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NOTE

from:	Presidency
to:	Delegations
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on European Social Entrepreneurship Funds - - Text provisionally agreed with the European parliament

Delegations will find attached the text of the above-mentioned Regulation, as provisionally agreed with the European Parliament.

**REGULATION (EU) No .../2012
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of

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 Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure³,

Whereas:

¹ OJ C ...p...

² OJ C ...p...

³ Position of the European Parliament of ...

- (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, *for example helping to tackle the social consequences of the financial crisis*, and making a valuable contribution to meeting the objectives of the Europe 2020 Strategy.
- (1a) *This Regulation is part of the Social Business Initiative set out by the Commission in its Communication of 25 October 2011 entitled 'Social Business Initiative - Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation'.*
- (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 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.
- (3a) This Regulation does not apply to existing national schemes that allow investment in social businesses and that do not use the designation 'EuSEF'.*
- (4) Defining the quality requirements for the use of the designation 'EuSEF' 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.

- (4a) ***It should be possible for a EuSEF to be either externally or internally managed. Where the EuSEF is internally managed, the EuSEF is also the manager and should therefore comply with all requirements for managers of EuSEFs under this Regulation and be registered as such. A EuSEF which is internally managed should however not be permitted to be the external manager of other collective investment undertakings or UCITS.***
- (5) In order to clarify the relationship between this Regulation and ***other*** 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)⁴ 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 Managers⁵, ***provided that those managers manage portfolios of EuSEFs. However, EuSEF managers who are registered under this Regulation and who are external managers should be allowed to additionally manage UCITS subject to authorisation under Directive 2009/65/EC.***

⁴ OJ L 302, 17.11.2009, p. 32.

⁵ OJ L 174, 1.7.2011, p. 1.

- (5a) Furthermore, this Regulation **applies** only **■** to managers **of those collective investment undertakings** whose assets under management in total do not exceed the threshold **mentioned in point (b) of Article 3(2)(b)** of Directive 2011/61/EU. **This means that the calculation of the threshold for the purposes of this Regulation follows the calculation of the threshold of point (b) of article 3(2) of Directive 2011/61/EU. However, EuSEF managers who are registered under this Regulation and whose assets in total subsequently grow to exceed the threshold mentioned in point (b) of Article 3(2) of Directive 2011/61/EU, and who therefore become subject to authorisation with the competent authorities of their home Member State in accordance with Article 6 of that Directive, may continue to use the designation 'EuSEF' in relation to the marketing of EuSEF in the Union, provided that they comply with the requirements laid down in that Directive and that they continue to comply with certain requirements for the use of the designation 'EuSEF' specified in this Regulation at all times in relation to the EuSEF. This applies to both existing EuSEFs and EuSEFs established after exceeding the threshold.**
- (6) Where managers of collective investment undertakings do not wish to use the designation 'EuSEF' 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. **This is necessary so that a clear demarcation line can be drawn between a EuSEF and other alternative investment funds that engage in other, less specialised, investment strategies, for example buyouts, which this Regulation is not seeking to promote.**

- (7a) 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. *A social undertaking is an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market and uses its profits primarily to achieve social objectives. It is managed in an accountable and transparent way and, in particular, by involving employees, consumers and stakeholders affected by its commercial activities.*
- (7b) As social undertakings have the achievement of positive social impact as their principle objective rather than maximising their profits ■ this Regulation should *only promote support to* qualifying portfolio *undertakings that* have the achievement of a measurable and positive social impact as *their* focus. *A measurable and positive social impact could include the provision of services to immigrants who are otherwise excluded, or by reintegrating marginalised groups in the labour market by providing employment, support or training. These undertakings use their* profits to achieve *their* primary *social* objective and *are* 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, marginalised, ***disadvantaged or excluded*** 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 ***that embodies their*** 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. ***Those activities may also concern environmental protection with a societal impact, such as anti-pollution, recycling and renewable energy.***
- (8a) ***In line with the aim of precisely circumscribing the collective investment undertakings which will be covered by this Regulation and in order to ensure a focus on providing capital to social undertakings, the EuSEFs should be considered those funds that intend to invest at least 70 percent of their aggregate capital contributions and uncalled committed capital in such undertakings. The EuSEF should not be permitted to invest more than 30 percent of its aggregate capital contributions and uncalled committed capital in assets other than qualifying investments. This means that whereas the 30 percent should be the maximum limit for non-qualifying investments at all times, the 70 percent should be reserved for qualifying investments during the life time of the EuSEF. The above mentioned limits should be calculated on the basis of amounts investible after deduction of all relevant costs and holdings of cash and cash equivalents. This Regulation should set out the details necessary for the calculation of the referred investment limits.***

- (8b)** *The purpose of this Regulation is to support growth of social undertakings in the Union. Investments in qualifying portfolio undertakings established in third countries can bring more capital to EuSEFs and thereby benefit social undertakings in the Union. However, under no circumstances should this Regulation benefit investments made in portfolio undertakings established in third countries characterised by a lack of appropriate cooperation arrangements between the competent authorities of the home Member State of the EuSEF manager and with each other Member State in which the units or shares of the EuSEF are intended to be marketed or by a lack of effective exchange of information in tax matters.*
- (8c)** *Social entrepreneurship funds should, for the time being, be established in the Union in order to be entitled to use the designation "EuSEF" as set out by this Regulation. The Commission should, at the latest within two years of the application of this Regulation, review the limitation on the use of the designation "EuSEF" to funds established in the EU, taking into account experience in applying the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters.*
- (8d)** *EuSEF managers should be able to attract additional capital commitments during the lifetime of a fund. Such additional capital commitments in the lifetime of the EuSEF should be taken into account when the next investment in assets other than qualifying assets is contemplated. Additional capital commitments should be permitted in accordance with to criteria and subject to conditions set out in the EuSEF's rules or instruments of incorporation.*

- (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 lays down uniform rules on the eligible instruments to be used by a EuSEF when making investments, which include equity *and quasi equity* instruments, debt instruments, *such as promissory notes and certificates of deposit*, investments into other EuSEFs, *secured or unsecured loans, and grants*. *However, to prevent dilution of the investments into qualifying portfolio undertakings, EuSEFs should only be permitted to invest into other EuSEFs where those other EuSEFs have not themselves invested more than 10 % of their aggregate capital contributions and uncalled committed capital into other EuSEFs.*
- (9a) *The core activities of EuSEF are providing finance to social undertakings through primary investments. EuSEFs should not participate in systemically important banking activities outside of the usual prudential regulatory framework (so-called 'shadow banking'). Neither should they follow typical private equity strategies, such as leveraged buyouts.*
- (10) To maintain the necessary flexibility in its investment portfolio, EuSEFs may invest in other assets than qualifying investments to the extent that these investments do not exceed the *30 percent limit* for non-qualifying investments. *Holdings of cash and cash equivalents should not be taken into account for the calculation of this limit as cash and cash equivalents are not to be considered as investments. EuSEFs should engage in investments throughout their portfolio that are consistent with their ethical investment strategy, for instance they should not undertake investments such as in the weapons industry, that risk breaches of human rights or that entail electronic waste-dumping.*
- (11) In order to ensure that the designation 'EuSEF' 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 ■ that such funds concentrate, in their investment activities, on supporting qualifying portfolio *undertakings, the use of leverage* at the level of the fund should not be permitted. *The EuSEF manager should only be permitted to borrow, issue debt obligations or provide guarantees, at the level of the EuSEFs, provided that such borrowings, debt obligations or guarantees are covered by uncalled commitments and thus do not increase the exposure of the fund beyond the level of its committed capital. Under this approach cash advances from investors of the EuSEF that are fully covered by capital commitments from those investors do not increase the exposure of the EuSEF and should therefore be allowed. Also, in order to permit the fund to cover extraordinary liquidity needs that might arise between a call of committed capital from investors and the actual reception of the capital in its accounts, short-term borrowing should be allowed so long as it does not exceed uncalled committed capital.*

- (14) In order to ensure that EuSEFs are **only** marketed to investors who have the **■** experience, **knowledgee** and **expertise to make their own investment decisions and properly assess** 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 **■** 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 repealing Council Directive 93/22/EEC⁶. 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. **Furthermore, investments made by executives, directors or employees involved in the management of a EuSEF manager should be possible when investing in the EuSEF they manage, as such individuals are knowledgeable enough to participate in such investments.**
- (15) To ensure that only EuSEF managers who fulfil uniform quality criteria as regards their behaviour in the market use the designation 'EuSEF', 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.

⁶ OJ L 145, 30.4.2004, p. 1.

- (15a) *Where an EuSEF manager intends to delegate functions to third parties, the manager's liability towards the EuSEF and its investors should not be affected by the delegation of functions by the EuSEF manager to a third party. Moreover, the EuSEF manager should not delegate functions to the extent that, in essence, it can no longer be considered to be the EuSEF manager and has become a letter-box entity. The EuSEF manager should remain responsible for the proper performance of delegated functions and compliance with this Regulation at all time. The delegation of functions should not undermine the effectiveness of supervision of the EuSEF manager, and, in particular, should not prevent the EuSEF manager from acting, or the EuSEF from being managed, in the best interests of its investors.***
- (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 ■ measuring the positive social impacts which are to be achieved by investment into qualifying portfolio undertakings.

- (16a)** *Currently funds that are targeting social outcomes or impacts typically assess and collate information on the extent to which social undertakings are achieving the outcomes they are targeting. There are a wide range of different kinds of social outcomes or impacts that a social undertaking might target. Different ways of identifying the social impacts and measuring them have thereby developed. For instance, a firm that is seeking to aid disadvantaged persons may report on the numbers of such persons aided, for instance employed who otherwise would not be employed. Or, a firm that is seeking to improve the rehabilitation into society of prisoners on release may assess its performance in terms of recidivism rates. The funds aid the undertakings in preparing and providing information on their goals and achievements, and gathering it for investors. While information about social impacts is very important for investors, it is difficult to compare between different social undertakings and different funds both because of the differences in social outcomes being targeted and because of the variety of current approaches. In order to encourage the greatest consistency and comparability in the longer term in such information and the greatest efficiency in the procedures for obtaining the information, it is desirable to develop delegated acts in this area. Such delegated acts should also ensure greater clarity for supervisors, EuSEFs and social undertakings.*
- (17)** In order to ensure the integrity of the designation 'EuSEF', 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 ■ .
- (17a)** *In order to ensure the proper management of the EuSEF and the ability of the manager to cover potential risks arising from its activities this Regulation should lay down uniform, proportionate requirements for EuSEF manager to maintain sufficient own funds. The amount of such own funds should be sufficient to ensure the continuity and proper management of the EuSEF.*

- (18) It is necessary for the purpose of investor protection to ensure that EuSEFs assets are properly evaluated. Therefore the *rules or instruments of incorporation* 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 'EuSEF' give sufficient account of their activities, uniform rules on annual reports should be established.
- (19a) *While safeguards are included in this Regulation to ascertain that funds are properly used, supervisory authorities should be vigilant in ensuring that those safeguards are complied with.*
- (20) To ensure the integrity of the designation 'EuSEF' 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 'EuSEF' 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. That registration should be valid across the entire Union.
- (21a) *In order to facilitate the efficient cross-border marketing of EuSEF, registration of the manager should be as quick as possible.***
- (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 Supervisory Authority*** (European Securities and Markets Authority) ('ESMA') ***established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council***⁷ should be entrusted with maintaining a central database listing all EuSEFs ***managers and the EuSEFs they manage*** that are registered in accordance with this Regulation.

⁷ ***OJ L 331, 15.12.2010, p. 84.***

- (24a) *Where the competent authority of the host Member State have clear and demonstrable grounds for believing that the EuSEF manager acts in breach of this Regulation within its territory, it shall promptly inform the competent authority of the home Member State, which shall take appropriate measures.*
- (24b) *If, despite the measures taken by the competent authority of the home Member State or because the competent authority of the home Member State fails to act within a reasonable timeframe, or the EuSEF manager persists in acting in a manner that is clearly in conflict with this Regulation, the competent authority of the host Member State, may, after informing the competent authority of the home Member State, take all the appropriate measures needed in order to protect investors, including the possibility of preventing the manager concerned from carrying out any further marketing of its EuSEFs within the territory of the host Member State.*
- (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 **administrative sanctions and measures** 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 'EuSEFs' 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.

- (28a) *The contribution of EuSEFs to the growth of a European market for social investments, will depend on take up of the designation by fund managers, the recognition of the designation by investors and the development of a strong eco-system for social enterprises across the Union that aids those enterprises in availing themselves of the financing options provided. To this end, all stakeholders, including market operators, competent authorities in Member States, the Commission and other relevant entities within the Union, should endeavour to ensure a high level of awareness of the possibilities presented by this Regulation.*
- (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 █ . ESMA should be entrusted with drafting implementing technical standards for the format █ of the notification *referred to in this Regulation.*

(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 types of goods and services or methods of production for goods and services embodying a social objective and the circumstances in which profits may be distributed to owners and investors***, the types of conflicts of interest 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 ***the content and procedure for provision of information for investors***. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, ***taking into account self-regulatory initiatives and codes of conduct. The consultations carried out by the Commission during its preparatory work regarding delegated acts on the details of the procedures to measure the social impacts to be achieved by the qualifying portfolio undertakings should involve relevant stakeholders and ESMA. 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 Council.***

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(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. ***The review should include a general survey of the functioning of the rules in this Regulation and the experience acquired in applying them. On the basis of*** the review, the Commission should submit a report to the European Parliament and the Council accompanied, if appropriate, by legislative ***proposals***.

- (33a) *Furthermore, by 22 July 2017, the Commission should start a review of the interaction between this Regulation and other rules on collective investment undertakings and their managers, especially those of Directive 2011/61/EU. In particular, this review should address the scope of this Regulation assessing whether it is necessary to extend the scope to allow for larger alternative investment funds managers to use the designation EuSEF. On the basis of the review, the Commission should submit a report to the European Parliament and the Council accompanied, if appropriate, by legislative proposals.*
- (33b) *In the context of this review, the Commission should evaluate any barriers that may have impeded the uptake of the funds by investors, including the impact on institutional investors of other regulation as may apply to them of a prudential nature. In addition, the Commission should gather data for assessing the contribution of EuSEFs to other Union programs such as Horizon 2020 that seek also to support innovation in the Union.*
- (33c) *In relation to the Commission examination of tax obstacles to cross-border venture capital investments as foreseen in Commission Communication entitled 'An action plan to improve access to finance for SMEs' (COM(2011)870) and in the context of the review of this Regulation, the Commission should consider undertaking an equivalent examination of possible tax obstacles for social entrepreneurship funds and assess possible tax incentives aimed at encouraging social entrepreneurship in the EU.*
- (33d) *ESMA should assess its staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.*
- (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/EC 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 data⁸ 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 data⁹ by the Union 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) *Since* the objective of this Regulation, namely to develop an internal market for EuSEFs by laying down a framework for the registration of EuSEF managers facilitating the marketing of EuSEFs throughout the Union, ***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 the European Union. In accordance with the principle of proportionality, as set ***out*** in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

⁸ OJ L 281, 23.11.1995 p. 31.

⁹ OJ L 8, 12.1.2001, p. 1.

CHAPTER I
SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

This Regulation lays down uniform requirements *and conditions* for those managers of collective investment undertakings who wish to use the designation 'European Social Entrepreneurship Fund' (EuSEF) *in relation to the marketing of EuSEF in the Union, and* thereby contributing to the smooth functioning of the internal market.

This Regulation also lays down uniform rules for the marketing of EuSEF ■ 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), *whose assets under management in total do not exceed the threshold mentioned in Article 3 (2) (b) of Directive 2011/61/EU*, who are established in the Union and *who* 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/EU, provided that those managers manage portfolios of EuSEFs ■ .

1a. *EuSEF managers registered under this Regulation in accordance with Article 14, and whose assets in total subsequently grow to exceed the threshold mentioned in Article 3 (2) (b) of Directive 2011/61/EU, and who therefore become subject to authorisation with the competent authorities of their home Member State in accordance with Article 6 of that Directive , may continue to use the designation 'EuSEF' in relation to the marketing of EuSEFs in the Union, provided that they comply with the requirements laid down in Directive 2011/61/EU and that they continue to comply with Articles 3, 5, 9, 12(2), 13(1) points (c)(d), (e) of this Regulation at all times in relation to the EuSEFs.*

3a. *EuSEF managers that are registered in accordance with this Regulation may additionally manage UCITS subject to authorisation under Directive 2009/65/EC provided that they are external managers.*

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:
- (i) ***intends to invest*** at least 70 percent of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments ***within a time frame laid down in the rules or instruments of incorporation of the EuSEF;***
 - (ii) ***never uses more than 30 percent of the fund's aggregate capital contributions and uncalled committed capital for the acquisition of assets other than qualifying investments;***
 - (iii) ***is established within the territories of a Member State,***

The limits referred to in points (i) and (ii) shall be calculated on the basis of amounts investible after the deduction of all relevant costs and holdings in cash and cash equivalents;

- (aa) *'relevant costs' means all fees, charges and expenses which are directly or indirectly borne by investors and which are agreed between the manager of, and the investors in, the EuSEFs;*
- (b) *'collective investment undertaking' means an AIF as defined in point (a) of Article 4(1) of Directive 2011/61/EU;*
- (c) *'qualifying investments' means any of the following instruments:*
- (i) **■** *equity or quasi equity instruments that are:*
 - *issued by a qualifying portfolio undertaking and acquired directly by the EuSEF from the qualifying portfolio undertaking,*
 - *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, provided that those EuSEFs have not themselves invested more than 10 percent of their aggregate capital contributions and uncalled committed capital in EuSEFs;*

- (iv) *secured or unsecured* loans granted *by the EuSEF* to *a* qualifying portfolio undertaking ■ ;
- (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 *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 *and which*:
- (-i) is established within the territories of a Member State, or in a third country provided that the third country:*
- *is not listed as a Non-Cooperative Country and Territory by FATF;*
 - *has signed an agreement with the home Member State of the EuSEF manager and with each other Member State in which the units or shares of the EuSEF are intended to be marketed, so that it is ensured that the third country fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;*
- (i) has the achievement of measurable, positive social impacts as *its* primary objective in accordance with its articles of association, statutes or any other *rules or instruments of incorporation* establishing the business, where *the undertaking*:
- ■ *provides services or goods to vulnerable or marginalised, disadvantaged or excluded persons; ■*

- **█** employs a method of production of goods or services that embodies its social objective; *or*
 - *provides financial support exclusively to social undertakings as defined in the first two indents;*
- (ii) uses its profits *first and foremost* to achieve its primary *social* objective *in accordance with its articles of association, statutes or any other rules or instruments of incorporation establishing the business. Those rules or instruments of incorporation shall have* in place predefined procedures and rules for any circumstances in which profits are distributed to shareholders and owners to *ensure that any such distribution of profits does not undermine its primary objective;*
- (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 *forms* of participation in the capital of the qualifying portfolio undertaking issued to *its* investors;
- (ea) 'quasi-equity' means any type of financing instrument which is a combination of equity and debt, here the return on the instrument is linked to the profit or loss of the qualifying portfolio undertaking and where the repayment of the instrument in the event of default is not fully secured;*
- (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 *an investor is obliged, within the time frame laid down in the rules or instruments of incorporation of the EuSEF*, 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 *and is subject to registration with the competent authorities in accordance with point (a) of Article 3(3) of Directive 2011/61/EU*;
- (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);
- (ka) *'UCITS' means an undertaking for collective investment in transferable securities authorised in accordance with Article 5 of Directive 2009/65/EC.*

In regard to point (h) of the first subparagraph, where the legal form of a EuSEF permits internal management and where the governing body of the fund chooses not to appoint an external manager, the EuSEF itself shall be registered as the EuSEF manager. A EuSEF who is registered as internal EuSEF manager can not be registered as external EuSEF manager of other collective investment undertakings.

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 'EuSEF'

Article 4

EuSEF managers who comply with the requirements set out in this Chapter shall be entitled to use the designation '***EuSEF***' 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 ***the 30 percent shall be calculated on the basis of amounts investible after the deduction of all relevant costs***; holdings in cash and cash equivalents shall not be taken into account for calculating this limit ***as cash and cash equivalents are not to be considered as investments***.
2. The EuSEF ***manager may*** not ***employ*** at the level of the EuSEF **■** any method **■** by which the exposure of the fund will be increased ***beyond the level of its committed capital***, whether through borrowing of cash or securities, the engagement into derivative positions or by any other means.

- 2a. *The EuSEF manager may only borrow, issue debt obligations or provide guarantees, at the level of the EuSEF, where such borrowings, debt obligations or guarantees are covered by uncalled commitments.*

█

Article 6

1. 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.

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2. *Paragraph 1 shall not apply to investments made by executives, directors or employees involved in the management of a EuSEF manager when investing in the EuSEFs that they manage.*

Article 7

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

- (a) act ***honestly*** with due skill, care and diligence ***and fairly*** 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 their business activities so as to promote ***the positive social impact of the qualifying portfolio undertakings in which they have invested***, 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 ***and the positive social impact of those undertakings***;
- (e) possess adequate knowledge and understanding of the qualifying portfolio undertakings they invest in;
- (ea) ***treat their investors fairly***;
- (eb) ***ensure that no investor shall obtain preferential treatment, unless such preferential treatment is disclosed in the rules or instruments of incorporation of the EuSEF.***

Article 7a

- 1. *Where a EuSEF manager intends to delegate functions to third parties, the manager's liability towards the EuSEF and its investors shall not be affected by the fact that the manager has delegated functions to a third party, nor shall the manager delegate to the extent that, in essence, it can no longer be considered to be the manager of the EuSEF and to the extent that it becomes a letter-box entity.***

- 2. *The delegation must not undermine the effectiveness of supervision of the EuSEF manager, and, in particular, must not prevent the EuSEF manager from acting, or the EuSEF from being managed, in the best interests of its investors.***

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 ***promptly***, 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;

(ba) the EuSEF or the investors in that EuSEF, and a collective investment undertaking or UCITS managed by the same EuSEF manager or the investors in that collective investment undertaking or UCITS.

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 ***shall*** 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 **■** the extent to which the qualifying portfolio undertakings, in which the EuSEF invests, achieve the positive social impact that they are committed to. ***The managers shall ensure that these procedures are clear and transparent and include indicators that may, depending on the social objective and nature of the qualifying portfolio undertaking, include one or more of the following subjects:***

- (a) employment and labour markets;*
- (b) standards and rights related to job quality;*
- (c) social inclusion and protection of particular groups; equality of treatment and opportunities, non -discrimination;*
- (d) public health and safety;*
- (e) access to and effects on social protection, health and educational systems.*

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 24 specifying the details of the procedures referred *to* 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.

It shall be incumbent upon the EuSEF managers, at all times, to ensure that they are able to justify the sufficiency of their own funds to maintain operational continuity and disclose their reasoning as to why these funds are sufficient as specified in Article 13.

Article 11

- 1. Rules for the valuation of assets shall be laid down in the rules or instruments of incorporation of the EuSEF and shall ensure a sound and transparent valuation process.*
- 2. Valuation procedures used shall ensure that the assets are valued properly and that the asset value is calculated at least once a year.*

3. ***In order to ensure consistency in the valuation of qualifying portfolio undertakings, ESMA shall develop guidelines setting out common principles on the treatment of investments in such undertakings taking into account their primary objective of achieving measurable positive social impacts and their use of their profits first and foremost for the achievement of this impact.***

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 also include a disclosure of the profits of the EuSEF by the end of its life time and, where applicable, a disclosure of the profits distributed during its lifetime.*** It shall contain the audited financial accounts for the EuSEF. ***The audit shall confirm that money and assets are held in the name of the fund and that the EuSEF manager has established and maintained adequate records and controls in respect of the use of any mandate or control over the money and assets of the EuSEF and its investors, and shall be conducted at least once a year. The annual report 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);
- (da) information on the nature and purpose of the investments other than qualifying portfolio investments referred to in Article 4(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 Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market¹⁰ 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.

Article 13

1. EuSEF managers shall, ***in relation to the EuSEFs they manage***, inform their investors, ***in a clear and understandable manner***, about the following elements ***prior to their investment decision***:
- (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;

¹⁰ OJ L 390, 31.12.2004, p. 38.

- (aa) *the amount of own funds available to the EuSEF manager, as well as a detailed statement as to why the EuSEF manager deems these own funds sufficient for maintaining the adequate human and technical resources necessary for the proper management of its EuSEFs;*
- (b) a description of the investment strategy and objectives of the EuSEF, including:
- (i) *the types of qualifying portfolio undertakings in which it intends to invest;*
 - (ii) *any other EuSEFs in which it intends to invest;*
 - (iii) *the types of qualifying portfolio undertakings in which any other EuSEF, as referred to in point (ii), intend to invest;*
 - (iv) *the non-qualifying investments which it intends to make;*
 - (v) *the techniques it intends to employ, and*
 - (vi) *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 *relevant costs* and of the maximum amounts thereof **■** ;
- (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 *where relevant*.

3. Where the EuSEF manager is required to publish a prospectus in accordance with Directive 2003/71/EC of the European Parliament and the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading¹¹ 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.

¹¹ OJ L 345, 31.12.2003, p. 64.

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 '***EuSEF***' 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;
 - (da) a list of Member States] where the EuSEF manager has established, or intends to establish, EuSEFs.***

2. The competent authority of the home Member State shall **■** register the EuSEF manager **only** if it is satisfied that the following conditions are met:
- (-a) the persons who effectively conduct the business of managing the EuSEF are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the EuSEF manager;**
- (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;
- (ba) the list notified according to point (da) of paragraph 1 reveals that all of the EuSEFs are established in accordance with Article 3(1)(a)(iii) of this Regulation.**
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 addition of a new EuSEF, the addition of a new domicile for the establishment of a EuSEF or the addition of a new Member State where the EuSEF manager intends to market EuSEFs***, the ***competent authority of the home Member State*** shall notify ***this*** to the Member States indicated in accordance with point (d) of Article 14(1) **■** 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 ...*.
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.

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 ***and EuSEFs that they market as well as the countries in which they are marketed.***

* ***OJ: please insert date: nine months after entry into force of this Regulation.***

Article 18

1. The competent authority of the home Member State shall supervise compliance with the requirements set out in this Regulation.
2. *Where the competent authority of the host Member State has clear and demonstrable grounds for believing that the EuSEF manager is in breach of this Regulation within its territory, it shall promptly inform the competent authority of the home Member State accordingly, which shall take appropriate measures.*
3. *If, despite the measures taken by the competent authority of the home Member State or because the competent authority of the home Member State fails to act within a reasonable timeframe, or the EuSEF manager persists in acting in a manner that is clearly in conflict with this Regulation, the competent authority of the host Member State, may, as a consequence and after informing the competent authority of the home Member State, take all the appropriate measures needed in order to protect investors, including the possibility of preventing the manager concerned from carrying out any further marketing of its EuSEFs within the territory of the host Member State.*

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 *sanctions and* measures applicable to breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The *administrative sanctions and* measures provided for shall be effective, proportionate and dissuasive.
2. By ...* 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.

* OJ: Please insert the date 24 months after entry into force of this Regulation.

Article 21

1. The competent authority of the home Member State shall, ***while respecting the principle of proportionality***, take the appropriate measures referred to in paragraph 2 where ***a*** EuSEF ***manager***:
 - (a) ***fails*** to comply with the requirements that apply to the portfolio composition in ***breach of Article 5***;
 - (b) ***markets, in breach of Article 6, the units and shares of a*** EuSEF to ***non-eligible investors*** ■ ;
 - (c) ***uses*** the designation '***EuSEF***' without being registered with the competent authority of their home Member State in accordance with Article 14;
 - (ca) ***uses the designation 'EuSEF' for the marketing of funds which are not established in accordance with Article 3(1)(a)(iii) of this Regulation.***
 - (cb) ***obtained a registration through false statements or any other irregular means in breach of Article 14***;
 - (cc) ***fails to act honestly with due skill, care and diligence and fairly in conducting their business in breach of Article 7(a)***;
 - (cd) ***fails to apply appropriate policies and procedures for preventing malpractices in breach of Article 7(b)***;
 - (ce) ***repeatedly fails to comply with the requirements under Article 12 regarding the annual report***;
 - (cf) ***repeatedly fails to comply with the obligation to inform investors in accordance with Article 13.***

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) take measures to ensure that a EuSEF manager complies with Articles 3(1)(a)(iii), 5, 6, 7(a), 7(b), 12, 13 and 14 of this Regulation;**
 - (a) prohibit the use of the designation '**EuSEF**' and remove the EuSEF manager from the register.
3. The competent **authority** 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) **and ESMA without delay** of the removal of the EuSEF manager from the register referred to in **point (a)** of paragraph 1 of this Article.
4. The right to market one or more EuSEFs under the designation 'EuSEF' in the Union expires with immediate effect from the date of the decision of the competent authority referred to in **point (a)** of paragraph 2 **of this Article**.

Article 22

1. Competent authorities and ESMA shall cooperate with each other for the purpose of carrying out their respective duties under this Regulation **in accordance with Regulation (EU) No 1095/2010**.
2. **Competent authorities and ESMA** shall exchange all information and documentation necessary **to carry out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010, in particular** to identify and remedy breaches of this Regulation.

Article 22a
Dispute settlement

In case of disagreement between competent authorities of Member States on an assessment, action or omission of one competent authority in areas where this Regulation requires cooperation or coordination between competent authorities from more than one Member State, competent authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010, in so far as the disagreement is not related to Article 3(1)(a)(-i) or Article 3(1)(d)(-i) of 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 **3(2)**, **8(5)**, **9(2)**, **11(3)** and **13(4)** shall be conferred on the Commission for a period of four years from ...^{*}. 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 in Articles **3(2)**, **8(5)**, **9(2)**, **11(3)** 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.

^{*} OJ: please insert date: entry into force of this Regulation.

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 **three 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 **three months** at the initiative of the European Parliament or the Council.

Article 25

1. The Commission shall review this Regulation ***within the timeframes referred to in paragraph 1a***. 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 '***EuSEF***' has been used by EuSEF managers in different Member States, whether domestically or on a cross border basis;
 - (aa) the geographical and sectoral distribution of investments undertaken by EuSEFs;***
 - (ab) the appropriateness of the information requirements under Article 13, in particular whether they are sufficient to enable investors to take an informed investment decision;***
 - (b) the use of the different qualifying investments by EuSEFs and how this has impacted the development of social undertakings across the Union;
 - (ba) []***
 - (bb) the appropriateness of establishing a European label for 'social enterprises';***

- (bc) the possibility of allowing social entrepreneurship funds established in a third country to use the designation "EuSEF", taking into account experience in applying the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters;*
- (c) the practical application of the criteria for identifying qualifying portfolio undertakings, the impact of this on the development of social undertakings across the Union *and their positive social impact;*
- (ca) an analysis of the procedures implemented by EuSEF managers so as to measure the positive social impact generated by the qualifying portfolio undertakings referred to in Article 9 and an assessment of the feasibility of introducing harmonised standards for measuring the social impact at Union level in a manner consistent with Union social policy;*
- (d) the possibility of extending the marketing of EuSEFs to retail investors;*
- (da) the appropriateness of including EuSEF within eligible assets under Directive 2009/65/EC;*
- (db) the appropriateness of complementing this Regulation with a depositary regime;*
- (dc) an examination of possible tax obstacles for social entrepreneurship funds and an assessment of possible tax incentives aimed at encouraging social entrepreneurship in the EU;*
- (ea) an evaluation of any barriers that may have impeded the uptake of the funds by investors, including the impact on institutional investors of other Union legislation of a prudential nature.*

1a. The review shall take place as follows:

(a) at the latest four years after the date of application of this Regulation on points (a), (aa), (ab), (b), (bb) and (c) to (ea) , and

(b) at the latest two years after the date of application of this Regulation on point (bc),

2. Following the review referred to in paragraph 1 and after consulting ESMA the Commission shall submit a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal.

Article 25a

1. By 22 July 2017, the Commission shall start a review of the interaction between this Regulation and other rules on collective investment undertakings and their managers, especially those of Directive 2011/61/EU. This review shall address the scope of this Regulation. It shall gather data for assessing whether it is necessary to extend the scope to allow for managers who manage EuSEFs the total assets of which exceed the threshold provided for in Article 2(1) to become EuSEF managers.

2. Following the review referred to in paragraph 1 and 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 ...

For the European Parliament
The President

For the Council
The President