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OF THE COUNCIL on the European Fund for Sustainable Development
(EFSD) and establishing the EFSD Guarantee and the EFSD Guarantee
Fund (First reading)
- Partial general approach

Delegations will find in the annex the Council's partial general approach¹ to the Proposal for a Regulation of the European Parliament and of the Council on the European Fund for Sustainable Development (EFSD) and establishing the EFSD Guarantee and the EFSD Guarantee Fund, as adopted by the Council at its 3511th meeting on 13 December 2016.

¹ The general approach remains partial at this stage because financial amounts are kept between square brackets pending the outcome of the mid-term review of the multi-annual financial framework (MFF).

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on the European Fund for Sustainable Development (EFSD) and establishing the EFSD
Guarantee and the EFSD Guarantee Fund**

Council's partial general approach

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 Articles 209(1) and 212(2) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The European Fund for Sustainable Development (EFSD), as part of the External Investment Plan (EIP), should contribute to the Sustainable Development Goals of the 2030 Agenda for Sustainable Development, in particular poverty eradication, and, where appropriate, to the implementation of the European Neighbourhood Policy and the New Partnership Framework with Third Countries under the European Agenda on Migration thus addressing root causes of irregular migration.

- (2) Investments under the EFSD should complement and reinforce efforts carried out in the context of the Union's migration policy with third countries, including implementation of compacts and the EU-Africa Valetta Action Plan.
- (3) This is in line with the Union Global Strategy for Foreign and Security Policy which embeds challenges such as migration and resilience in the overall EU foreign policy, ensuring coherence and synergies with European development and Neighbourhood policies.
- (4) The EFSD should provide an integrated financial package to crowd-in private sector investments, primarily in Africa and the European Neighbourhood, that contribute to sustainable, inclusive growth and decent job creation with particular focus on gender equality and the empowerment of women and youth, supporting the implementation of the EU Gender Action Plan 2016-2020: "Gender Equality and Women's Empowerment: Transforming the Lives of Girls and Women through EU External Relations 2016-2020."
- (5) In order to fulfil the political commitments of the EU on renewable energy and climate change, a minimum share of 20% for the funding allocated under the EFSD should be devoted to financing and investment operations relevant for these sectors thus contributing to the implementation of the Paris Agreement on Climate Change.
- (6) The EFSD should incorporate the Union's commitments on development effectiveness and deriving from the Addis Ababa Action Agenda on Financing for Development. Actions under the EFSD Regulation should be designed, so as to fulfil the criteria for Official Development Assistance (ODA) established by the Development Assistance Committee (DAC) of the OECD.

- (7) The Commission and the EIB should conclude an agreement specifying the conditions of their cooperation in the management of the EFSD guarantee and should present the agreement to the strategic board.
- (8) The EFSD should be composed of regional investment platforms, combining financing from existing blending facilities and the EFSD Guarantee. The operational board of each regional investment platform should provide support to the Commission in the implementation of this Regulation. The operational board should have similar tasks as laid down by the decisions revamping the regional investment platforms based on the current rules of procedures of the existing blending facilities as created by Commission Decision C(2015)5210 for Africa and by Commission Implementing Decision C(2016)3436 for the Neighbourhood.
- (9) A strategic board should support the Commission in setting strategic guidance and overall investment goals. The strategic board should also support coordination and coherence between the regional platforms. This should strengthen the complementarity of the various instruments in external action. The strategic board should be co-chaired by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy to ensure consistency and coherence with Union external policy objectives and partnership frameworks with third countries.
- (10) The strategic board should support overall coordination, complementarity and coherence between the regional investment platforms and amongst the three pillars of the EIP: the EFSD (Pillar I); technical assistance (Pillar II), improving investment climate and overall policy environment in partner countries (Pillar III).

- (11) The EFSD should operate as 'one-stop-shop' to receive financing proposals from financial institutions and public or private investors and deliver a wide range of financial support to eligible investments. The EFSD Guarantee should be backed by the EFSD Guarantee Fund.
- (12) The EFSD should deploy innovative instruments to support investments and involve the private sector in particular micro-, small- and medium-sized enterprises. It should also allow European investors and private companies, including micro- small- and medium-sized enterprises, to participate more effectively in efforts to achieve sustainable development in partner countries. Bottlenecks and obstacles to investments need to be addressed in this respect.
- (13) Coordination and coherence of the EFSD with the European Investment Bank's (EIB) external lending mandate as set out in Decision (to be adopted), including the EIB resilience initiative, as well as with the ACP Investment Facility, without prejudice to the rules of governance of the EIB, should be ensured through the Strategic Board of the EFSD
- (14) The EFSD Guarantee should be granted to eligible counterparts for financing and investment operations or guarantee instruments for an initial investment period up to 31 December 2020. The guarantee shall be implemented whenever possible under the lead of a European eligible counterpart.
- (15) In order to provide for flexibility, increase the attractiveness for the private sector and maximise the impact of the investments it is appropriate to provide for a derogation from Article 58(1)(c)(vii) of Regulation (EU) No 966/2012 of the European Parliament and the Council² by which the eligible counterparts who are bodies governed by private law could also be bodies which are not entrusted with the implementation of a public-private partnership and could also be bodies governed by the private law of a partner country.

² Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

- (16) The Commission should conclude guarantee agreements with the eligible counterparts setting out the specific provisions under which the EFSD Guarantee is granted to them. These guarantee agreements should provide the legal basis for adequate risk sharing, thus providing incentives for the eligible counterparts to provide financing, as well as the mechanisms and procedures for potential calls on the EFSD Guarantee.
- (17) The Union should make available a guarantee of EUR [1 500 000 000] to establish the EFSD Guarantee. Member States and other contributors should be invited to contribute further to support the EFSD Guarantee Fund in the form of cash (Member States and other contributors) or guarantees (Member States) in order to increase the liquidity cushion and thus allow the increase of the total volume of EFSD Guarantee. Member States, public financial institutions and other contributors should be invited to provide additional funding to the EFSD Guarantee Fund under conditions that should be established in an agreement to be concluded between the Commission on behalf of the Union and the contributor.
- (18) The EFSD Guarantee Fund should be established as a liquidity cushion in the event of a call on the EFSD Guarantee. To reach a level that adequately reflects EU financial liabilities in relation to the EFSD Guarantee, the Union should make available EUR [750 000 000].

- (19) In order to increase the impact of the EFSD Guarantee in view of the needs in the regions concerned, Member States should have the possibility of providing contributions in the form of a guarantee or cash. Those contributions could be earmarked by region, sector or investment window.
- (20) As the funds of the European Development Fund (EDF) are to be used for the countries eligible under the 11th EDF³, it requires the allocation of a minimum of EUR [400 000 000] of EFSD Guarantee coverage for investments throughout the implementation period of the EFSD Guarantee. The EFSD Guarantee should only become available when EUR [400 000 000] of 11th EDF funds have been allocated to the EFSD Guarantee Fund.
- (21) A contribution of EUR [350 000 000] should be provided by the general budget of the Union.
- (22) The Commission should report annually to the European Parliament and the Council on the financing and investment operations covered by the EFSD Guarantee with a view to ensuring accountability to the European citizens. The report should be made public in order to allow relevant stakeholders, including civil society, to express their views. The Commission should also report annually to the European Parliament and the Council on the management of the EFSD Guarantee Fund so that accountability and transparency are ensured.

³ Internal Agreement between the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the financing of European Union aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Treaty on the Functioning of the European Union applies (OJ L 210, 6.8.2013, p. 1).

- (23) In order to take into account lessons learned and allow for further evolvement of the EFSD, the functioning of the EFSD and the use of the EFSD Guarantee Fund should be evaluated by the Commission. The application of this Regulation should be evaluated independently in order to assess the level of conformity of the implementation with the legal basis, but also to establish the applicability and practicability of the Regulation in the achievement of its objectives.
- (24) In order to protect the financial interests of the Union, with a view to establishing whether there has been fraud, corruption, money laundering or any other illegal activity affecting the financial interests of the Union in connection with any financing and investment operations covered by this Regulation, the European Anti-Fraud Office (OLAF) is entitled to carry out investigations in accordance with Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁴, Council Regulation (Euratom, EC) No 2185/96⁵ and Council Regulation (EC, Euratom) No 2988/95.⁶
- (25) In order to contribute to the international fight against tax fraud, tax evasion and money-laundering, the eligible counterparts should not support any activities carried out for illegal purposes and should not participate in any financing or investment operation through a vehicle located in a non-cooperative jurisdiction.

⁴ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

⁵ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p.2).

⁶ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

HAVE ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Subject matter

1. This Regulation establishes the European Fund for Sustainable Development (EFSD), the EFSD Guarantee and the EFSD Guarantee Fund.
2. For the purposes of paragraph 1, this Regulation provides for the Commission on behalf of the Union to conclude guarantee agreements with the eligible counterparts as defined in Article 10.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'regional investment platforms' means blending facilities in line with Article 4 (1) e) of Regulation (EU) No 236/2014 of the European Parliament and the Council⁷ and with Article 40 of Council Regulation (EU) 2015/323⁸ for the contribution from the 11th European Development Fund (EDF) combined with the granting of the EFSD Guarantee as set out in Article 6;

⁷ Regulation (EU) No 236/2014 of the European Parliament and the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action (OJ L 77, 15.03.2014, p. 95).

⁸ Council Regulation (EU) 2015/323 of 2 March 2015 on the financial regulation applicable to the 11th European Development Fund (OJ L 58, 03.03.2015, p.17).

- (2) 'investment window' means a targeted area for support by the EFSD Guarantee to portfolios of investments in specific regions, countries or sectors and implemented via the regional investment platforms;
- (3) 'contributor' means a Member State, an international financial institution or a public institution of a Member State, a public agency or other entities contributing in cash grants or in guarantees to the EFSD Guarantee Fund;
- (4) 'partner countries' means countries that are signatories to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its member States, of the other part, signed in Cotonou on 23 June 2000 ⁹, countries that are listed in Annex I to Regulation (EU) No 232/2014 of the European Parliament and of the Council¹⁰ as well as countries that are eligible for geographic cooperation under Regulation (EU) No 233/2014 of the European Parliament and of the Council; ¹¹
- (5) 'additionality' means the principle ensuring that the EFSD support contributes to sustainable development by achieving positive results above and beyond what could have been achieved without the support. Additionality also means crowding in private sector funding, and addressing market failures or sub-optimal investment situations as well as improving the quality, sustainability, impact or scale of an investment. It may not be aimed at replacing the support of a Member State, private funding or another Union financial intervention, and it shall avoid crowding out other public or private investments.

⁹ OJ L 317, 15.12.2000 as last amended by OJ L 287, 4.11.2010

¹⁰ Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (OJ L 77, 15.3.2014, p. 27).

¹¹ Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020 (OJ L 77, 15.3.2014, p. 44).

CHAPTER II

EUROPEAN FUND FOR SUSTAINABLE DEVELOPMENT

Article 3

Purpose

1. The purpose of the EFSD shall be to contribute to the achievement of the Sustainable Development Goals of the 2030 Agenda, in particular poverty eradication and, where appropriate, contribute to the implementation of the European Neighbourhood Policy and the New Partnership Framework with Third Countries under the European Agenda on Migration, with a particular focus on sustainable, inclusive growth, decent job creation with focus on the youth and women, socio-economic sectors and on the support to micro, small and medium sized enterprises.

The EFSD shall thus address root causes of irregular migration and, inter alia, contribute to sustainable integration of migrants in host countries and reintegration of returned migrants in their countries of origin or transit.

2. The EFSD as an integrated financial package shall support, through the supply of financing capacity in the form of grants, guarantees and other financial instruments to eligible counterparts, investments and increased access to financing, primarily in Africa and the European Neighbourhood, while maximising additionality.

Article 4
Structure of the EFSD

1. The EFSD shall be composed of regional investment platforms, which will combine blending facilities and the EFSD Guarantee.
2. The management of the EFSD shall be ensured by the Commission. The Commission shall work in close cooperation with the European Investment Bank (EIB) as regards the operational management of the EFSD guarantee.
3. Each regional investment platform shall have an operational board that supports the Commission in defining regional and sectorial investment goals, regional, sectorial and thematic investment windows, formulates opinions on the blending operations and discusses the use of the EFSD Guarantee in line with the investment windows to be defined.

Article 5
Strategic board of the EFSD

1. In the management of the EFSD the Commission shall be advised by a strategic board.
2. The strategic board shall advise the Commission on the strategic orientations and priorities of the EFSD Guarantee investments including indicative geographical and thematic coverage for investment windows.

The strategic board shall also support overall coordination, complementarity and coherence between the regional investment platforms, between the three pillars of the EIP, between the EIP and the Union's other long-term and short-term efforts on migration and, without prejudice to the internal rules of governance of the EIB, with the external lending mandate operations managed by the EIB, including the EIB resilience initiative and the ACP Investment Facility while ensuring full complementarity.

3. The strategic board shall be composed of representatives of the Commission and of the High Representative of the Union for Foreign Affairs and Security Policy (High Representative), of all the Member States and of the EIB. The strategic board shall be co-chaired by the Commission and the High Representative.

Contributors, eligible counterparts, partner countries, regional organisations and the European Parliament may be given observer status, where appropriate. The EU Member States shall be consulted prior to the inclusion of any new observer.

4. The strategic board shall meet at least twice a year and, when possible, adopt opinions by consensus.

Additional meetings may be organised at any time by the chair and upon request of one third of its members.

In case consensus cannot be achieved, voting rights, taking due account of the source of financing, shall apply as agreed during the first meeting of the strategic board and laid down in its rules of procedure.

5. The Commission shall report annually to the strategic board about the progress made.

CHAPTER III

EFSD GUARANTEE AND EFSD GUARANTEE FUND

Article 6

The EFSD Guarantee

1. The Union shall provide an irrevocable and unconditional guarantee on first demand to the eligible counterpart for the financing and investment operations covered by this Regulation.
2. The EFSD Guarantee shall be granted as a guarantee on first demand in respect of the instruments referred to in Article 9 and in compliance with the eligibility criteria referred to in Article 8.

Article 7

Requirements for the use of the EFSD Guarantee

1. The granting of the EFSD Guarantee shall be subject to the conclusion of the respective EFSD guarantee agreement between the Commission on behalf of the Union and the eligible counterpart.
2. The investment period during which the EFSD guarantee agreements for supporting financing and investment operations can be concluded with the eligible counterparts shall last until 31 December 2020.
3. The maximum period allowed for eligible counterparts to conclude agreements with financial intermediaries or final beneficiaries shall be four years after the conclusion of the relevant guarantee agreement.

Article 8

Eligibility criteria for the use of the EFSD Guarantee

1. The financing and investment operations eligible for support through the EFSD Guarantee in accordance with Article 3 shall be consistent and aligned with Union policies, as well as with the partner countries' strategies and policies. Operations shall take into account other EU and international support to ensure complementarity with other initiatives and aim at supporting the following general objectives:
 - (a) promote economic and social development, thus pursuing and strengthening amongst others the rule of law, good governance and human rights and with particular focus on sustainability and decent job creation promoting in particular gender equality, empowerment of women and youth, thus addressing root causes of irregular migration, and, inter alia, taking into consideration the needs of countries of origin and transit and contributing to sustainable integration of migrants in host countries and reintegration of returned migrants in their countries of origin;
 - (b) target socio-economic sectors, in particular public and private infrastructure including sustainable energy, water, transport, information and communications technologies, environment, sustainable use of natural resources, agriculture and blue growth, social infrastructure, health, human capital, in order to improve the socio-economic environment;
 - (c) provide finance in favour of micro-, small- and medium-sized enterprises with a particular focus on private sector development while addressing market failures and limiting market distortions;

- (d) provide financial instruments aimed at addressing the bottlenecks to private investments, including first loss guarantees to portfolios guarantees to private sector projects such as loan guarantees for small and medium-sized enterprises and guarantees for specific risks for infrastructure projects and other risk capital;
 - (e) leverage private sector financing, with a particular focus on micro-, small-, and medium-sized enterprises, by addressing bottlenecks and obstacles to investment;
 - (f) allocate at least 20% of the financing to investments with components that contribute to climate action.
2. The EFSD Guarantee shall support financing and investment operations which in particular:
- (a) contribute to sustainable development in its economic, social and environmental dimensions through the implementation of the Agenda 2030 on Sustainable Development and, where appropriate, the European Neighbourhood Policy;
 - (b) contribute to the implementation of the Union's migration policy, including, where appropriate, the New Partnership Framework with Third Countries;
 - (c) provide additionality;
 - (d) ensure alignment of interest by providing adequate risk sharing by the respective eligible counterpart and other prospective partners;
 - (e) are economically and financially viable, with due regard to the possible support from, and co-financing by, private and public partners to the project while taking into account the specific operating environment and capacities of countries identified as experiencing fragility or conflict, LDCs and heavily indebted poor countries where more concessional terms can be given;
 - (f) are technically viable and are sustainable from an environmental and social point of view;
 - (g) maximise the mobilisation of private sector capital;

- (h) respect the principles of development effectiveness including untied aid;
 - (i) contribute to climate action, environmental protection and management thus producing climate co-benefits;
3. On a case by case basis operations may combine financing from different Union instruments.
 4. The Commission, taking due account of the advice provided by the strategic board and after consultation with the operational boards, shall define investment windows for specific regions or partner countries or for both, for specific sectors, for specific projects or for specific categories of final beneficiaries or for both to be funded by instruments referred to in Article 9 to be covered by the EFSD Guarantee up to a fixed amount. The EIB should provide a written opinion on banking related matters to accompany each proposal for investment windows. All requests for financial support within investment windows shall be made to the Commission.

Article 9

Eligible instruments for the EFSD Guarantee

1. The EFSD Guarantee shall be used to cover the risks for the following instruments:
 - (a) loans;
 - (b) guarantees;
 - (c) counter-guarantees;
 - (d) capital market instruments;
 - (e) any other form of funding or credit enhancement, insurance, equity, quasi-equity participations.

2. The instruments listed in paragraph 1 may be provided by eligible counterparts under an investment window or individual project administered by an eligible counterpart. They may be provided for the benefit of partner countries, including countries experiencing fragility or conflict or facing challenges in reconstruction and post-conflict recovery, and these partner countries' institutions, including their public national and private local banks and financial institutions as well as private sector entities of these partner countries. In countries experiencing fragility or conflict, as well as other countries when justified, support may be provided to public sector investments that have relevant effects on private sector development.

Article 10

Eligibility and selection of counterparts

1. The eligible counterparts for the purposes of the EFSD Guarantee shall be:
 - (a) the European Investment Bank and the European Investment Fund;
 - (b) public law bodies;
 - (c) international organisations and their agencies;
 - (d) bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
 - (e) bodies governed by the private law of a Member State that provide adequate financial guarantees, by derogation from Article 58(1)(c)(vii) of Regulation (EU) No 966/2012;
 - (f) bodies governed by the private law of a partner country that provide adequate financial guarantees, by derogation from Article 58(1)(c)(vii) of Regulation (EU) No 966/2012.

2. Eligible counterparts shall comply with the rules and conditions provided for in Article 60 of Regulation (EU, Euratom) No 966/2012.
3. The guarantee shall be implemented whenever possible under the lead of a European eligible counterpart.
4. The Commission shall select the eligible counterparts pursuant to Article 61 of Regulation (EU, Euratom) No 966/2012.

Article 11

Coverage and terms of the EFSD guarantee agreements

1. The EFSD Guarantee shall not, at any time, exceed EUR [1 500 000 000] without prejudice to paragraph 2.
2. Member States may contribute to the EFSD Guarantee Fund in the form of guarantees or cash. Subject to the opinion of the strategic board and Commission approval, other contributors may contribute, in the form of cash.

The amount of the Guarantee exceeding the amount indicated in paragraph 1 shall be granted on behalf of the Union.

Aggregate net payments from the general budget of the Union under the EFSD Guarantee shall not exceed [EUR 1 500 000 000]. Payments for guarantee calls shall be made, where necessary, by the contributing Member States or other contributors on pari passu basis with the Union, without prejudice to paragraph 4.

A contribution agreement shall be concluded between the Commission, on behalf of the Union, and the contributor, which shall contain, in particular, provisions concerning the payment conditions.

3. The EFSD Guarantee shall only become available when a contribution in cash of [EUR 400 000 000] from the 11th European Development Fund (EDF)¹² to the general budget of the Union has been confirmed.

The Member States may contribute to the EFSD Guarantee in the form of guarantees or cash.

The Commission shall inform the European Parliament and the Council about the contributions confirmed.

4. The contributions made by the Member States in the form of a guarantee may only be called for payments of guarantee calls after the funding from the general budget of the Union increased by any other cash contributions has been used on payments of guarantee calls.

At the request of the Member States, the contributions made by them may be earmarked for the initiation of projects in specific regions, countries, sectors or investment windows.

Any contribution may be used to cover guarantee calls regardless of earmarking.

5. At least [EUR 400 000 000] of EFSD Guarantee coverage shall be allocated for investments in the partner countries eligible under the 11th EDF throughout the implementation period of the EFSD Guarantee.
6. At least EUR 100 000 000 of EFSD Guarantee coverage shall be allocated for investments in the partner countries from the Eastern and Southern Neighbourhood, in line with Regulation (EU) No 232/2014 of the European Parliament and of the Council.¹³

¹² Internal Agreement between the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the financing of European Union aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Treaty on the Functioning of the European Union applies, OJ L 210, 6.8.2013, p. 1.

Article 12
Implementation of the EFSD guarantee agreements

1. The Commission on behalf of the Union shall conclude EFSD guarantee agreements with the eligible counterparts selected pursuant to Article 10 and paragraph 4, on the granting of the EFSD Guarantee, which shall be unconditional, irrevocable, at first demand, in favour of the selected eligible counterpart.
2. One or more guarantee agreements shall be concluded for each investment window between the Commission and the eligible counterpart or eligible counterparts selected. In order to address specific needs, the EFSD Guarantee may be granted for individual financing or investment operations. Agreements can be concluded with a consortium of two or more eligible counterparts.
3. The guarantee agreements shall contain, in particular, provisions concerning the following:
 - (a) The objectives and purpose of this regulation including a needs assessment and the expected results taking into account the promotion of corporate social responsibility, in particular through respect of the internationally agreed guidelines and principles including such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.
 - (b) detailed rules on the provision of the EFSD Guarantee, including its arrangements on the coverage and its defined coverage of portfolios and of projects of specific types of instruments as well as a risk analysis of project and portfolio, including on sectoral, regional and national levels;
 - (c) the remuneration of the guarantee which shall reflect the risk level. The remuneration can be partly subsidised in order to give more concessional terms, when duly justified, in particular in countries referred to in article 8 (2) d);

- (d) requirements for the use of the EFSD Guarantee, including payment conditions, such as specific time frames, interest to be paid on due amounts, expenses and recovery costs and possibly necessary liquidity arrangements;
 - (e) claims procedures, including but not limited to triggering events and waiting periods; and provisions and procedures regarding the recovery of claims;
 - (f) provisions regarding the monitoring, reporting and evaluation obligations pursuant to Articles 15 and 16.
4. The Commission, when concluding guarantee agreements with eligible counterparts, shall take due account of:
- (a) the advice and guidance of the boards, in accordance with articles 4 and 5;
 - (b) the objectives of the investment window;
 - (c) the experience, operational, financial and risk management capacity of the counterpart;
 - (d) the amount of own resources that the counterpart is ready to mobilise for the investment window.
5. The approval of financing and investment operations shall be made by the eligible counterpart following its own rules and procedures and in compliance with the terms of the guarantee agreement.
6. The EFSD Guarantee may cover:
- (a) for debt instruments the principal and all interests and amounts due to the selected eligible counterpart, but not received by it in accordance with the terms of the financing operations after an event of default has occurred;
 - (b) for equity investments the amounts invested and their associated financing costs;

- (c) for other financing and investment operations referred to in Article 8(2) the amounts used and their associated funding costs;
 - (d) all relevant expenses and recovery costs related to an event of default, unless deducted from recovery proceeds.
7. The guarantee agreements shall lay down detailed rules on the cover, requirements, eligibility, eligible counterparts, and procedures.

Article 13

The EFSD Guarantee Fund

1. The EFSD Guarantee Fund shall constitute a liquidity cushion from which the eligible counterparts shall be paid in the event of a call on the EFSD Guarantee pursuant to the relevant EFSD guarantee agreement.
2. The EFSD Guarantee Fund shall be endowed by:
 - (a) contributions from the general budget of the Union and other sources;
 - (b) voluntary contributions from Member States and other contributors;
 - (c) returns on invested resources of EFSD Guarantee Fund ;
 - (d) amounts recovered from defaulting debtors in accordance with the recovery provisions laid down in the guarantee agreements;
 - (e) revenues and any other payments received by the Union in accordance with the guarantee agreements.
3. Revenues of the EFSD Guarantee Fund as provided for in points (c) and (e) of paragraph 2 shall constitute internal assigned revenue in accordance with Article 21(4) of Regulation (EU, Euratom) No 966/2012.

4. The management of the resources of the EFSD Guarantee Fund referred to in paragraph 2 shall be entrusted to the EIB under a mandate on behalf of the Union. These resources shall be managed and invested in accordance with the principle of sound financial management and shall follow appropriate prudential rules. On 30 June 2018 the Commission shall submit to the European Parliament and the Council a report evaluating the application of this paragraph which shall provide input for a possible amendment.
5. Endowments to the EFSD Guarantee Fund shall be used to reach an appropriate level of provisioning to cover the total EFSD Guarantee obligations. The provisioning rate shall be at 50% of the total EFSD Guarantee obligations covered by the general budget of the Union.
6. Following an assessment of the adequacy of the level of the EFSD Guarantee Fund in accordance with the report provided for under Article 15(3), the following payments shall be made:
 - (a) any surplus shall be paid to the general budget of the Union;
 - (b) any replenishment of the EFSD Guarantee Fund shall be paid in annual tranches during a maximum period of 3 years starting from year n+1.
7. From 1 January 2021, if, as a result of calls on the EFSD Guarantee, the level of resources in the Guarantee Fund falls below 50% of the provisioning rate referred to in paragraph 5, the Commission shall submit a report on exceptional measures that may be required to replenish the EFSD Guarantee Fund.
8. After a call on the EFSD Guarantee, endowments to the EFSD Guarantee Fund provided for in points (c), (d) and (e) of paragraph 2 exceeding the resources necessary to reach the provisioning rate at the level referred to in paragraph 5 shall be used within the limits of the initial investment period provided for in Article 7(2) to restore the EFSD Guarantee up to its initial amount.

Article 14

Funding of the EFSD Guarantee Fund from the general budget of the Union

A contribution of EUR [350 000 000] shall be provided by the general budget of the Union.

CHAPTER IV

REPORTING, ACCOUNTING AND EVALUATION

Article 15

Reporting and accounting

1. The Commission shall submit an annual report to the European Parliament and to the Council on the financing and investment operation covered by the EFSD Guarantee. This report shall be made public. It shall include the following elements:
 - (a) an assessment of the results contributing to the objectives and purpose of this regulation;
 - (b) an assessment of the financing and investment operations in operation and covered by the EFSD Guarantee, sector, country and regional levels and their compliance with this Regulation including the risk measures and their impact on the financial and economic stability of the partners;
 - (c) an assessment of the additionality, the mobilisation of private sector resources, the estimated and actual outputs and the outcomes and impact of the financing and investment operations covered by the EFSD Guarantee on an aggregated basis, including the impact on decent job creation, climate change, the eradication of poverty and addressing root causes of irregular migration;

- (d) an assessment of the compliance with the requirements concerning the use of the EFSD Guarantee and key performance indicators established for each proposal submitted;
- (e) an assessment of the leverage effect achieved by the operations covered by the EFSD Guarantee;
- (f) the financial amount transferred to beneficiaries and an assessment of financing and investment operations by each counterpart on an aggregated basis including a gender analysis of the operations covered based on evidence and on sex-disaggregated data;
- (g) an assessment of the additionality of financing and investment operations of the eligible counterparts, and of the aggregate risk associated with those operations;
- (h) detailed information on calls on the EFSD Guarantee, losses, returns, amounts recovered and any other payments received as well as overall risk exposure;
- (i) the financial reports on financing and investment operations of the eligible counterparts covered by this Regulation audited by an independent external auditor;
- (j) an assessment of the remuneration of the guarantees.

2. For the purposes of the Commission's accounting, its reporting of the risks covered by the EFSD Guarantee and its management of the EFSD Guarantee Fund, the eligible counterparts with whom a guarantee agreement has been concluded shall provide the Commission and Court of Auditors annually with the financial reports on financing and investment operations covered by this Regulation audited by an independent external auditor, containing, among other, information on:

- (a) the risk assessment of financing and investment operations of the eligible counterparts including information on the Union liabilities measured in compliance with the accounting rules of the Union set by the accounting officer of the Commission based on the internationally accepted accounting standards for the public sector;

- (b) the outstanding financial obligation for the Union arising from the EFSD Guarantee provided towards the eligible counterparts and their financing and investment operations, broken down by individual operations.

The Counterparts shall upon request provide to the Commission any additional information necessary to fulfil the Commission's obligations in relation to this Regulation.

3. By 31 March of each year, the Commission shall submit to the European Parliament, to the Council and to the Court of Auditors, in the context of the financial statements of the Commission, the required information on the situation of the EFSD Guarantee Fund. In addition, it shall, by 31 May of each year, submit to the European Parliament, to the Council and to the Court of Auditors an annual report on the management of the EFSD Guarantee Fund in the previous calendar year, including an assessment of the adequacy of the provisioning and the level of the Guarantee Fund and of the need for its replenishment.

The annual report shall contain the presentation of the financial position of the EFSD Guarantee Fund at the end of the previous calendar year, the financial flows during the previous calendar year as well as the significant transactions and any relevant information on the financial accounts. The report shall also include information about the financial management, the performance, and the risk of the guarantee fund at the end of the previous calendar year.

Article 16

Evaluation and review

1. By 31 December 2019, the Commission shall evaluate the initial functioning of the EFSD. The Commission shall submit its evaluation report to the European Parliament and the Council, containing an external and independent evaluation of the application of this Regulation. This evaluation should assess whether the first operations are in line with the purpose as stipulated in article 3. Taking into account possible recommendations in the report mentioned above, the Commission may submit a legislative proposal.

2. By 31 December 2019 and every two years thereafter, the Commission shall evaluate the use of the EFSD Guarantee Fund. The Commission shall submit its evaluation report to the European Parliament and the Council. That evaluation report shall be accompanied by an opinion of the Court of Auditors.

CHAPTER V

GENERAL PROVISIONS

Article 17

Transparency and public disclosure of information

In accordance with its transparency policies and general Union principles on access to documents and information, the eligible counterparts shall make publicly available on their websites information relating to all financing and investment operations covered by the EFSD Guarantee under this Regulation, relating in particular to the manner in which those operations contribute to the objectives and purpose of this Regulation.

Article 18

Auditing by the Court of Auditors

1. The external audit of the activities undertaken in accordance with this Regulation shall be carried out by the Court of Auditors in accordance with Article 287 of the Treaty on the Functioning of the European Union (TFEU).
2. For the purpose of paragraph 1 of this Article, the Court of Auditors shall, at its request and in accordance with Article 287(3) TFEU, be granted access to any document or information necessary to carry out its task.

Article 19
Anti-fraud measures

1. The Commission or the eligible counterparts shall notify the European Anti-Fraud Office (OLAF) promptly and provide it with the necessary information when, at any stage of the preparation, implementation or closure of financing and investment operations covered by this Regulation, they have grounds for suspecting fraud, corruption, money laundering or any other illegal activity that may affect the financial interests of the Union.

2. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council, Council Regulation (Euratom, EC) No 2185/96 and Council Regulation (EC, Euratom) No 2988/95 in order to protect the financial interests of the Union, with a view to establishing whether there has been fraud, corruption, money laundering or any other illegal activity affecting the financial interests of the Union in connection with any financing and investment operations covered by this Regulation. OLAF may transmit any information obtained in the course of its investigations to the competent authorities of the Member States concerned.

Where such illegal activities are proven, the eligible counterparts shall undertake recovery efforts with respect to its financing and investment operations covered by this Regulation that are concerned by such activities.

Article 20

Excluded activities and non-cooperative jurisdictions

1. In their financing and investment operations, the eligible counterparts shall not support any activities carried out for illegal purposes, including money laundering, terrorist financing, organised crime, tax fraud and tax evasion, corruption, and fraud affecting the financial interests of the Union as well as any activities carried out by persons, entities or bodies subject to EU restrictive measures. The eligible counterparts shall not participate in any financing or investment operation through a vehicle located in a non-cooperative jurisdiction, in accordance with its policy towards weakly regulated or non-cooperative jurisdictions based on policies of the Union, the Organisation for Economic Co-operation and Development or the Financial Action Task Force.
2. In its financing and investment operations, the eligible counterpart shall apply the principles and standards set out in Union law on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and in particular Regulation (EU) 2015/847 of the European Parliament and of the Council¹⁴ and Directive (EU) 2015/849 of the European Parliament and of the Council¹⁵. The eligible counterparts shall make both direct funding and funding via intermediaries under this Regulation contingent upon the disclosure of beneficial ownership information in accordance with Directive (EU) 2015/849.

¹⁴ Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

¹⁵ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

CHAPTER VI
FINAL PROVISIONS

Article 21
Entry into force

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

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

Done at Brussels,

For the European Parliament

For the Council

The President

The President
