEFs may also invest in other assets than qualifying investments to the extent that these investments do not exceed the limits set by this Regulation for non-qualifying investments. Short term holdings such as cash and cash equivalents should not be taken into account for the calculation of the limits set for non-qualifying investments in this Regulation.
- (11) In order to ensure that the designation "European Social Entrepreneurship Fund" is reliable and easily recognisable for investors across the Union this Regulation should

establish that only EuSEF managers which comply with the uniform quality criteria as set out in this Regulation should be eligible to use this designation when marketing EuSEFs across the Union.

- (12) In order to ensure that EuSEFs have a distinct and identifiable profile which is suited to their purpose, there should be uniform rules on the composition of the portfolio and on the investment techniques which are permitted for such funds.
- (13) In order to ensure that EuSEFs do not contribute to the development of systemic risks, and so as to ensure that such funds concentrate, in their investment activities, on supporting qualifying portfolio companies, borrowing or leverage at the level of the fund should not be permitted. However, in order to permit the fund to cover extraordinary liquidity needs that might arise between the call of committed capital from investors and the actual reception of the capital in its accounts, short-term borrowing should be allowed.
- (14) In order to ensure that EuSEFs are marketed to investors who have the knowledge, experience and capacity to take on the risks these funds carry, and in order to maintain investor confidence and trust in EuSEF, certain specific safeguards should be laid down. Therefore, EuSEFs should in general only be marketed to investors who are professional clients or who can be treated as professional clients under Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.¹² However, in order to have a sufficiently broad investor base for investments into EuSEFs it is also desirable that certain other investors have access to these funds, including high net worth individuals. For those other investors, specific safeguards should be laid down in order to ensure that EuSEFs are only marketed to investors that have the appropriate profile for making such investments. These safeguards exclude marketing through the use of periodic savings plans.
- (15) To ensure that only EuSEF managers who fulfil uniform quality criteria as regards their behaviour in the market use the designation "European Social Entrepreneurship Fund", this Regulation should establish rules on the conduct of business and the relationship of the EuSEF manager to its investors. For the same reason, this Regulation should also lay down uniform conditions concerning the handling of conflicts of interest by such managers. These rules should also require the manager to have the necessary organisational and administrative arrangements in place to ensure a proper handling of conflicts of interest.
- (16) The creation of positive social impacts in addition to the generation of financial returns for investors is a key characteristic of investment funds targeting social undertakings, one which distinguishes them from other types of investment funds. This Regulation should therefore require that the EuSEF managers put in place procedures for monitoring and measuring the positive social impacts which are to be achieved by investment into qualifying portfolio undertakings.

- (17) In order to ensure the integrity of the designation "European Social Entrepreneurship Fund", this Regulation should also contain quality criteria as regards the organisation of a EuSEF manager. Therefore, this Regulation should lay down uniform, proportionate requirements for the need to maintain adequate technical and human resources as well as sufficient own funds for the proper management of EuSEFs.
- (18) It is necessary for the purpose of investor protection to ensure that EuSEFs assets are properly evaluated. Therefore the statutory document of the EuSEF should contain rules on the valuation of assets. This should ensure the integrity and the transparency of the valuation.
- (19) In order to ensure that EuSEF managers which make use of the designation "European Social Entrepreneurship Funds" give sufficient account of their activities, uniform rules on annual reports should be established.
- (20) To ensure the integrity of the designation "European Social Entrepreneurship Fund" in the eyes of investors, it is necessary that the designation only be used by fund managers who are fully transparent as to their investment policy and their investment targets. This Regulation should therefore set out uniform rules on disclosure requirements that are incumbent on a EuSEF manager in relation to his investors. These requirements include those elements that are specific to investments into social undertakings, so that greater consistency and comparability of such information may be achieved. This includes information about the criteria and the procedures which are used to select particular qualifying portfolio undertakings as investment targets. This also includes information about the positive social impact to be achieved by the investment policy and how this should be monitored and assessed. To ensure the necessary confidence and the trust of investors in such investments, this further includes information about the assets of the EuSEF which are not invested into qualifying portfolio undertakings and how these are selected.
- (21) In order to ensure effective supervision of the uniform requirements contained in this Regulation, the competent authority of the home Member State should supervise compliance of the EuSEF manager with the uniform requirements set out in this Regulation. To this effect, the EuSEF manager who wishes to market his funds under the designation "European Social Entrepreneurship Fund" should inform the competent authority of his home Member State of this intention. The competent authority should register the fund manager if all necessary information has been provided and if there are suitable arrangements to comply with the requirements of this Regulation are in place. This registration should be valid across the entire Union.
- (22) In order to ensure effective supervision of compliance with the uniform criteria set out, this Regulation should contain rules on the circumstances under which information supplied to the competent authority in the home Member State needs to be updated.
- (23) For the effective supervision of the requirements laid down, this Regulation should also establish a process for cross-border notifications between the competent supervisory authorities, to be triggered by the registration of the EuSEF manager in its home Member State.
- (24) In order to maintain transparent conditions for the marketing of EuSEF managers across the Union, the European Securities and Markets Authority (ESMA) should be

entrusted with maintaining a central database listing all EuSEFs that are registered in accordance with this Regulation.

- (25) In order to ensure the effective supervision of the uniform criteria established, this Regulation should contain a list of supervisory powers that competent authorities shall have at their disposal.
- (26) In order to ensure proper enforcement, this Regulation should contain sanctions for the breach of its key provisions, namely the rules on portfolio composition, on safeguards relating to the identity of eligible investors, and on the use of the designation "European Social Entrepreneurship Fund" only by registered EuSEF managers. It should be established that a breach of these key provisions entails the prohibition of the use of the designation and the removal of the fund manager from the register.
- (27) Supervisory information should be exchanged between the competent authorities in the home and host Member States and ESMA.
- (28) Effective regulatory cooperation among the entities tasked with supervising compliance with the uniform criteria set out in this Regulation requires that a high level of professional secrecy should apply to all relevant national authorities and to ESMA.
- (29) Technical standards in financial services should ensure consistent harmonisation and a high level of supervision across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA with the elaboration of draft implementing technical standards where these do not involve policy choices, for submission to the Commission.
- (30) The Commission should be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union and in accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.¹⁴ ESMA should be entrusted with drafting implementing technical standards for the format and method of the notification procedure in Article 16.
- (31) In order to specify the requirements set out in this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of specifying the methods to be used to for calculating and monitoring the threshold as referred to in this Regulation, specifying the details for the identification of qualifying portfolio undertakings, the types of conflicts of interests EuSEF managers need to avoid and the steps to be taken in that respect, the details of the procedures to measure the social impacts to be achieved by the qualifying portfolio undertakings and details for the specification of transparency requirements. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. This work should also take into account self regulatory initiatives and codes of conduct.

¹⁴ OJ L 331, 15.12.2010, p. 84.

- (32) The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (33) At the latest four years after the date on which this Regulation becomes applicable a review of this Regulation should be carried out in order to take account of the development of the market of EuSEFs. On the basis of the review, the Commission should submit a report to the European Parliament and the Council accompanied, if appropriate, by legislative changes.
- (34) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to respect for private and family life and the freedom to conduct a business.
- (35) Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹⁵ governs the processing of personal data carried out in the Member States in the context of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data¹⁷ by the EU institutions and bodies and on the free movement of such data, governs the processing of personal data carried out by ESMA within the framework of this Regulation and under the supervision of the European Data Protection Supervisor.
- (36) The objective of this Regulation, namely to develop a an Internal Market for EuSEFs by laying down a framework for the registration of EuSEF managers facilitating the marketing of EuSEFs throughout the Union, can only be 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 the European Union. In accordance with the principle of proportionality, as set in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

This Regulation lays down uniform requirements for those managers of collective investment undertakings who wish to use the designation "European Social Entrepreneurship Fund" (EuSEF) and the conditions for the marketing of collective investment undertakings under this

¹⁵ OJ L 281, 23.11.1995 p. 31.

¹⁷ OJ L 8, 12.1.2001, p. 1.

designation in the Union, thereby contributing to the smooth functioning of the internal market.

This Regulation also lays down uniform rules for the marketing of EuSEF managers to eligible investors across the Union, for the portfolio composition of EuSEFs, for the eligible investment instruments and techniques, as well as on the organisation, transparency and conduct of EuSEF managers that market EuSEFs across the Union.

Article 2

1. This Regulation applies to managers of collective investment undertakings as defined in point (b) of Article 3 (1) who are established in the Union and are subject to registration with the competent authorities of their home Member State in accordance with point (a) of Article 3 (3) of Directive 2011/61/EC, provided that these managers manage portfolios of EuSEFs whose assets under management in total do not exceed a threshold of EUR 500 million or, in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of the entry into force of this Regulation.
2. In calculating the threshold referred to in paragraph 1 managers of collective investment undertakings who manage funds other than EuSEFs will not need to aggregate the assets managed in these other funds.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 24 specifying the methods for calculating the threshold as referred in paragraph 1 of this Article and for monitoring compliance with this threshold on an ongoing basis.

Article 3

1. For the purposes of this Regulation, the following definitions shall apply:
 - (a) 'European Social Entrepreneurship Fund' (EuSEF) means a collective investment undertaking that invests at least 70 percent of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments;
 - (b) 'collective investment undertaking' means an undertaking which raises capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors and which does not require authorisation pursuant to Article 5 of Directive 2009/65/EC;
 - (c) 'qualifying investments' means any of the following instruments:
 - (i) an equity instrument that is:
 - issued by a qualifying portfolio undertaking and acquired directly by the EuSEF from the qualifying portfolio undertaking or

- issued by a qualifying portfolio undertaking in exchange for an equity security issued by the qualifying portfolio undertaking or
 - issued by an undertaking of which the qualifying portfolio undertaking is a majority-owned subsidiary and which is acquired by the EuSEF in exchange for an equity instrument issued by the qualifying portfolio undertaking;
- (ii) securitised and un-securitised debt instruments, issued by a qualifying portfolio undertaking;
- (iii) units or shares of one or several other EuSEFs;
- (iv) medium to long term loans granted to qualifying portfolio undertakings by the EuSEF;
- (v) any other type of participation in a qualifying portfolio undertaking.
- (d) 'qualifying portfolio undertaking' means an undertaking that, at the time of an investment by the EuSEF, is not listed on a regulated market as defined in point (14) of Article 4 (1) of Directive 2004/39/EC, which either has an annual turnover not exceeding EUR 50 million, or an annual balance sheet total not exceeding EUR 43 million, which is not itself a collective investment undertaking and which:
- (i) has the achievement of measurable, positive social impacts as a primary objective in accordance with its articles of association, statutes or any other statutory document establishing the business, where:
 - the undertaking provides services or goods to vulnerable or marginalised persons; or
 - the undertaking employs a method of production of goods or services that embodies its social objective;
 - (ii) uses its profits to achieve its primary objective instead of distributing profits and has in place predefined procedures and rules for any circumstances in which profits are distributed to shareholders and owners;
 - (iii) is managed in an accountable and transparent way, in particular by involving workers, customers and stakeholders affected by its business activities.
- (e) 'equity' means ownership interest in an undertaking, represented by the shares or other form of participation in the capital of the qualifying portfolio undertaking issued to the investors;
- (f) 'marketing' means a direct or indirect offering or placement at the initiative of the EuSEF manager or on behalf of that manager of units or shares of a EuSEF

it manages to or with investors domiciled or with a registered office in the Union;

- (g) 'committed capital' means any commitment pursuant to which a person is obligated to acquire an interest in the EuSEF or make capital contributions to the EuSEF;
 - (h) 'EuSEF manager' means a legal person whose regular business is managing at least one EuSEF;
 - (i) 'home Member State' means the Member State where the EuSEF manager is established or has its registered office;
 - (j) 'host Member State' means the Member State, other than the home Member State, where the EuSEF manager markets EuSEFs in accordance with this Regulation.
 - (k) 'competent authority' means the national authority which the home Member State designates, by law or regulation, to undertake the registration of managers of collective investment undertakings as referred to in Article 2 (1).
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 24 specifying the types of services or goods and the methods of production of services or goods that embody a social objective referred to in point (i) of paragraph 1 (d) of this Article taking into account the different kinds of qualifying portfolio undertakings and those circumstances in which profits can be distributed to owners and investors.

CHAPTER II

CONDITIONS FOR THE USE OF THE DESIGNATION "EUROPEAN SOCIAL ENTREPRENEURSHIP FUND"

Article 4

EuSEF managers who comply with the requirements set out in this Chapter shall be entitled to use the designation "European Social Entrepreneurship Fund" in relation to the marketing of EuSEFs across the Union.

Article 5

1. EuSEF managers shall ensure that, when acquiring assets other than qualifying investments no more than 30 percent of the EuSEF's aggregate capital contributions and uncalled committed capital is used for the acquisition of assets other than qualifying investments; short term holdings in cash and cash equivalents shall not be taken into account for calculating this limit.
2. EuSEF managers shall not borrow, issue debt obligations, provide guarantees, at the level of the EuSEF, nor employ any method, at the level of the EuSEF, by which the

exposure of the fund will be increased, whether through borrowing of cash or securities, the engagement into derivative positions or by any other means.

3. The prohibition set out in paragraph 2 shall not apply to borrowing for a non-renewable term of no longer than 120 calendar days to provide liquidity between a call for and receipt of committed capital from investors .

Article 6

EuSEF managers shall market the units and shares of the EuSEFs under management exclusively to investors which are considered to be professional clients in accordance of Section I of Annex II of Directive 2004/39/EC, or may, on request, be treated as professional clients in accordance with Section II of Annex II of Directive 2004/39/EC, or to other investors where:

- (a) those other investors commit to invest a minimum of EUR 100.000;
- (b) those other investors state in writing, in a separate document from the contract that is concluded for the commitment to invest, that they are aware of the risks associated with the envisaged commitment;
- (c) the EuSEF manager undertakes an assessment of the expertise, experience and knowledge of the investor, without presuming that the investor has the market knowledge and experience of those listed in Section I of Annex II of Directive 2004/39/EC;
- (d) the EuSEF manager is reasonably assured, in light of the nature of the commitment envisaged, that the investor is capable of making his own investment decisions and understanding the risks involved, and that a commitment of this kind is appropriate for such an investor;
- (e) the EuSEF manager confirms in writing that he has undertaken the assessment referred to in point (c) and has reached the conclusion referred to in point (d).

Article 7

EuSEF managers shall, in relation to the EuSEF they manage:

- (a) act with due skill, care and diligence in conducting their activities;
- (b) apply appropriate policies and procedures for preventing malpractices that might be reasonably expected to affect the interests of investors and the qualifying portfolio undertakings;
- (c) conduct of their business activities so as to promote the best interests of the EuSEFs they manage, the investors in those EuSEFs, and the integrity of the market;

- (d) apply a high level of diligence in the selection and ongoing monitoring of investments in qualifying portfolio undertakings;
- (e) possess adequate knowledge and understanding of the qualifying portfolio undertakings they invest in.

Article 8

1. EuSEF managers shall identify and avoid conflicts of interest and, where they cannot be avoided, manage and monitor and, in accordance with paragraph 4, disclose, those conflicts of interest in order to prevent them from adversely affecting the interests of the EuSEFs and their investors and to ensure that the EuSEFs they manage are fairly treated.
2. EuSEF managers shall identify in particular those conflicts of interest that may arise between
 - (a) EuSEF managers, those persons who effectively conduct the business of the EuSEF manager, employees or any person who directly or indirectly controls or is controlled by the EuSEF manager, and the EuSEF managed by the EuSEF manager or the investors in those EuSEFs;
 - (b) a EuSEF or the investors in that EuSEF, and another EuSEF managed by that EuSEF manager, or the investors in that other EuSEF.
3. EuSEF managers shall maintain and operate effective organisational and administrative arrangements in order to comply with the requirements laid down in paragraph 1 and 2.
4. Disclosures of conflicts of interest as referred to in paragraph 1 shall be provided, where organisational arrangements made by the EuSEF manager to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented. EuSEF managers shall clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf.
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 24 specifying:
 - (a) the types of conflicts of interest as referred to in paragraph 2 of this Article;
 - (b) the steps EuSEF Managers are expected to take, in terms of structures and organisational and administrative procedures, in order to identify, prevent, manage, monitor and disclose conflicts of interest.

Article 9

1. EuSEF managers shall employ for each EuSEF they manage procedures to measure and monitor the extent to which the qualifying portfolio undertakings, in which the EuSEF invests, achieve the positive social impact that they are committed to.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 24 specifying the details of the procedures referred in paragraph 1 of this Article, in relation to different qualifying portfolio undertakings.

Article 10

At all times, EuSEF managers shall have sufficient own funds and use adequate and appropriate human and technical resources as are necessary for the proper management of EuSEFs.

Article 11

Rules for the valuation of assets shall be laid down in the statutory documents of the EuSEF.

Article 12

1. EuSEF managers shall make available an annual report to the competent authority of the home Member State for each EuSEF under management no later than 6 months following the end of the financial year. The report shall describe the composition of the portfolio of the EuSEF and the activities of the past year. It shall contain the audited financial accounts for the EuSEF. It shall be produced in accordance with existing reporting standards and the terms agreed between the EuSEF manager and the investors. EuSEF managers shall provide the report to investors on request. EuSEF managers and investors may agree additional disclosures amongst themselves.
2. The annual report shall at least include the following elements:
 - (a) details, as appropriate, of the overall social outcomes achieved by the investment policy and the method used to measure these outcomes;
 - (b) a statement of any divestments in relation to qualifying portfolio undertakings that have occurred;
 - (c) a description of whether divestments in relation to the other assets of the EuSEF which are not invested into qualifying portfolio undertakings occurred on the basis of the criteria as referred to in point (e) of Article 13 (1);
 - (d) a summary of the activities the EuSEF manager has undertaken in relation to the qualifying portfolio undertakings as referred to in point (k) of Article 13(1).
3. Where the EuSEF manager is required to make public an annual financial report in accordance with Article 4 of Directive 2004/109/EC of the European Parliament and Council²² in relation to the EuSEF the information referred to in paragraph 1 and 2 of this Article may be provided either separately or as an additional part of the annual financial report.

²² OJ L 390, 31.12.2004, p. 38.

Article 13

1. EuSEF managers shall inform their investors prior to their investment decision at least about the following elements:
 - (a) the identity of the EuSEF manager and of any other service providers contracted by the EuSEF manager in relation to their management, and a description of their duties;
 - (b) a description of the investment strategy and objectives of the EuSEF, including a description of the types of the qualifying portfolio undertakings and the process and criteria which are used for identifying them, the investment techniques it may employ, and any applicable investment restrictions;
 - (c) the positive social impact being targeted by the investment policy of the EuSEF, including where relevant, projections of such outcomes as may be reasonable, and information on past performance in this area;
 - (d) the methodologies to be used to measure social impacts;
 - (e) a description of the assets other than qualifying portfolio undertakings and the process and the criteria which are used for selecting these assets unless they are cash or cash equivalents;
 - (f) a description of the risk profile of the EuSEF and any risks associated with the assets in which the fund may invest or the investment techniques that may be employed;
 - (g) a description of the EuSEF's valuation procedure and of the pricing methodology for valuing assets, including the methods used for valuing qualifying portfolio undertakings;
 - (h) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
 - (i) a description of how the remuneration of the EuSEF manager is calculated;
 - (j) where available, the historical financial performance of the EuSEF;
 - (k) the business support services and the other support activities the EuSEF manager is providing or arranging through third parties in order to facilitate the development, growth or in some other respect the on-going operations of the qualifying portfolio undertakings in which the EuSEF invests, or, where these services or activities are not provided, an explanation of that fact;
 - (l) a description of the procedures by which the EuSEF may change its investment strategy or investment policy, or both.
2. All of the information referred to in paragraph 1 shall be fair, clear and not misleading. It shall be kept up-to-date and reviewed regularly.

3. Where the EuSEF manager is required to publish a prospectus in accordance with Directive 2003/71/EC of the European Parliament and the Council²³ or in accordance with national law in relation to the EuSEF, the information referred to in paragraph 1 of this Article may be provided either separately or as a part of the prospectus.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 24 specifying:
 - (a) the content of the information referred to in point (b) to (e) and (k) of paragraph 1 of this Article;
 - (b) how the information as referred to in point (b) to (e) and (k) of paragraph 1 of this Article can be presented in a uniform way in order to ensure the highest possible level of comparability.

CHAPTER III

SUPERVISION AND ADMINISTRATIVE COOPERATION

Article 14

1. EuSEF managers who intend to use of the designation "European Social Entrepreneurship Fund" for the marketing of their EuSEF shall inform the competent authority of their home Member State of this intention and shall provide the following information:
 - (a) the identity of the persons who effectively conduct the business of managing EuSEFs;
 - (b) the identity of the EuSEFs whose units or shares shall be marketed and their investment strategies;
 - (c) information on the arrangements made for complying with the requirements of Chapter II;
 - (d) a list of Member States where the EuSEF manager intends to market each EuSEF.
2. The competent authority of the home Member State shall only register the EuSEF manager if it is satisfied that the following conditions are met:
 - (a) the information required referred to in paragraph 1 is complete;
 - (b) the arrangements notified according to in point (c) of paragraph 1 are suitable in order to comply with the requirements of Chapter II.

²³ OJ L 345, 31.12.2003, p. 64.

3. The registration shall be valid for the entire territory of the Union and shall allow EuSEF managers to market EuSEFs under the designation "European Social Entrepreneurship Funds" throughout the Union.

Article 15

The EuSEF manager shall update the information provided to the competent authority of the home Member State where the EuSEF manager intends:

- (a) to market a new EuSEF;
- (b) to market an existing EuSEF in a Member State not mentioned in the list referred to in point (d) of Article 14 (1).

Article 16

1. Immediately after the registration of a EuSEF manager, the authority of the home Member State shall notify the fact that the EuSEF manager is registered to the Member States indicated in accordance with point (d) of Article 14 (1) of this Regulation and to ESMA.
2. The host Member States indicated in accordance with point (d) of Article 14 (1) of this Regulation shall not impose, on the EuSEF manager registered in accordance with Article 14, any requirements or administrative procedures in relation to the marketing of its EuSEFs, nor shall they require any approval of the marketing prior to its commencement.
3. In order to ensure uniform application of this article, ESMA shall develop draft implementing technical standards to determine the format of the notification.
4. ESMA shall submit those draft implementing technical standards to the Commission by [insert date].
5. Power is conferred on the Commission to adopt the implementing technical standards referred to in paragraph 3 in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.²⁴

Article 17

ESMA shall maintain a central database, publicly accessible on the internet, listing all EuSEF managers registered in the Union in accordance with this Regulation.

Article 18

The competent authority of the home Member State shall supervise compliance with the requirements set out in this Regulation.

²⁴ OJ L 331, 15.12.2010, p.84.

Article 19

Competent authorities shall, in conformity with national law, have all supervisory and investigatory powers that are necessary for the exercise of their functions. They shall have in particular the power to:

- (a) request access to any document in any form, and to receive or take a copy of it thereof;
- (b) require the EuSEF manager to provide information without delay;
- (c) require information from any person related to the activities of the EuSEF manager or the EuSEF;
- (d) carry out on site inspections with or without prior announcements;
- (e) take appropriate measures to ensure that a EuSEF manager continues to comply with the requirements of this Regulation;
- (f) issue an order to ensure that a EuSEF manager complies with the requirements of this Regulation and desists from a repetition of any conduct that may consist of a breach of this Regulation.

Article 20

1. Member States shall lay down the rules on administrative measures and sanctions applicable to breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The measures and sanctions provided for shall be effective, proportionate and dissuasive.
2. By [24 months after entry into force of this Regulation] the Member States shall notify the rules referred to in paragraph 1 to the Commission and ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

Article 21

1. The competent authority of the home Member State shall take the appropriate measures referred to in paragraph 2 where EuSEF managers:
 - (a) fail to comply with the requirements that apply to the portfolio composition in accordance with Article 5;
 - (b) fail to market the EuSEF to eligible investors in accordance to Article 6;
 - (c) use the designation "European Social Entrepreneurship Fund" without being registered with the competent authority of their home Member State in accordance with Article 14.
2. In the cases referred to in paragraph 1 the competent authority of the home Member State shall take the following measures, as appropriate:

- (a) prohibit the use of the designation "European Social Entrepreneurship Fund" for the marketing of one or more EuSEFs of the EuSEF manager;
 - (b) remove the EuSEF manager from the register.
3. The competent authorities of the home Member State shall inform the competent authorities of the host Member States indicated in accordance with point (d) of Article 14 (1) of the removal of the EuSEF manager from the register referred to in point (b) of paragraph 1 of this Article.
4. The right to market one or more EuSEFs under the designation "European Social Entrepreneurship Funds" in the Union expires with immediate effect from the date of the decision of the competent authority referred to in points (a) or (b) of paragraph 2.

Article 22

1. Competent authorities and ESMA shall cooperate with each other whenever necessary for the purpose of carrying out their respective duties under this Regulation.
2. They shall exchange all information and documentation necessary to identify and remedy breaches to this Regulation.

Article 23

1. All persons who work or who have worked for the competent authorities or ESMA, as well as auditors and experts instructed by the competent authorities and ESMA, are bound by the obligation of professional secrecy. No confidential information which those persons receive in the course of their duties shall be divulged to any person or authority whatsoever, save in summary or aggregate form such that EuSEF managers and EuSEFs cannot be individually identified, without prejudice to cases covered by criminal law and proceedings under this Regulation.
2. The competent authorities of the Member States or ESMA shall not be prevented from exchanging information in accordance with this Regulation or other Union law applicable to EuSEF Managers and EuSEFs.
3. Where competent authorities and ESMA receive confidential information in accordance with paragraph 1, they may use it only in the course of their duties and for the purpose of administrative and judicial proceedings.

CHAPTER IV TRANSITIONAL AND FINAL PROVISIONS

Article 24

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions set out in this Article.

2. The delegation of power referred to in Articles 2 (3), 3 (2), 8 (5), 9 (2) and 13 (4) shall be conferred on the Commission for a period of four years from the date of entering into force of this Regulation. The Commission shall draw up a report in respect of the delegation of powers not later than nine months before the end of the four year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of powers referred to Articles 2 (3), 3 (2), 8 (5), 9 (2) and 13 (4) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 25

1. At the latest four years after the date of application of this Regulation, the Commission shall review this Regulation. The review shall include a general survey of the functioning of the rules in this Regulation and the experience acquired in applying them, including:
 - (a) the extent to which the designation "European Social Entrepreneurship Fund" has been used by EuSEF managers in different Member States, whether domestically or on a cross border basis;
 - (b) the use of the different qualifying investments by EuSEFs and how this has impacted the development of social undertakings across the Union;
 - (c) the practical application of the criteria for identifying qualifying portfolio undertakings and the impact of this on the development of social undertakings across the Union;
 - (d) the scope of this Regulation, including the threshold of EUR 500 million.
2. After consulting ESMA the Commission shall submit a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal.

Article 26

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. It shall apply from the 22 July 2013, except for Articles 2 (3), 3 (2), 8 (5), 9 (2) and 13 (4), which shall apply from the date of entry into force of the Regulation.

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