

European social entrepreneurship funds

2011/0418(COD) - 12/03/2013 - Text adopted by Parliament, 1st reading/single reading

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

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

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

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

The amendments adopted clarify the following points:

- the Regulation applies to managers of collective investment undertakings whose assets under management in total do not exceed the threshold referred to in Directive 2011/61/EU, who are established in the Union and who are subject to registration with the competent authorities of their home Member State;
- EuSEF managers registered under this Regulation whose assets in total subsequently grow to exceed the threshold referred to in Directive 2011/61/EU, and who therefore become subject to authorisation with the competent authorities of their home Member State in accordance with that Directive, may continue to use the designation ‘EuSEF’ in relation to the marketing of EuSEF in the Union, provided that they comply with the requirements laid down in that Directive and that they continue to comply with this Regulation at all times in relation to the EuSEF;
- EuSEF managers that are registered in accordance with this Regulation may additionally manage UCITS subject to authorisation under Directive 2009/65/EC provided that they are external managers.

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

- intends to invest at **least 70% of its aggregate capital** contributions and uncalled committed capital in assets that are qualifying investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents, within a time frame laid down in its rules or instruments of incorporation;
- **does not use more than 30% of its aggregate capital contributions** and uncalled committed capital for the acquisition of assets other than qualifying investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents;
- **is established within the territory of a Member State.**

A ‘**qualifying portfolio undertaking**’ shall mean an undertaking that it is established within the territory of a Member State, or in a third country provided that the third country is **not listed as a Non-Cooperative Country** and Territory by the Financial Action Task Force on Anti-Money Laundering and Terrorist Financing and has **signed an agreement** with the home Member State of the manager of a

qualifying social entrepreneurship fund and with each other Member State in which the units or shares of the qualifying social entrepreneurship fund are intended to be marketed to ensure that the third country fully complies with the standards laid down in the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters.

Conditions for the use of the “EuSEF” designation: the amended text stipulates that the EuSEF manager may not employ at the level of the EuSEF any method by which the exposure of the fund will be increased beyond the level of its committed capital. Furthermore, the EuSEF manager may only borrow, issue debt obligations or provide guarantees, at the level of the EuSEF, where such borrowings, debt obligations or guarantees are covered by uncalled commitments.

EuSEF managers should, among other things:

- act honestly and fairly, with due skill, care and diligence and fairly in conducting their activities;
- apply a high level of diligence in the selection and ongoing monitoring of investments in qualifying portfolio undertakings and the positive social impact of those undertakings;
- treat their investors fairly; and
- ensure that no investor obtains preferential treatment, unless such preferential treatment is disclosed in the rules or instruments of incorporation of the EuSEF.

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

Clear and transparent indicators: for each fund that they manage, managers should implement clear and transparent procedures and include indicators that may, depending on the social objective and nature of the qualifying portfolio undertaking, include one or more of the following subjects:

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

Sound and transparent valuation process: the valuation procedures used shall ensure that the assets are valued properly and that the asset value is calculated at least annually. In order to ensure consistency in the valuation of qualifying portfolio undertakings, **ESMA shall develop guidelines** setting out common principles on the treatment of investments in such undertakings.

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

Investor information: prior to the investment decision, managers of qualifying social entrepreneurship funds shall inform their investors in a **clear and understandable manner**, of the **amount of own funds**

available to that manager and a **detailed statement** as to why that manager considers that amount to be sufficient for maintaining the adequate human and technical resources necessary for the proper management of its funds.

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

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

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

In the event of disagreement between competent authorities of Member States on an assessment, action or omission of one competent authority in areas where this Regulation requires cooperation or coordination between competent authorities from more than one Member State, competent authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Regulation (EU) No 1095/2010.

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

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

By 22 July 2017, the Commission shall start a **review of the interaction between this Regulation and other rules** on collective investment undertakings and their managers, in particular those laid down in Directive 2011/61/EU. Following that review, and after consulting ESMA, the Commission shall submit a report to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal.