

Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (Text with EEA relevance)

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EUROPEAN PARLIAMENT AND OF THE COUNCIL

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

Acting in accordance with the ordinary legislative procedure⁽³⁾,

Whereas:

- (1) Increasingly, as investors also pursue social goals and are not only seeking financial returns, a social investment market has been emerging in the Union, comprising, in part, investment funds targeting social undertakings. Such investment funds provide funding to social undertakings that act as drivers of social change by offering innovative solutions to social problems, for example by helping to tackle the social consequences of the financial crisis, and by making a valuable contribution to meeting the objectives of the Europe 2020 Strategy set out in the Commission Communication of 3 March 2010 entitled ‘Europe 2020: A strategy for delivering smart, sustainable and inclusive growth’.
- (2) This Regulation is part of the Social Business Initiative established 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’.
- (3) It is necessary to lay down a common framework of rules regarding the use of the designation ‘EuSEF’ for qualifying social entrepreneurship funds, in particular on the composition of the portfolio of funds that operate under that designation, their eligible investment targets, the investment tools they may employ and the categories of investors that are eligible to invest in them 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 proper 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 qualifying social entrepreneurship funds. Investors should, furthermore, be able to compare the investment propositions of different qualifying social entrepreneurship funds. It is necessary to remove significant obstacles to cross-border fundraising by qualifying social entrepreneurship funds, 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 for this Regulation is Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted by consistent case law of the Court of Justice of the European Union.

- (4) It is necessary to adopt a regulation establishing uniform rules applicable to qualifying social entrepreneurship funds and imposing corresponding obligations on their managers in all Member States that wish to raise capital across the Union using the designation ‘EuSEF’. Those requirements should ensure the confidence of investors that wish to invest in such funds. The regulation should not apply to existing national schemes that allow investment in social businesses and that do not use the designation ‘EuSEF’.
- (5) Defining the quality requirements for the use of the designation ‘EuSEF’ in the form of a regulation ensures that those requirements are directly applicable to the managers of collective investment undertakings that raise funds using that designation. This also ensures uniform conditions for the use of the designation by preventing diverging national requirements as a result of the transposition of a directive. Managers of collective investment undertakings that use the designation should follow the same rules across the Union, which will also boost the confidence of investors. This Regulation reduces regulatory complexity and the managers’ costs of compliance with often divergent national rules governing such funds, especially for those managers that want to raise capital on a cross-border basis. It also contributes to eliminating competitive distortions.
- (6) It should be possible for a qualifying social entrepreneurship fund to be externally or internally managed. Where a qualifying social entrepreneurship fund is internally managed, the fund is also the manager and should therefore comply with all relevant requirements for managers under this Regulation and be registered in accordance with this Regulation. A qualifying social entrepreneurship fund which is internally managed should not, however, be permitted to be the external manager of other collective investment undertakings or of undertakings for collective investment in transferable securities (UCITS).
- (7) 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 only apply to managers of collective investment undertakings

other than UCITS falling within the scope 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⁾, which are established in the Union and are registered with the competent authority in their home Member State in accordance with Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers⁽⁵⁾, provided that those managers manage portfolios of qualifying social entrepreneurship funds. However, external managers of qualifying social entrepreneurship funds that are registered under this Regulation should also be allowed to manage UCITS, subject to authorisation under Directive 2009/65/EC.

- (8) Furthermore, this Regulation applies only to managers of those collective investment undertakings with assets under management that in total do not exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU. The calculation of the threshold for the purposes of this Regulation is the same as for the threshold of point (b) of Article 3(2) of Directive 2011/61/EU.
- (9) However, managers registered in accordance with this Regulation and with assets under management that in total subsequently exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU, and that therefore become subject to authorisation with the competent authorities of their home Member State in accordance with Article 6 of that Directive, should be able to continue to use the designation ‘EuSEF’ in relation to the marketing of qualifying social entrepreneurship funds 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 qualifying social entrepreneurship fund. This applies both to existing qualifying social entrepreneurship funds and to qualifying social entrepreneurship funds established after exceeding the threshold.
- (10) 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.
- (11) This Regulation should establish uniform rules on the nature of qualifying social entrepreneurship funds, in particular on qualifying portfolio undertakings into which the qualifying social entrepreneurship funds 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 qualifying social entrepreneurship fund and alternative investment funds that engage in other, less specialised, investment strategies, for example buyouts, which this Regulation is not seeking to promote.
- (12) In order to ensure the necessary clarity and certainty, this Regulation should also lay down uniform criteria to identify social undertakings as qualifying portfolio undertakings. A social undertaking should be defined as an operator in the social economy, the main objective of which is to have a social impact rather than to make a profit for its 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 manner, in particular, by involving employees, consumers and stakeholders that are affected by its commercial activities.

- (13) As the principal objective of social undertakings is to have a positive social impact rather than to maximise profits this Regulation should only promote support for 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 the reintegration of marginalised groups into the labour market by providing employment, training or other support. Social undertakings use their profits to achieve their primary social objective and are managed in an accountable and transparent way. Where, on an exceptional basis, a qualifying portfolio undertaking wishes to distribute profits to its shareholders and owners, it should have predefined procedures and rules on how profits are to be distributed. Those rules should specify that such distribution of profits does not undermine the primary social objective of the qualifying social portfolio undertaking.
- (14) Social undertakings include a large range of undertakings, taking various legal forms, which 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 which embodies their social objective, but the activities of which 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.
- (15) In line with the aim of precisely circumscribing the collective investment undertakings which are to be covered by this Regulation and in order to ensure a focus on providing capital to social undertakings, qualifying social entrepreneurship funds should be deemed to be funds that intend to invest at least 70 % of their aggregate capital contributions and uncalled committed capital in such undertakings. Qualifying social entrepreneurship funds should not be permitted to invest more than 30 % of their aggregate capital contributions and uncalled committed capital in assets other than qualifying investments. This means that whereas the 30 % threshold should be the maximum limit for non-qualifying investments at all times, the 70 % threshold should be reserved for qualifying investments during the life of the qualifying social entrepreneurship fund. Those thresholds 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 thresholds.
- (16) The purpose of this Regulation is to enhance the growth of social undertakings in the Union. Investments in qualifying portfolio undertakings established in third countries can bring more capital to qualifying social entrepreneurship funds and can 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 manager of the 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 or by a lack of effective exchange of information in tax matters.

- (17) A qualifying social entrepreneurship fund should, as a first step, be established in the Union in order to be entitled to use the designation ‘EuSEF’ as established by this Regulation. The Commission should, within two years of the date of application of this Regulation, review the limitation on the use of the designation ‘EuSEF’ to funds established in the Union, taking into account experience of applying the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters.
- (18) Managers of social entrepreneurship funds should be able to attract additional capital commitments during the life of a fund. Such additional capital commitments during the life of the qualifying social entrepreneurship fund 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 criteria and subject to conditions set out in the qualifying social entrepreneurship fund’s rules or instruments of incorporation.
- (19) Taking into account the specific funding needs of social undertakings, it is necessary to achieve clarity regarding the types of instruments that a qualifying social entrepreneurship fund should use for such funding. Therefore, this Regulation lays down uniform rules on the eligible instruments to be used by a qualifying social entrepreneurship fund when making investments, which include equity and quasi-equity instruments, debt instruments, such as promissory notes and certificates of deposit, investments into other qualifying social entrepreneurship funds, secured or unsecured loans, and grants. To prevent dilution of the investments into qualifying portfolio undertakings, qualifying social entrepreneurship funds should only be permitted to invest in other qualifying social entrepreneurship funds where those other qualifying social entrepreneurship funds have not themselves invested more than 10 % of their aggregate capital contributions and uncalled committed capital into other qualifying social entrepreneurship funds.
- (20) The core activities of qualifying social entrepreneurship funds are to provide financing to social undertakings through primary investments. Qualifying social entrepreneurship funds should neither participate in systemically important banking activities outside of the usual prudential regulatory framework (so-called ‘shadow banking’) nor follow typical private equity strategies, such as leveraged buyouts.
- (21) To maintain the necessary flexibility in its investment portfolio, qualifying social entrepreneurship funds should be able to invest in assets other than qualifying investments to the extent that those other investments do not exceed the 30 % threshold for non-qualifying investments. Holdings of cash and cash equivalents should not be

taken into account for the calculation of that threshold because such holdings are not to be considered as investments. Qualifying social entrepreneurship funds should invest in a manner consistent with their ethical investment strategy, for instance they should not undertake investments that finance the weapons industry, that risk breaches of human rights or that entail electronic waste-dumping.

- (22) In order to ensure that the designation ‘EuSEF’ is reliable and easily recognisable for investors across the Union only managers of qualifying social entrepreneurship funds that comply with the uniform quality criteria as set out in this Regulation should be eligible to use the designation ‘EuSEF’ when marketing qualifying social entrepreneurship funds across the Union.
- (23) In order to ensure that qualifying social entrepreneurship funds 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.
- (24) In order to ensure that qualifying social entrepreneurship funds 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. Managers of qualifying social entrepreneurship funds should only be permitted to borrow, issue debt obligations or provide guarantees, at the level of the qualifying social entrepreneurship fund, 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. Cash advances from investors of qualifying social entrepreneurship funds that are fully covered by capital commitments from those investors do not increase the exposure of the qualifying social entrepreneurship fund 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 provided that the amount of such borrowing does not exceed the fund’s uncalled committed capital.
- (25) In order to ensure that qualifying social entrepreneurship funds are only marketed to investors who have the experience, knowledge and expertise to make their own investment decisions and properly assess the risks that those funds carry, and in order to maintain investor confidence and trust in qualifying social entrepreneurship funds, certain specific safeguards should be laid down. Therefore, qualifying social entrepreneurship funds 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⁽⁶⁾. However, in order to have a sufficiently broad investor base for investments into qualifying social entrepreneurship funds 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 qualifying social entrepreneurship funds are only marketed to investors that have the appropriate profile for making such investments. Those safeguards exclude

marketing through the use of periodic savings plans. Furthermore, investments made by executives, directors or employees involved in the management of a manager of a qualifying social entrepreneurship fund should be possible when investing in the qualifying social entrepreneurship funds they manage, as such individuals are knowledgeable enough to participate in such investments.

- (26) To ensure that only managers of qualifying social entrepreneurship funds that fulfil uniform quality criteria as regards their behaviour in the market use the designation ‘EuSEF’, there should be rules on the conduct of business and the relationship of those managers with their investors. For the same reason, uniform conditions concerning the handling of conflicts of interest by such managers should be established. Those rules and conditions should also require the manager to have the necessary organisational and administrative arrangements in place to ensure a proper handling of conflicts of interest.
- (27) Where a manager of a qualifying social entrepreneurship fund intends to delegate functions to third parties, the manager’s 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. The 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 manager, and, in particular, should not prevent the manager from acting, or the fund from being managed, in the best interests of its investors.
- (28) 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 a manager of a qualifying social entrepreneurship fund put in place procedures for measuring the positive social impacts which are to be achieved by investment into qualifying portfolio undertakings.
- (29) Currently funds that target social outcomes or impacts typically assess and collate information on the extent to which social undertakings achieve the outcomes or impacts that 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 and measuring the social outcomes or impacts have thereby developed. For instance, a firm that seeks to employ disadvantaged persons may report on the numbers of such persons employed who would not otherwise have been employed and a firm that seeks to improve the rehabilitation of prisoners may assess its performance in terms of recidivism rates. The funds aid the social undertakings in preparing and providing information on their goals and achievements, and gathering it for investors. While information about social outcomes and 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 or impacts targeted and because of the variety of approaches. In order to encourage the greatest consistency and comparability

of such information in the longer term and the greatest efficiency in the procedures for obtaining the information, delegated acts should be developed in this area. Such delegated acts should also ensure greater clarity for supervisors, qualifying social entrepreneurship funds and social undertakings.

- (30) In order to ensure the integrity of the designation 'EuSEF', quality criteria as regards the organisation of a manager of a qualifying social entrepreneurship fund should be established. Therefore, uniform, proportionate requirements for the need to maintain adequate technical and human resources should be laid down.
- (31) In order to ensure the proper management of qualifying social entrepreneurship funds and the ability of their managers to cover potential risks arising from their activities, uniform, proportionate requirements for managers of qualifying social entrepreneurship funds to maintain sufficient own funds should be laid down. The amount of such own funds should be sufficient to ensure the continuity and proper management of the qualifying social entrepreneurship funds.
- (32) It is necessary for the purpose of investor protection to ensure that the assets of qualifying social entrepreneurship funds are properly evaluated. The rules or instruments of incorporation of qualifying social entrepreneurship funds should therefore contain provisions on the valuation of assets. This should ensure the integrity and the transparency of the valuation.
- (33) In order to ensure that managers of qualifying social entrepreneurship funds which make use of the designation 'EuSEF' give sufficient account of their activities, uniform rules on annual reports should be established.
- (34) 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.
- (35) To ensure the integrity of the designation 'EuSEF' in the eyes of investors, it is necessary that the designation only be used by managers of qualifying social entrepreneurship funds that are fully transparent as to their investment policy and their investment targets. Uniform rules on disclosure requirements that are incumbent on managers in relation to its investors should therefore be laid down. Those rules should include those elements that are specific to investments into social undertakings, so that greater consistency and comparability of such information can 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 qualifying social entrepreneurship fund which are not invested into qualifying portfolio undertakings and how these are selected.
- (36) 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.

- (37) In order to facilitate the efficient cross-border marketing of qualifying social entrepreneurship fund, registration of the manager should be effected as quickly as possible.
- (38) In order to ensure effective supervision of compliance with the uniform criteria laid down in this Regulation, rules on the circumstances under which information supplied to the competent authority in the home Member State needs to be updated should be established.
- (39) For the effective supervision of the requirements laid down in this Regulation, a process for cross-border notifications between the competent supervisory authorities, to be triggered by the registration of a manager of a qualifying social entrepreneurship fund in its home Member State, should also be established.
- (40) In order to maintain transparent conditions for the marketing of qualifying social entrepreneurship funds 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 managers of qualifying social entrepreneurship fund and the qualifying social entrepreneurship funds that they manage that are registered in accordance with this Regulation.
- (41) Where the competent authority of the host Member State has clear and demonstrable grounds for believing that a manager of a qualifying social entrepreneurship fund is acting in breach of this Regulation within its territory, it should promptly inform the competent authority of the home Member State, which should take appropriate measures.
- (42) If a manager of a qualifying social entrepreneurship fund persists in acting in a manner that is clearly in conflict with this Regulation 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 take measures within a reasonable timeframe, the competent authority of the host Member State should be able, after informing the competent authority of the home Member State, to take all the appropriate measures in order to protect investors, including the possibility of preventing the manager concerned from carrying out any further marketing of its qualifying social entrepreneurship funds within the territory of the host Member State.
- (43) In order to ensure the effective supervision of the uniform criteria established, this Regulation contains a list of supervisory powers that competent authorities must have at their disposal.

- (44) In order to ensure proper enforcement, this Regulation contains administrative penalties and other 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 ‘EuSEF’ only by managers of qualifying social entrepreneurship funds managers that are registered in accordance with this Regulation. A breach of those key provisions should entail, where appropriate, prohibition of the use of the designation and the removal of the manager concerned from the register.
- (45) Supervisory information should be exchanged between the competent authorities in the home and host Member States and ESMA.
- (46) 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.
- (47) The contribution of qualifying social entrepreneurship funds to the growth of a European market for social investments will depend on the take-up of the designation ‘EuSEF’ by managers of qualifying social entrepreneurship funds, 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 that 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.
- (48) In order to specify the requirements set out in this Regulation, the power to adopt acts in accordance with Article 290 TFEU 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 managers of qualifying social entrepreneurship funds 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 to the Council.
- (49) 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.

- (50) The Commission should be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU 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.
- (51) Within four years of the date of application of this Regulation, the Commission should carry out a review of this Regulation in order to assess the development of the market of qualifying social entrepreneurship funds across the Union. 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.
- (52) Furthermore, within four years of the date of application of this Regulation, the Commission should start a review of the interaction between this Regulation and other rules on collective investment undertakings and their managers, in particular those of Directive 2011/61/EU. In particular, that review should address the scope of this Regulation assessing whether it is necessary to extend the scope to allow 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 to the Council accompanied, if appropriate, by legislative proposals.
- (53) In the context of that 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 the designation 'EuSEF' to other Union programmes such as Horizon 2020, which also seek to support innovation in the Union.
- (54) In relation to the Commission's examination of tax obstacles to cross-border venture capital investments as provided for in the Commission Communication of 7 December 2011 entitled 'An action plan to improve access to finance for SMEs' and in the context of its 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 Union.
- (55) 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, to the Council and to the Commission.
- (56) 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 (Article 7) and freedom to conduct a business (Article 16).
- (57) 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 data⁽⁸⁾ 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 (EC) 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 data by the Community institutions and bodies and on the free movement of such data⁽⁹⁾, 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.

- (58) Since the objective of this Regulation, namely to develop an internal market for qualifying social entrepreneurship funds by laying down a framework for the registration of managers of qualifying social entrepreneurship funds, thereby facilitating the marketing of qualifying social entrepreneurship funds 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 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:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

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, thereby contributing to the smooth functioning of the internal market.

It also lays down uniform rules for the marketing of qualifying social entrepreneurship funds to eligible investors across the Union, for the portfolio composition of qualifying social entrepreneurship funds, for the eligible investment instruments and techniques to be used by qualifying social entrepreneurship funds as well as for the organisation, conduct and transparency of managers that market qualifying social entrepreneurship funds across the Union.

Article 2

1 This Regulation applies to managers of collective investment undertakings as defined in point (a) of Article 3(1) that meet the following conditions:

- a their assets under management in total do not exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU;
- b they are established in the Union;
- c they 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; and

d they manage portfolios of qualifying social entrepreneurship funds.

2 Where the total assets under management of managers of qualifying social entrepreneurship fund registered in accordance with Article 15 subsequently exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU, and where those managers are therefore subject to authorisation in accordance with Article 6 of that Directive, they may continue to use the designation ‘EuSEF’ in relation to the marketing of qualifying social entrepreneurship funds in the Union provided that, at all times in relation to the qualifying social entrepreneurship funds that they manage, they:

- a comply with the requirements laid down in Directive 2011/61/EU; and
- b continue to comply with Articles 3, 5, 10, Article 13(2) and points (d), (e) and (f) of Article 14(1) of this Regulation.

3 Where managers of qualifying social entrepreneurship funds are external managers and are registered in accordance with Article 15, they may additionally manage undertakings for collective investment in transferable securities (UCITS), subject to authorisation under Directive 2009/65/EC.

Article 3

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

- a ‘collective investment undertaking’ means an AIF as defined in point (a) of Article 4(1) of Directive 2011/61/EU;
- b ‘qualifying social entrepreneurship fund’ means a collective investment undertaking that:
 - (i) 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;
 - (ii) 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;
 - (iii) is established within the territory of a Member State;
- c ‘manager of a qualifying social entrepreneurship fund’ means a legal person the regular business of which is managing at least one qualifying social entrepreneurship fund;
- d ‘qualifying portfolio undertaking’ means an undertaking that:
 - (i) at the time of an investment by the qualifying social entrepreneurship fund is not admitted to trading on a regulated market or on a multilateral trading facility (MTF) as defined in point (14) and point (15) of Article 4(1) of Directive 2004/39/EC;
 - (ii) 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;
- (iii) uses its profits primarily 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 and with the predefined procedures and rules therein, which determine the circumstances in which profits are distributed to shareholders and owners to ensure that any such distribution of profits does not undermine its primary objective;
- (iv) is managed in an accountable and transparent way, in particular by involving workers, customers and stakeholders affected by its business activities;
- (v) 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,
 - 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 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;
- e ‘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 qualifying social entrepreneurship fund from the qualifying portfolio undertaking,
 - a qualifying portfolio undertaking in exchange for an equity security issued by the qualifying portfolio undertaking, or
 - an undertaking of which the qualifying portfolio undertaking is a majority-owned subsidiary and which is acquired by the qualifying social entrepreneurship fund 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 qualifying social entrepreneurship funds, provided that those qualifying social entrepreneurship funds have not themselves invested more than 10 % of their aggregate capital contributions and uncalled committed capital in qualifying social entrepreneurship funds;
- (iv) secured or unsecured loans granted by the qualifying social entrepreneurship fund to a qualifying portfolio undertaking;
- (v) any other type of participation in a qualifying portfolio undertaking;

- f ‘relevant costs’ means all fees, charges and expenses which are directly or indirectly borne by investors and which are agreed between the manager of a qualifying social entrepreneurship fund and the investors therein;
- g ‘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;
- h ‘quasi-equity’ means any type of financing instrument which is a combination of equity and debt, where 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;
- i ‘marketing’ means a direct or indirect offering or placement at the initiative of the manager of a qualifying social entrepreneurship fund, or on its behalf, of units or shares of a qualifying social entrepreneurship fund that is managed by that manager to or with investors domiciled or with a registered office in the Union;
- j ‘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 qualifying social entrepreneurship fund, to acquire an interest in, or to make capital contributions to, that fund;
- k ‘home Member State’ means the Member State where the manager of a qualifying social entrepreneurship fund 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;
- l ‘host Member State’ means the Member State, other than the home Member State, where the manager of a qualifying social entrepreneurship fund markets qualifying social entrepreneurship funds in accordance with this Regulation;
- m ‘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 falling within the scope of this Regulation.

With regard to point (c) of the first subparagraph, where the legal form of a qualifying social entrepreneurship fund permits internal management and where the governing body of the fund does not appoint an external manager, the qualifying social entrepreneurship fund itself shall be registered as the manager of a qualifying social entrepreneurship fund in accordance with Article 15. A qualifying social entrepreneurship fund that is registered as an internal manager of a social entrepreneurship fund shall not be registered as an external manager of a qualifying social entrepreneurship fund of other collective investment undertakings.

2 The Commission shall be empowered to adopt delegated acts in accordance with Article 26 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 (ii) of point (d) of paragraph 1 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

Managers of qualifying social entrepreneurship funds that comply with the requirements set out in this Chapter shall be entitled to use the designation ‘EuSEF’ in relation to the marketing of qualifying social entrepreneurship funds across the Union.

Article 5

1 Managers of qualifying social entrepreneurship funds shall ensure that, when acquiring assets other than qualifying investments, no more than 30 % of the qualifying social entrepreneurship fund's aggregate capital contributions and uncalled committed capital is used for the acquisition of such assets. The 30 % threshold 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 that threshold as cash and cash equivalents are not to be considered as investments.

2 Managers of qualifying social entrepreneurship funds shall not employ at the level of the qualifying social entrepreneurship fund 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, engaging in derivative positions or by any other means.

3 Managers of qualifying social entrepreneurship funds may only borrow, issue debt obligations or provide guarantees, at the level of the qualifying social entrepreneurship fund where such borrowings, debt obligations or guarantees are covered by uncalled commitments.

Article 6

1 Managers of qualifying social entrepreneurship fund shall market the units and shares of the qualifying social entrepreneurship fund exclusively to investors which are considered to be professional clients in accordance with Section I of Annex II to Directive 2004/39/EC, or which may, on request, be treated as professional clients in accordance with Section II of Annex II to Directive 2004/39/EC, or to other investors that:

- a commit to invest a minimum of EUR 100 000; and
- b 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.

2 Paragraph 1 shall not apply to investments made by executives, directors or employees involved in the management of a manager of a qualifying social entrepreneurship fund when investing in the qualifying social entrepreneurship funds that they manage.

Article 7

Managers of qualifying social entrepreneurship funds shall, in relation to the qualifying social entrepreneurship funds they manage:

- (a) act honestly, fairly and with due skill, care and diligence in conducting their activities;
- (b) apply appropriate policies and procedures for preventing malpractices that can reasonably be expected to affect the interests of the investors and the qualifying portfolio undertakings;
- (c) conduct their business activities in such a way as to promote the positive social impact of the qualifying portfolio undertakings in which they have invested, the best interests of the qualifying social entrepreneurship funds that they manage, the investors therein 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 in which they invest;

- (f) treat their investors fairly;
- (g) ensure that no investor obtains preferential treatment, unless such preferential treatment is disclosed in the rules or instruments of incorporation of the qualifying social entrepreneurship fund.

Article 8

1 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.

2 Any delegation of functions under paragraph 1 shall not undermine the effectiveness of supervision of the manager of a qualifying social entrepreneurship fund, and, in particular, shall not prevent that manager from acting, or the qualifying social entrepreneurship fund from being managed, in the best interests of the investors therein.

Article 9

1 Managers of qualifying social entrepreneurship funds shall identify and avoid conflicts of interest and, where they cannot be avoided, manage and monitor and, in accordance with paragraph 4, disclose those conflicts of interest promptly in order to prevent them from adversely affecting the interests of the qualifying social entrepreneurship funds and the investors therein and to ensure that the qualifying social entrepreneurship funds that they manage are fairly treated.

2 Managers of qualifying social entrepreneurship funds shall identify in particular those conflicts of interest that may arise between:

- a managers of qualifying social entrepreneurship funds, persons who effectively conduct the business of those managers, employees of, or any person who directly or indirectly controls or is controlled by, those managers, and the qualifying social entrepreneurship fund managed by those managers, or the investors therein;
- b a qualifying social entrepreneurship fund or the investors therein, and another qualifying social entrepreneurship fund managed by the same manager, or the investors therein;
- c the qualifying social entrepreneurship fund or the investors therein, and a collective investment undertaking or UCITS managed by the same manager, or the investors therein.

3 Managers of qualifying social entrepreneurship funds shall maintain and operate effective organisational and administrative arrangements in order to comply with the requirements laid down in paragraphs 1 and 2.

4 Disclosures of conflicts of interest as referred to in paragraph 1 shall be provided, where organisational arrangements made by a manager of a qualifying social entrepreneurship fund 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. A manager of a qualifying social entrepreneurship fund shall disclose in clear terms 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 26 specifying:

- a the types of conflicts of interest referred to in paragraph 2 of this Article;
- b the steps that managers of a qualifying social entrepreneurship fund must take, in terms of structures and organisational and administrative procedures, in order to identify, prevent, manage, monitor and disclose conflicts of interest.

Article 10

1 Managers of a qualifying social entrepreneurship fund shall employ for each qualifying social entrepreneurship fund that they manage, procedures to measure the extent to which the qualifying portfolio undertakings, in which the qualifying social entrepreneurship fund invests, achieve the positive social impact to which they are committed. 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;
- d equal treatment, equal opportunities and non-discrimination;
- e public health and safety;
- f access to and effects on social protection and on health and educational systems.

2 The Commission shall be empowered to adopt delegated acts in accordance with Article 26 specifying the details of the procedures referred to in paragraph 1 of this Article, in relation to different qualifying portfolio undertakings.

Article 11

1 At all times, managers of qualifying social entrepreneurship funds shall have sufficient own funds and use adequate and appropriate human and technical resources as necessary for the proper management of the qualifying social entrepreneurship fund that they manage.

2 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 as specified in Article 14.

Article 12

1 Rules for the valuation of assets shall be laid down in the rules or instruments of incorporation of the qualifying social entrepreneurship fund and shall ensure a sound and transparent valuation process.

2 The valuation procedures used shall ensure that the assets are valued properly and that the asset value is calculated at least annually.

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 a measurable positive social impact and the use of their profits first and foremost for the achievement of that impact.

Article 13

1 Managers of qualifying social entrepreneurship funds shall make available an annual report to the competent authority of the home Member State for each qualifying social entrepreneurship fund that they manage, by six months following the end of the financial year. The report shall describe the composition of the portfolio of the qualifying social

entrepreneurship fund and the activities of the previous year. It 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. It shall contain the audited financial accounts for the qualifying social entrepreneurship fund. The annual report shall be produced in accordance with existing reporting standards and the terms agreed between the managers of qualifying social entrepreneurship funds and the investors. Managers of qualifying social entrepreneurship funds shall provide the report to investors on request. Managers of qualifying social entrepreneurship funds and investors may agree additional disclosures to each other.

- 2 The annual report shall at least include the following:
- a details, as appropriate, of the overall social outcomes achieved by the investment policy and the method used to measure those 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 qualifying social entrepreneurship fund which are not invested into qualifying portfolio undertakings occurred on the basis of the criteria as referred to in point (f) of Article 14(1);
 - d a summary of the activities that the manager of a qualifying social entrepreneurship fund has undertaken in relation to the qualifying portfolio undertakings as referred to in point (l) of Article 14(1);
 - e information on the nature and purpose of the investments other than qualifying investments referred to in Article 5(1).

3 An audit of the qualifying social entrepreneurship fund shall be conducted at least annually. The audit shall confirm that money and assets are held in the name of the qualifying social entrepreneurship fund and that the manager of a qualifying social entrepreneurship fund has established and maintained adequate records and checks in respect of the use of any mandate or control over the money and assets of the qualifying social entrepreneurship fund and the investors therein.

4 Where the manager of a qualifying social entrepreneurship fund 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 the securities of which are admitted to trading on a regulated market⁽¹⁰⁾ in relation to the qualifying social entrepreneurship fund the information referred to in paragraphs 1 and 2 of this Article may be provided separately or as an additional part of the annual financial report.

Article 14

1 Managers of qualifying social entrepreneurship funds shall, in relation to the qualifying social entrepreneurship funds that they manage, inform their investors, prior to the investment decision of the latter, in a clear and understandable manner, of the following:

- a the identity of that manager and of any other service providers contracted by that manager in relation to their management, and a description of their duties;
- b the amount of own funds available to that manager, as well as 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 qualifying social entrepreneurship funds;
- c a description of the investment strategy and objectives of the qualifying social entrepreneurship fund, including:

- (i) the types of qualifying portfolio undertakings in which it intends to invest;
 - (ii) any other qualifying social entrepreneurship fund in which it intends to invest;
 - (iii) the types of qualifying portfolio undertakings in which any other qualifying social entrepreneurship fund, as referred to in point (ii), intends to invest;
 - (iv) the non-qualifying investments which it intends to make;
 - (v) the techniques that it intends to employ; and
 - (vi) any applicable investment restrictions;
- d the positive social impact being targeted by the investment policy of the qualifying social entrepreneurship fund, including, where relevant, projections of such outcomes as may be reasonable, and information on past performance in this area;
 - e the methodologies to be used to measure social impacts;
 - f 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;
 - g a description of the risk profile of the qualifying social entrepreneurship fund and any risks associated with the assets in which the fund may invest or the investment techniques that may be employed;
 - h a description of the qualifying social entrepreneurship fund's valuation procedure and of the pricing methodology for valuing assets, including the methods used for valuing qualifying portfolio undertakings;
 - i a description of how the remuneration of the manager of a qualifying social entrepreneurship fund is calculated;
 - j a description of all relevant costs and of the maximum amounts thereof;
 - k where available, the historical financial performance of the qualifying social entrepreneurship fund;
 - l the business support services and the other support activities the manager of a qualifying social entrepreneurship fund is providing or arranging through third parties in order to facilitate the development, growth or in some other respect the ongoing operations of the qualifying portfolio undertakings in which the qualifying social entrepreneurship fund invests, or, where these services or activities are not provided, an explanation of that fact;
 - m a description of the procedures by which the qualifying social entrepreneurship fund 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 manager of a qualifying social entrepreneurship fund is required to publish a prospectus in accordance with Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading⁽¹¹⁾ or in accordance with national law in relation to the qualifying social entrepreneurship fund, the information referred to in paragraph 1 of this Article may be provided separately or as a part of the prospectus.

4 The Commission shall be empowered to adopt delegated acts in accordance with Article 26 specifying:

- a the content of the information referred to in points (c) to (f) and (l) of paragraph 1 of this Article;

- b how the information as referred to in points (c) to (f) and (l) 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 15

1 Managers of qualifying social entrepreneurship funds that intend to use of the designation 'EuSEF' for the marketing of their qualifying social entrepreneurship funds shall inform the competent authority of their home Member State of their intention and shall provide the following information:

- a the identity of the persons who effectively conduct the business of managing qualifying social entrepreneurship funds;
- b the identity of the qualifying social entrepreneurship funds, the units or shares of which are to 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 manager of a qualifying social entrepreneurship fund intends to market each qualifying social entrepreneurship fund;
- e a list of Member States where the manager of a qualifying social entrepreneurship fund has established, or intends to establish, qualifying social entrepreneurship funds.

2 The competent authority of the home Member State shall register the qualifying social entrepreneurship fund manager only if the following conditions are met:

- a 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;
- b the information required referred to in paragraph 1 is complete;
- c the arrangements notified according to in point (c) of paragraph 1 are suitable for complying with the requirements of Chapter II;
- d the list notified according to point (e) of paragraph 1 reveals that all of the qualifying social entrepreneurship funds are established in accordance with point (b)(iii) of Article 3(1) of this Regulation.

3 Registration under this Article shall be valid in the entire territory of the Union and shall allow managers of qualifying social entrepreneurship funds to market qualifying social entrepreneurship funds under the designation 'EuSEF' throughout the Union.

Article 16

Managers of qualifying social entrepreneurship funds shall inform the competent authority of the home Member State where they intend to market:

- (a) a new qualifying social entrepreneurship fund; or
- (b) an existing qualifying social entrepreneurship fund in a Member State not mentioned in the list referred to in point (d) of Article 15(1).

Article 17

1 Immediately after the registration of a manager of a qualifying social entrepreneurship fund, the addition of a new qualifying social entrepreneurship fund, the addition of a new domicile for the establishment of a qualifying social entrepreneurship fund or the addition of a new Member State where a manager of a qualifying social entrepreneurship fund intends to market qualifying social entrepreneurship funds, the competent authority of the home Member State shall notify the Member States indicated in accordance with point (d) of Article 15(1) and ESMA, accordingly.

2 The host Member States indicated in accordance with point (d) of Article 15(1) of this Regulation shall not impose, on the manager of a qualifying social entrepreneurship fund registered in accordance with Article 15, any requirements or administrative procedures in relation to the marketing of its qualifying social entrepreneurship fund, 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 under this Article.

4 ESMA shall submit those draft implementing technical standards to the Commission by 16 February 2014.

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 18

ESMA shall maintain a central database, publicly accessible on the internet, listing all managers of qualifying social entrepreneurship funds, registered in accordance with Article 15, and the qualifying social entrepreneurship funds that they market, as well as the countries in which those funds are marketed.

Article 19

1 The competent authority of the home Member State shall supervise compliance with the requirements laid down in this Regulation.

2 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.

3 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.

Article 20

Competent authorities shall, in accordance with national law, have all supervisory and investigatory powers that are necessary for the exercise of their functions. They shall, in particular, have 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 manager of a qualifying social entrepreneurship fund to provide information without delay;
- (c) require information from any person related to the activities of the manager of a qualifying social entrepreneurship fund or the qualifying social entrepreneurship fund;
- (d) carry out on-site inspections with or without prior announcement;
- (e) take appropriate measures to ensure that a manager of a qualifying social entrepreneurship fund continues to comply with this Regulation;
- (f) issue an order to ensure that a manager of a qualifying social entrepreneurship fund complies with this Regulation and desists from a repetition of any conduct that may consist of a breach of this Regulation.

Article 21

1 Member States shall lay down the rules on administrative penalties and other measures applicable to breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The administrative penalties and other measures provided for shall be effective, proportionate and dissuasive.

2 By 16 May 2015 the Member States shall notify the Commission and ESMA of the rules referred to in paragraph 1. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

Article 22

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 manager of a qualifying social entrepreneurship fund:

- 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 qualifying social entrepreneurship fund to non-eligible investors;
- c uses the designation 'EuSEF' but is not registered in accordance with Article 15;
- d uses the designation 'EuSEF' for the marketing of funds which are not established in accordance with point (b)(iii) of Article 3(1);
- e has obtained registration through false statements or any other irregular means in breach of Article 15;
- f fails to act honestly, fairly or with due skill, care or diligence, in conducting their business, in breach of point (a) of Article 7;
- g fails to apply appropriate policies and procedures for preventing malpractices, in breach of point (b) of Article 7;
- h repeatedly fails to comply with the requirements under Article 13 regarding the annual report;

- i repeatedly fails to comply with the obligation to inform investors in accordance with Article 14.

2 In the cases referred to in paragraph 1, the competent authority of the home Member State shall, as appropriate:

- a take measures to ensure that the manager of a qualifying social entrepreneurship fund concerned complies with Articles 5 and 6, points (a) and (b) of Article 7 and Articles 13, 14 and 15;
- b prohibit the use of the designation ‘EuSEF’ and remove the manager of a qualifying social entrepreneurship fund concerned from the register.

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

4 The right to market one or more qualifying social entrepreneurship funds 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 (b) of paragraph 2.

Article 23

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 24

1 All persons who work or who have worked for the competent authorities or for ESMA, as well as auditors and experts instructed by the competent authorities or by 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 managers of qualifying social entrepreneurship funds and qualifying social entrepreneurship funds 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 managers of qualifying social entrepreneurship funds and qualifying social entrepreneurship funds.

3 Where competent authorities or ESMA receive confidential information in accordance with paragraph 2, they may use it only in the course of their duties and for the purpose of administrative and judicial proceedings.

Article 25

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 Article 19 of

Regulation (EU) No 1095/2010, in so far as the disagreement does not relate to point (b)(i) or to point (d)(i) of Article 3(1) of this Regulation.

CHAPTER IV

TRANSITIONAL AND FINAL PROVISIONS

Article 26

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 Article 3(2), Article 9(5), Article 10(2) and Article 14(4) shall be conferred on the Commission for a period of four years from 15 May 2013. 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 Article 3(2), Article 9(5), Article 10(2) and Article 14(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5 A delegated act adopted pursuant to Article 3(2), Article 9(5), Article 10(2) or Article 14(4) 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 27

1 The Commission shall review this Regulation in accordance with paragraph 2. 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 managers of qualifying social entrepreneurship funds in different Member States, whether domestically or on a cross-border basis;
- b the geographical and sectoral distribution of investments undertaken by qualifying social entrepreneurship funds;
- c the appropriateness of the information requirements under Article 14, in particular whether they are sufficient to enable investors to take an informed investment decision;
- d the use of the different qualifying investments by qualifying social entrepreneurship funds and what impact this has had on the development of social undertakings across the Union;
- e the appropriateness of establishing a European label for ‘social enterprises’;

- f 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;
 - g 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;
 - h an analysis of the procedures implemented by managers of qualifying social entrepreneurship funds so as to measure the positive social impact generated by the qualifying portfolio undertakings referred to in Article 10 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;
 - i the possibility of extending the marketing of qualifying social entrepreneurship funds to retail investors;
 - j the appropriateness of including qualifying social entrepreneurship funds within eligible assets under Directive 2009/65/EC;
 - k the appropriateness of complementing this Regulation with a depositary regime;
 - l 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;
 - m an evaluation of any barriers that may have impeded investment into funds using the designation ‘EuSEF’, including the impact on institutional investors of other Union law of a prudential nature.
- 2 The review referred to in paragraph 1 shall be conducted:
- a by 22 July 2017 as regards points (a) to (e) and (g) to (m); and
 - b by 22 July 2015 as regards point (f).

3 Following the review referred to in paragraph 1, 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.

Article 28

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, in particular those laid down in Directive 2011/61/EU. That 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 of social entrepreneurship funds with assets under management that in total exceed the threshold provided for in Article 2(1) to become managers of qualifying social entrepreneurship fund in accordance with this Regulation.

2 Following the review referred to in paragraph 1, 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.

Article 29

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 Article 3(2), Article 9(5), Article 10(2) and Article 14(4), which shall apply from 15 May 2013.

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

Done at Strasbourg, 17 April 2013.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

L. CREIGHTON

Status: This is the original version (as it was originally adopted).

- (1) OJ C 175, 19.6.2012, p. 11.
- (2) OJ C 229, 31.7.2012, p. 55.
- (3) Position of the European Parliament of 12 March 2013 (not yet published in the Official Journal) and decision of the Council of 21 March 2013.
- (4) OJ L 302, 17.11.2009, p. 32.
- (5) OJ L 174, 1.7.2011, p. 1.
- (6) OJ L 145, 30.4.2004, p. 1.
- (7) OJ L 331, 15.12.2010, p. 84.
- (8) OJ L 281, 23.11.1995, p. 31.
- (9) OJ L 8, 12.1.2001, p. 1.
- (10) OJ L 390, 31.12.2004, p. 38.
- (11) OJ L 345, 31.12.2003, p. 64.