

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2011/0418(COD) Procedure completed
European social entrepreneurship funds	
Amended by 2016/0221(COD) Amended by 2017/0230(COD) Amended by 2018/0045(COD)	
Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 3.45.07 Social economy, mutual societies, cooperatives, associations	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		25/10/2011
		PPE AUCONIE Sophie Shadow rapporteur S&D EL KHADRAOUI Saïd ALDE SCHMIDT Olle Verts/ALE GIEGOLD Sven ECR KAMALL Syed	
	Committee for opinion	Rapporteur for opinion	Appointed
	EMPL Employment and Social Affairs		26/03/2012
		S&D BERÈS Pervenche	
	IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
	JURI Legal Affairs		25/01/2012
		NI STOYANOV Dimitar	
Council of the European Union	Council configuration	Meeting	Date
	Environment	3233	21/03/2013
	General Affairs	3180	26/06/2012
	Competitiveness (Internal Market, Industry, Research and Space)	3147	20/02/2012
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel	
European Economic and Social Committee			

Key events			
07/12/2011	Legislative proposal published	COM(2011)0862	Summary
17/01/2012	Committee referral announced in Parliament, 1st reading		
20/02/2012	Debate in Council	3147	Summary
31/05/2012	Vote in committee, 1st reading		
06/06/2012	Committee report tabled for plenary, 1st reading	A7-0194/2012	Summary
12/09/2012	Debate in Parliament		
13/09/2012	Results of vote in Parliament		
13/09/2012	Decision by Parliament, 1st reading	T7-0345/2012	Summary
12/03/2013	Decision by Parliament, 1st reading	T7-0072/2013	Summary
21/03/2013	Act adopted by Council after Parliament's 1st reading		
17/04/2013	Final act signed		
17/04/2013	End of procedure in Parliament		
25/04/2013	Final act published in Official Journal		

Technical information	
Procedure reference	2011/0418(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amended by 2016/0221(COD) Amended by 2017/0230(COD) Amended by 2018/0045(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114-p1
Other legal basis	Rules of Procedure EP 159
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/08183

Documentation gateway					
Legislative proposal		COM(2011)0862	07/12/2011	EC	Summary
Document attached to the procedure		SEC(2011)1512	07/12/2011	EC	
Document attached to the procedure		SEC(2011)1513	07/12/2011	EC	
Committee draft report		PE483.704	27/02/2012	EP	

Amendments tabled in committee		PE486.145	29/03/2012	EP	
Committee opinion	EMPL	PE487.778	25/04/2012	EP	
European Central Bank: opinion, guideline, report		CON/2012/0032 OJ C 175 19.06.2012, p. 0011	25/04/2012	ECB	Summary
Committee opinion	JURI	PE485.841	27/04/2012	EP	
Economic and Social Committee: opinion, report		CES1294/2012	23/05/2012	ESC	
Committee report tabled for plenary, 1st reading/single reading		A7-0194/2012	06/06/2012	EP	Summary
Document attached to the procedure		N7-0122/2012 OJ C 335 01.11.2012, p. 0016	14/06/2012	EDPS	Summary
Text adopted by Parliament, partial vote at 1st reading/single reading		T7-0345/2012	13/09/2012	EP	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0072/2013	12/03/2013	EP	Summary
Draft final act		00074/2012/LEX	17/04/2013	CSL	
Commission response to text adopted in plenary		SP(2013)306	30/04/2013	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Regulation 2013/346](#)
[OJ L 115 25.04.2013, p. 0018](#) Summary

Final legislative act with provisions for delegated acts

Delegated acts

2019/2555(DEA)	Examination of delegated act
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European social entrepreneurship funds

PURPOSE: to provide support to the market for social businesses by improving the effectiveness of fundraising by investment funds that target these businesses.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: increasingly, investors are pursuing social goals and are not only seeking financial returns. In this way, a social investment market has been emerging in the Union, comprised in part by investment funds targeting social undertakings. According to the Global Enterprise Monitor 2009 report, between 3% and 7.5% of the workforce in selected EU Member States were employed in various forms of social businesses. Some estimates suggest social investments could grow rapidly to become a market well in excess of EUR 100 billion.

Social businesses are almost exclusively SMEs and derive significant proportions of their funding from grants, whether from foundations, individuals or from the public sector. As businesses, however, their sustainable growth depends on drawing on a wider range of investments and financing sources. In this regard, the EU market for investment funds has begun to play a significant role, since a market for investment funds whose main objective is investing in social businesses has taken shape. In order to distinguish such targeted funds from wider social investment funds, these targeted funds are referred to as social entrepreneurship funds in this proposal.

Evidence on regulatory and market failings shows two problems are limiting the growth of social entrepreneurship funds: (i) regulatory requirements at EU and national levels are not tailored to facilitate the raising of capital by these kinds of funds; (ii) social entrepreneurship funds are not flourishing across all Member States, but are currently geographically uneven in their distribution.

Accordingly, 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 [Single Market Act](#), the Commission undertook to put in train several measures to ensure EU social businesses can flourish, including by tackling such financing weaknesses. The current proposal is one initiative that delivers on that commitment. It forms part of the Commission's [Social Business Initiative](#), which aims to tackle wider issues in this sector. It is complementary to the [proposal on venture capital funds](#). Both proposals aim to achieve different goals and both proposals, if adopted, will coexist as autonomous legal acts in mutual independence.

IMPACT ASSESSMENT : the impact assessment identified two key problems:

(1) information made available to investors pertaining to social undertakings, the investment policies and screening procedures followed by social entrepreneurship funds and the measurement of social impacts is either insufficient or not presented in a comparable manner;

(2) regulatory approaches to the fundraising of organisations specialising in investments in social businesses were not sufficiently tailored to the specific needs of social entrepreneurship funds.

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

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

LEGAL BASIS: Article 114 TFEU.

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

The proposed Regulation aims to address the problems identified by introducing:

- uniform requirements for the managers of collective investment undertakings that operate under the designation "European Social Entrepreneurship Fund";
- requirements as to the investment portfolio, investment techniques and eligible undertakings that a qualifying social entrepreneurship fund may target;
- uniform rules on which categories of investors a qualifying social entrepreneurship fund may target and on the internal organisation of the managers that market such qualifying funds.

The proposed Regulation also takes the special characteristics of social undertakings into account. Social undertakings have the achievement of positive social impact as their principle objective. Therefore, this Regulation requires that a qualifying portfolio undertaking should have a measurable and positive social impact, use its profits to achieve its primary objective and that it is managed in an accountable and transparent way.

As managers of collective investment undertakings that operate under the designation "European Social Entrepreneurship Fund" will be subject to identical substantive rules across the EU, they will benefit from uniform requirements for registration and an EU-wide passport, which will help create a level playing field for all participants in the market for the funding of social entrepreneurs.

BUDGETARY IMPLICATIONS: there are no budgetary implications.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the EU.

European social entrepreneurship funds

The Council held an orientation debate on draft regulations concerning [European Venture Capital Funds](#) and European Social Entrepreneurship Funds.

The proposals were submitted last December and are part of the [Single Market Act](#) and the [Commission's action plan to improve access to finance for SMEs](#).

Ministers endorsed the overall objective of the proposals and committed to a swift calendar for starting negotiations with the European Parliament, with a view to reaching an agreement by June 2012, as requested by the European Council.

All in all, there is a very broad support to, or at least an increasing convergence of views on the overall objectives and main elements of the proposals, such as the scope of the Regulations, definitions, conditions for an EU-wide passport and the supervision of the venture capital and social entrepreneurship fund managers.

Nevertheless, the Presidency considers that - in order to reach an agreement on the Council's approach on the proposals - some technical issues still require further elaboration at the level of the Working Party.

European social entrepreneurship funds

The Committee on Economic and Monetary Affairs adopted the report by Sophie AUCONIE (EPP, FR) on the proposal for a Regulation of the European Parliament and of the Council on European Social Entrepreneurship Funds (EuSEF).

The committee recommends that the European Parliaments position adopted at first reading under the ordinary legislative procedure should be to amend the Commissions proposal. The amendments proposed are the result of discussions between members of the committee responsible and the representatives of the Member States. They relate in particular to the following points:

Purpose and scope: this Regulation applies to managers of collective investment undertakings that are established in the Union and that manage portfolios of EuSEFs whose assets under management in total:

- do not exceed a threshold of EUR 500 million and are subject to registration with the competent authorities of their home Member State in accordance with [Directive 2011/61/EC](#); or
- meet or exceed the threshold of EUR 500 million and are subject to authorisation in accordance with Directive 2011/61/E, provided that such managers choose to opt into the regime established by this Regulation and comply with it at all times in relation to the EuSEFs that they manage.

EuSEF managers subject to authorisation under this Regulation may additionally manage UCITS subject to authorisation under [Directive 2009/65/EC](#) provided that they are external managers.

It is stipulated that the 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, including promissory notes and certificates of deposit, investments into other EuSEFs and short and medium-term loans, including shareholder loans and grants.

Definitions:

- 'EuSEF' means a collective investment undertaking that invests at least 70% of its aggregate capital contributions in assets that are qualifying investments. The amended text specifies that the percentage shall be calculated on average within a maximum period of five years, and on the basis of amount investible after deduction of all relevant costs and short-term holdings in cash and cash equivalents.
- qualifying portfolio undertaking means an undertaking that, at the time of an investment by the EuSEF, is not listed on a regulated market as defined in Directive 2004/39/EC and which: has the achievement of measurable, positive social impacts as a primary objective in providing: i) services or goods to vulnerable, marginalised, disadvantaged or excluded persons; ii) goods and services through a method of production, which embodies integration of vulnerable, marginalised, disadvantaged or excluded persons.

Conditions for the use of the designation European Social Entrepreneurship Fund: an amendment clarifies that EuSEF managers may borrow, issue debt obligations or provide guarantees, at the level of the EuSEF, provided that such borrowings, debt obligations or guarantees are covered by uncalled commitments and thus do not increase the exposure of the fund beyond its commitments.

As far as the EuSEF they manage is concerned, EuSEF managers shall:

- 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;
- 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.

Indicators: EuSEF managers shall employ for each EuSEF they manage procedures to measure and monitor through clear and comparable indicators the extent to which the qualifying portfolio undertakings, in which the EuSEF invests, achieve the positive social impact that they are committed to. The indicators shall include at least the following:

- employment and labour markets;
- standards and rights relating to job quality;
- social inclusion and protection of particular groups;
- equality of treatment and opportunities and non- discrimination;
- public health and safety;
- access to and effects on social protection, health and educational systems.

Own funds: at all times, EuSEF managers shall have sufficient own funds of at least equivalent to 25% of their previous years fixed overheads. Where a EuSEF has not completed a year of business following its establishment, the requirement shall be that the EuSEF has own funds of at least 25% of the fixed overheads projected in its business plan, unless an adjustment to that plan is required by the competent authorities.

Depository: for each EuSEF it manages, the manager shall ensure that a single depository is appointed. The depository i) shall be an institution which is subject to prudential regulation and ongoing supervision; ii) shall be responsible for verifying ownership and maintaining a record of the assets of the qualifying EuSEF; and iii) shall be liable to the EuSEF and its investors for any loss suffered as a result of negligence or intentional failure.

Supervision and administrative cooperation: the competent authorities shall cooperate with ESMA for the purposes of this Regulation in accordance with Regulation (EU) No 1095/2010. They shall provide ESMA, without delay, with all the information necessary to carry out its duties in accordance with Regulation (EU) No 1095/2010. In particular, ESMA and the competent authorities shall exchange all information and documentation necessary to identify and remedy breaches to this Regulation.

In the event of disagreement between the competent authorities concerning the exercise of their respective duties under this Regulation, any of the authorities concerned may refer the matter for mediation by ESMA.

Review: at the latest, four years after the Regulations entry into force, the Commission shall review the Regulation and provide an analysis of, among other things, the following particular points:

- an analysis of the geographic locations of EuSEFs and of the qualifying portfolio undertakings in which they invest;
- the appropriateness of establishing a European label for "social enterprises";
- the scope of this Regulation, including the possibility of extending the marketing of EuSEFs to retail investors, and the additional safeguards for investors protection which such an extension of scope would involve;
- the appropriateness of complementing this Regulation with a European tax framework aimed at encouraging social entrepreneurship.

European social entrepreneurship funds

The European Parliament adopted amendments to the proposal for a Regulation of the European Parliament and of the Council on European Social Entrepreneurship Funds (EuSEF).

The matter was referred back to the committee responsible and the vote was postponed until a subsequent plenary session.

The main amendments adopted by Parliament are as follows:

Purpose, scope and definitions: according to Parliament, the Regulation should establish 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 EuSEF .

The amendments adopted clarify the following points:

- the Regulation applies to managers of collective investment undertakings whose assets under management in total do not exceed the threshold referred to in [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;
- EuSEF managers registered under this Regulation whose assets in total subsequently grow to exceed the threshold referred to in Directive 2011/61/EU, and who therefore become subject to authorisation with the competent authorities of their home Member State in accordance with 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 this Regulation at all times in relation to the EuSEF;
- 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.

Definition of EuSEF: EuSEFs should be deemed to be those funds that intend to invest at least 70% of their aggregate capital contributions and uncalled committed capital in such undertakings. Parliament seeks to clarify the following points:

- EuSEF should not be permitted to invest more than 30% of its aggregate capital contributions and uncalled committed capital in assets other than qualifying investments. This means that whereas the 30% should be the maximum limit for non-qualifying investments at all times, the 70% should be reserved for qualifying investments during the life time of the EuSEF
- A EuSEF should not be established in tax havens or uncooperative jurisdictions, such as third countries characterised in particular by i) no or nominal taxes, ii) a lack of appropriate cooperation arrangements between the competent authorities of the home Member State of the EuSEF manager and the supervisory authorities of the third country where the social entrepreneurship fund is established, or iii) a lack of effective exchange of information in tax matters.

Conditions for the use of the EuSEF designation: Members consider that a EuSEF manager may not

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.

Furthermore, 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.

EuSEF managers should, among other things:

- act honestly, with due skill, care and diligence and fairly in conducting their activities;
- 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;
- treat their investors fairly; and
- ensure that no investor obtains preferential treatment, unless such preferential treatment is disclosed in the rules or instruments of incorporation of the EuSEF.

Delegation of functions to third parties: 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.

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

Clear and transparent indicators: 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:

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

Sound and transparent valuation process: valuation procedures used shall ensure that the assets are valued properly and that the asset value is calculated at least once a year.

In order to ensure consistency in the valuation of qualifying portfolio undertakings, the European Securities and Markets Authority (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.

Annual report: this report 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. 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.

Investor information: EuSEF shall, in relation to the EuSEFs they manage, inform their investors, in a clear and understandable manner, about 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.

Registration: the competent authority of the home Member State shall register the EuSEF manager only if it is satisfied that 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.

Supervision and administrative cooperation: the amended text stipulates that 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.

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 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.

Dispute settlement: in case of disagreement between competent authorities of home and host Member States, competent authorities may refer the matter to the European Securities and Markets Authority (ESMA), which may act in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

Review: Members want that at the latest four years after the date of application of this Regulation, the Commission shall review this Regulation. The review shall include a general survey of the functioning of the rules in this Regulation and the experience acquired in applying them, including:

- the extent to which the designation EuSEF has been used;
- the geographical location of EuSEFs and whether additional measures are necessary to ensure that EuSEFs are established in accordance with the Regulation;
- the geographical and sectoral distribution of investments undertaken by EuSEFs;
- the appropriateness of establishing a European label for social enterprises;
- the possibility of extending the marketing of EuSEFs to retail investors;
- 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;
- an examination of possible tax obstacles for social entrepreneurship funds and an assessment of possible tax incentives aimed at encouraging social entrepreneurship in the Union.

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

European social entrepreneurship funds

The European Parliament adopted by 603 votes to 27, with 46 abstentions, a legislative resolution on the proposal for a Regulation of the European Parliament and of the Council on European Social Entrepreneurship Funds (EuSEF).

The report was referred back to the committee at the 13 September 2012 plenary session.

Parliament adopted its position at first reading, following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise reached between the European Parliament and the Council. They amend the proposal as follows:

Purpose, scope and definitions: under the compromise, the new Regulation lays down uniform requirements and conditions for managers of collective investment undertakings that wish to use the designation EuSEF in relation to the marketing of qualifying social entrepreneurship funds in the Union, thereby contributing to the smooth functioning of the internal market.

The amendments adopted clarify the following points:

- the Regulation applies to managers of collective investment undertakings whose assets under management in total do not exceed the threshold referred to in 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;
- EuSEF managers registered under this Regulation whose assets in total subsequently grow to exceed the threshold referred to in Directive 2011/61/EU, and who therefore become subject to authorisation with the competent authorities of their home Member State in accordance with 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 this Regulation at all times in relation to the EuSEF;
- 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.

Definition of EuSEF: the purposes of this Regulation, a collective investment undertaking shall mean an AIF which intends to:

- intends to invest at least 70% of its aggregate capital contributions and uncalled committed capital in assets that are qualifying

- investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents, within a time frame laid down in its rules or instruments of incorporation;
- does not use more than 30% of its aggregate capital contributions and uncalled committed capital for the acquisition of assets other than qualifying investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents;
- is established within the territory of a Member State.

A qualifying portfolio undertaking shall mean an undertaking that it is established within the territory 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 the Financial Action Task Force on Anti-Money Laundering and Terrorist Financing and has signed an agreement with the home Member State of the manager of a qualifying social entrepreneurship fund and with each other Member State in which the units or shares of the qualifying social entrepreneurship fund are intended to be marketed to ensure that the third country fully complies with the standards laid down in the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters.

Conditions for the use of the EuSEF designation: the amended text stipulates that 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. Furthermore, 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.

EuSEF managers should, among other things:

- act honestly and fairly, with due skill, care and diligence and fairly in conducting their activities;
- 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;
- treat their investors fairly; and
- ensure that no investor obtains preferential treatment, unless such preferential treatment is disclosed in the rules or instruments of incorporation of the EuSEF.

Delegation of functions to third parties: where a manager of a qualifying social entrepreneurship fund delegates functions to third parties, the manager's liability towards the qualifying social entrepreneurship fund or the investors therein shall remain unaffected. The manager shall not delegate functions to the extent that, in essence, it can no longer be considered to be the manager of the qualifying social entrepreneurship fund and to the extent that it becomes a letter-box entity. At all times, managers of qualifying social entrepreneurship funds shall ensure that they are able to justify the sufficiency of their own funds to maintain operational continuity and disclose their reasoning as to why those funds are sufficient.

Clear and transparent indicators: for each fund that they manage, managers should implement clear and transparent procedures 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:

- employment and labour markets;
- standards and rights related to job quality;
- social inclusion and protection of particular groups;
- equal treatment, equal opportunities and non-discrimination;
- public health and safety;
- access to and effects on social protection and on health and educational systems.

Sound and transparent valuation process: the valuation procedures used shall ensure that the assets are valued properly and that the asset value is calculated at least annually. 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.

Annual report: this report shall also disclose the profits earned by the qualifying social entrepreneurship fund at the end of its life and, where applicable, the profits distributed during its life. An audit of the qualifying social entrepreneurship fund shall be conducted at least annually.

Investor information: prior to the investment decision, managers of qualifying social entrepreneurship funds shall inform their investors in a clear and understandable manner, of the amount of own funds available to that manager and a detailed statement as to why that manager considers that amount to be sufficient for maintaining the adequate human and technical resources necessary for the proper management of its funds.

Registration: the competent authority of the home Member State shall register the qualifying social entrepreneurship fund manager only if the persons who effectively conduct the business of managing qualifying social entrepreneurship funds are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the manager of a qualifying social entrepreneurship fund.

Supervision and administrative cooperation: the amended text stipulates that where there are clear and demonstrable grounds that lead the competent authority of the host Member State to believe that the manager of a qualifying social entrepreneurship fund is in breach of this Regulation within its territory, it shall promptly inform the competent authority of the home Member State accordingly. The competent authority of the home Member State shall take appropriate measures.

If the manager of a qualifying social entrepreneurship fund persists in acting in a manner that is clearly in breach of this Regulation despite measures taken by the competent authority of the home Member State or because that competent authority has failed to take measures within reasonable time, the competent authority of the host Member State may, after informing the competent authority of the home Member State, take all the appropriate measures in order to protect investors, including prohibiting the manager of a qualifying social entrepreneurship fund from carrying out any further marketing of its qualifying social entrepreneurship funds within the territory of the host Member State.

In the event 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 Regulation (EU) No 1095/2010.

Review: the text provides that by 22 July 2015 or 22 July 2017 depending on the case, the Commission shall review this Regulation which shall include a general survey of the functioning of the rules in this Regulation and the experience acquired in applying them, including:

- the extent to which the designation EuSEF has been used;
- the geographical and sectoral distribution of investments undertaken by qualifying social entrepreneurship funds;
- the appropriateness of establishing a European label for social enterprises;
- the possibility of extending the marketing of qualifying social entrepreneurship funds to retail investors;
- an examination of possible tax obstacles for social entrepreneurship funds and an assessment of possible tax incentives aimed at encouraging social entrepreneurship in the Union.

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, in particular those laid down in Directive 2011/61/EU. Following that review, and after consulting ESMA, the Commission shall submit a report to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal.

European social entrepreneurship funds

PURPOSE: improve access to finance for SMEs through the establishment of a valid EU-wide passport for managers of European social entrepreneurship funds (EuSEF) relating to the marketing of their funds.

LEGISLATIVE ACT: Regulation (EU) No 346/2013 of the European Parliament and of the Council on European social entrepreneurship funds.

CONTENT: this Regulation lays down uniform requirements and conditions for managers of collective investment undertakings that wish to use the designation "EuSEF" in relation to the marketing of qualifying social entrepreneurship funds in the Union.

It also lays down uniform rules for:

- the marketing of qualifying social entrepreneurship funds to eligible investors across the Union,
- the portfolio composition of qualifying social entrepreneurship funds,
- the eligible investment instruments and techniques to be used by qualifying social entrepreneurship funds;
- the organisation, conduct and transparency of managers that market qualifying social entrepreneurship funds across the Union.

This Regulation applies to managers of collective investment undertakings whose assets under management in total do not exceed the threshold referred to in [Directive 2011/61/EU](#) on Alternative Investment Fund Managers.

Qualifying social entrepreneurship fund shall mean a collective investment undertaking that:

- intends to invest at least 70% of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments;
- does not use more than 30% of its aggregate capital contributions and uncalled committed capital for the acquisition of assets other than qualifying investments;
- is established within the territory of a Member State.

Qualifying portfolio undertaking shall mean an undertaking that 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. It should be established within the territory 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 the Financial Action Task Force on Anti-Money Laundering and Terrorist Financing.

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: (i) employment and labour markets; (ii) standards and rights related to job quality; (iii) social inclusion and protection of particular groups; (iv) equal treatment, equal opportunities and non-discrimination; (v) public health and safety; (vi) access to and effects on social protection and on health and educational systems.

Where a manager of a qualifying social entrepreneurship fund intends to delegate functions to third parties, the managers liability towards the qualifying social entrepreneurship fund and the investors therein should not be affected by such delegation of functions to a third party. Moreover, the manager should not delegate functions to the extent that, in essence, it can no longer be considered to be a manager of a qualifying social entrepreneurship fund and has become a letter-box entity.

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 manager of a qualifying social entrepreneurship fund with the uniform requirements set out in this Regulation. To that end, managers that intend to market their funds under the designation "EuSEF" should inform the competent authority of their home Member State of that intention. The competent authority should register the manager if all necessary information has been provided and if suitable arrangements to comply with the requirements of this Regulation are in place. Such registration should be valid across the entire Union.

By 22 July 2015 and 22 July 2017 depending on the case, the Commission shall start a review including an assessment, inter alia, on : (i) the extent to which the designation "EuSEF" has been used ; (ii) the geographical and sectoral distribution of investments undertaken by the funds; (iii) the appropriateness of establishing a European label for "social enterprises".

It should be noted that this Regulation adopted in parallel with the [Regulation on European venture capital funds](#) forms part of [Single Market Act](#) to stimulate growth and job creation and of the [action plan to improve access to finance for SMEs](#).

ENTRY INTO FORCE: 15/05/2013. The Regulation shall apply from 22/07/2013 (with the exception of certain measures which are applicable from 15/05/2013).

DELEGATED ACTS: the Commission may adopt delegated acts in order to specify the requirements provided by this Regulation. The power to adopt these acts is conferred on the Commission for a period of four years from 15 May 2013. 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 (this delay may be extended by two months). If the European Parliament or the Council object, the delegated act shall not enter into force.