

European social entrepreneurship funds

2011/0418(COD) - 13/09/2012 - Text adopted by Parliament, partial vote at 1st reading/single reading

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.