

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

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

European Commission	Commission DG	Commissioner
	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel
European Economic and Social Committee		

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

Technical information	
Procedure reference	2011/0418(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amended by 2016/0221(COD) Amended by 2017/0230(COD) Amended by 2018/0045(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 114-p1
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE483.704	27/02/2012	
Amendments tabled in committee		PE486.145	29/03/2012	
Committee opinion	EMPL	PE487.778	25/04/2012	
Committee opinion	JURI	PE485.841	27/04/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0194/2012	06/06/2012	Summary
Text adopted by Parliament, partial vote at 1st reading /single reading		T7-0345/2012	13/09/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0072/2013	12/03/2013	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00074/2012/LEX	17/04/2013	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0862 	07/12/2011	Summary
Document attached to the procedure	SEC(2011)1512 	07/12/2011	
Document attached to the procedure	SEC(2011)1513 	07/12/2011	
Commission response to text adopted in plenary	SP(2013)306	30/04/2013	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2011)0862	01/03/2012	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
ECB	European Central Bank: opinion, guideline, report	CON/2012/0032 OJ C 175 19.06.2012, p. 0011	25/04/2012	Summary
	Economic and Social Committee:			

EESC	opinion, report	CES1294/2012	23/05/2012	
EDPS	Document attached to the procedure	N7-0122/2012 OJ C 335 01.11.2012, p. 0016	14/06/2012	Summary

Additional information		
Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act	
Regulation 2013/0346 OJ L 115 25.04.2013, p. 0018	Summary

Delegated acts	
Reference	Subject
2019/2555(DEA)	Examination of delegated act

European social entrepreneurship funds

2011/0418(COD) - 14/06/2012

Executive summary of the EDPS Opinion on the proposals for a regulation on European venture capital funds and for a regulation on European social entrepreneurship funds.

The EDPS welcomes the fact that he is consulted by the Commission and recommends that references to this Opinion are included in the preambles of the proposed regulations.

He notes that the proposed regulations on European venture capital funds and on European social entrepreneurship funds will complement each other. The proposed regulations aim to solve different problems with both types of funds due to the fragmentation and dispersion of the European risk capital sector. Both proposals, if adopted, will coexist as autonomous legal acts in mutual independence.

The implementation and application of the legal framework for [venture capital funds](#) and social entrepreneurship funds may in certain cases affect the rights of individuals relating to the processing of their personal data. On the basis of this observation, the EDPS considers that - with regard to data protection issues - **the proposed regulations are too general**. It is unclear in some cases whether processing of personal data will take place under certain provisions of the proposed regulations, for example regarding exchanges of information, investigatory powers of the competent authorities and establishment of European Securities and Markets Authority (ESMA) databases.

Accordingly, the EDPS recommends the following:

- inserting provisions in the proposed regulations **emphasising the full applicability of existing data protection legislation**. The EDPS also suggests that the reference to Directive 95/46/EC be clarified by specifying that the provisions will apply in accordance with the national rules which implement Directive 95/46/EC;
- **specifying the kind of personal information that can be processed** and transferred under the proposed regulations, as well as (i) defining the purposes for which personal data can be processed and transferred by the competent authorities concerned and ESMA and (ii) fixing a proportionate data retention period for the above processing or at least introduce precise criteria for its establishment;
- limiting competent authorities' access to documents and information to **specifically identified and serious violations of the proposed regulations** and in cases where a reasonable suspicion (which should be supported by concrete initial evidence) exists that a breach has been committed;

- introducing a requirement for competent authorities to request documents and information by formal decision, **specifying the legal basis and the purpose of the request** and what information is required, the time limit within which the information is to be provided as well as the right of the addressee to have the decision reviewed by a court of law;
- **clarifying the legal basis of the fund manager databases** by introducing more detailed provisions in the proposed regulations. Such provisions must comply with the requirements of Regulation (EC) No 45/2001. In particular, the provision establishing the database must (i) identify the purpose of the processing operations and establish which are the compatible uses; (ii) identify which entities (ESMA, competent authorities, Commission) will have access to which data stored in the database and will have the possibility to modify the data; (iii) ensure the right of access and appropriate information for all the data subjects whose personal data may be stored and exchanged; (iv) define and limit the retention period for the personal data to the minimum necessary for the performance of such purpose;
- the investigatory powers of the competent authorities and the establishment of ESMA databases of fund managers, essential elements of the processing of personal data, **should not be left to be decided by delegated acts**, but included in the relevant substantive articles of the proposed regulations;
- including references in the proposed regulations to the **need to consult the EDPS in so far as the delegated and implementing acts concern the processing of personal data**.

Lastly, the EDPS notes that there are comparable provisions to the ones referred to in this Opinion in several pending and possible future proposals, such as those discussed in the EDPS Opinions on the legislative package on the revision of the banking legislation, credit rating agencies, markets in financial instruments (MIFID/MIFIR) and market abuse. Therefore, the EDPS recommends reading this Opinion in close conjunction with his Opinions of 10 February 2012 on the abovementioned initiatives.

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.

European social entrepreneurship funds

2011/0418(COD) - 17/04/2013 - Final act

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

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

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

It also lays down uniform rules for:

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

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

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

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

Qualifying portfolio undertaking shall mean an undertaking that has the achievement of **measurable, positive social impacts** as its primary objective in accordance with its articles of association, statutes or any other rules or instruments of incorporation establishing the business. It should be established within the territory of a Member State, or in a third country provided that the third country is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force on Anti-Money Laundering and Terrorist Financing.

The managers shall ensure that these **procedures are clear and transparent and include indicators** that may, depending on the social objective and nature of the qualifying portfolio undertaking, include one or more of the following subjects: (i) employment and labour markets; (ii) standards and rights related to job quality; (iii) social inclusion and protection of particular groups; (iv) equal treatment, equal opportunities and non-discrimination; (v) public health and safety; (vi) access to and effects on social protection and on health and educational systems.

Where a manager of a qualifying social entrepreneurship fund intends to **delegate functions to third parties**, the 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**.

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

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

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

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

DELEGATED ACTS: the Commission may adopt delegated acts in order to specify the requirements provided by this Regulation. The power to adopt these acts is conferred on the Commission for a period of **four years from 15 May 2013**. A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **three months** of notification of that act (this delay may be extended by two months). If the European Parliament or the Council object, the delegated act shall not enter into force.

European social entrepreneurship funds

2011/0418(COD) - 07/12/2011 - Legislative proposal

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

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

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

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

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

Accordingly, it is necessary to lay down **a common framework of rules** regarding the use of the designation "European Social Entrepreneurship Fund", in particular on the composition of the portfolio of funds that operate under this designation, their eligible investment targets, the investment tools they may employ and the categories of investors that are eligible to invest in such funds by uniform rules in the Union.

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

IMPACT ASSESSMENT : the impact assessment identified two key problems:

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

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

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

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

LEGAL BASIS: Article 114 TFEU.

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

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

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

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

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

BUDGETARY IMPLICATIONS: there are no budgetary implications.

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

European social entrepreneurship funds

2011/0418(COD) - 20/02/2012

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

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

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

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

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

European social entrepreneurship funds

2011/0418(COD) - 06/06/2012 - Committee report tabled for plenary, 1st reading/single reading

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

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

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

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

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

It is stipulated that the Regulation lays down uniform rules on the eligible instruments to be used by a EuSEF when making investments, which include equity and quasi equity instruments, debt instruments, including promissory notes and certificates of deposit, investments into other EuSEFs and short and medium-term loans, including shareholder loans and grants.

Definitions:

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

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

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

- conduct their business activities so as to promote the positive social impact of the qualifying portfolio undertakings in which they have invested, the best interests of the EuSEFs they manage, the investors in those EuSEFs and the integrity of the market;
- apply a high level of diligence in the selection and ongoing monitoring of investments in qualifying portfolio undertakings and the positive social impact of those undertakings.

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

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

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

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

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

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

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

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

European social entrepreneurship funds

2011/0418(COD) - 25/04/2012

OPINION OF THE EUROPEAN CENTRAL BANK on a [proposal for a regulation](#) of the European Parliament and of the Council on European venture capital funds and on a proposal for a regulation of the European Parliament and of the Council on European social entrepreneurship funds.

The ECB welcomes the proposed regulations which will introduce uniform requirements for funds operating under a single, European designation and an identical substantive regulatory framework, while ensuring adequate supervision.

In this regard, the ECB notes several features that would contribute to achieving an appropriate and balanced regulatory framework: (i) the voluntary nature of the regime, (ii) the cross-border notification process between the competent authorities, (iii) the rules governing the behaviour of a qualifying manager and disclosure requirements, (iv) as well as the provisions designed to ensure the effective supervision of the use of the passport.

The ECB supports the Commission's objective of ensuring the consistency of the proposed regulations with the existing regime for alternative investment funds managers under Directive 2011/61/EU. In this respect, the ECB welcomes the reference in the proposed regulations to the threshold in Directive 2011/61/EU, which introduces a limit of EUR 500 million of capital funds that would delineate the European venture capital funds and EuSEF regimes from the framework established by Directive 2011/61/EU.

The scope of the proposed regulations is also conditioned by the requirement for all qualifying venture capital and social entrepreneurship funds to be unleveraged, to ensure that qualifying funds do not contribute to the development of systemic risks and that they concentrate on supporting qualifying portfolio companies.

Therefore, whilst the concept of leverage is fundamental to the business model implemented by many alternative investment fund managers, the ECB considers it appropriate to make explicit the **exclusion of any possible leverage** in the case of the proposed European venture capital funds and EuSEF regimes.

European social entrepreneurship funds

2011/0418(COD) - 26/06/2012

The Council agreed on a **general approach** on the draft regulations concerning [European Venture Capital Funds](#) and European Social Entrepreneurship Funds. The agreement paves the way for the continuation of negotiations with the European Parliament with a view to their swift adoption.

The overall objective of the proposals is to foster the growth of SMEs by improving their access to finance through the establishment of an EU-wide passport for managers of venture capital funds (EuVECA) and social entrepreneurship funds (EuSEF) relating to the marketing of their funds.

The proposals :

- introduce uniform requirements for the managers of collective investment undertakings that want to operate under the EU-wide passport;
- introduce requirements concerning the investment portfolio, investment techniques and eligible undertakings that a qualifying fund may target;
- introduce uniform rules on which categories of investors a qualifying fund may target and on the internal organisation deployed by managers that market such qualifying funds.

Identical substantive rules across the EU will help create a level playing field for all market participants.

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.