

**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) ⁽¹⁾**

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. Articles 3 to 6, Articles 10 and 13, points (d), (e) and (f) of Article 14(1), Articles 15a to 20, the second subparagraph of Article 21(3) and Articles 22 and 22a of this Regulation shall apply to managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU that manage portfolios of qualifying social entrepreneurship funds and intend to use the designation 'EuSEF' in relation to the marketing of those funds in the Union.

(1) This text is meant purely as a documentation tool and has no legal effect. The Union's institutions do not assume any liability for its contents. The authentic versions of the relevant acts, including their preambles, are those published in the Official Journal of the European Union and available in EUR-Lex. Those official texts are directly accessible through the links embedded in this document



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 which generate a social return;
 - 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 in which the manager of a qualifying social entrepreneurship fund has its registered office; ▼B
- 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; ▼M1
- m) 'competent authority' means:
 - i) for managers as referred to in Article 2(1) of this Regulation, the competent authority referred to in point (a) of Article 3(3) of Directive 2011/61/EU;
 - ii) for managers as referred to in Article 2(2) of this Regulation, the competent authority referred to in Article 7(1) of Directive 2011/61/EU;
 - iii) for qualifying social entrepreneurship funds, the competent authority of the Member State in which the qualifying social entrepreneurship fund is established;
- n) 'competent authority of the host Member State' means the authority of a Member State, other than the home Member State, in which the qualifying social entrepreneurship fund is marketed.

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. ▼B
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. ▼M1
2. Both internally managed qualifying social entrepreneurship funds and external managers of qualifying social entrepreneurship funds shall have an initial capital of EUR 50 000.
3. Own funds shall at all times amount to at least one eighth of the fixed overheads incurred by the manager in the preceding year. The competent authority of the home Member State may adjust that requirement in the event of a material change to the manager's business since the preceding year. Where the manager of a qualifying social entrepreneurship fund has not completed a year of business, the requirement shall amount to one eighth of the fixed overheads expected in its business plan, unless the competent authority of the home Member State requires an adjustment to that plan.
4. Where the value of the qualifying social entrepreneurship funds managed by the manager exceeds EUR 250 000 000, the manager shall provide an additional amount of own funds. That additional amount shall be equal to 0,02 % of the amount by which the total value of the qualifying social entrepreneurship funds exceeds EUR 250 000 000.
5. The competent authority of the home Member State may authorise the manager of qualifying social entrepreneurship fund not to provide up to 50 % of the additional amount of own funds referred to in paragraph 4 if that manager benefits from a guarantee for the same amount given by a credit institution or an insurance undertaking which has its registered office in a Member State, or in a third country where it is subject to prudential rules which the competent authority of the home Member State considers to be equivalent to those laid down in Union law.
6. Own funds shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions. ▼B



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, value and purpose of the investments other than qualifying investments referred to in Article 5(1);
 - f) a description of how environmental and climate-related risks are taken into account in the investment approach of the qualifying social entrepreneurship funds.
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 (1) 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.
5. The competent authority of the home Member State shall make available all information gathered under this Article to the competent authority of each qualifying social entrepreneurship fund concerned, to the competent authority of each host Member State concerned and to ESMA in a timely manner by means of the procedure referred to in Article 23.

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 for maintaining the adequate human and technical resources necessary for the proper management of its qualifying social entrepreneurship funds; ▼B
 - 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 (1) 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.
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.
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.
4. The competent authority of the home Member State shall inform the manager as referred to in paragraph 1 whether it has been registered as a manager of a qualifying social entrepreneurship fund no later than two months after it has provided all the information referred to in that paragraph.
5. A registration in accordance with this Article shall constitute a registration for the purposes of Article 3(3) of Directive 2011/61/EU in respect of the management of qualifying social entrepreneurship funds.
6. A manager of a qualifying social entrepreneurship fund as referred to in this Article shall notify the competent authority of the home Member State of any material changes to the conditions for its initial registration in accordance with this Article before such changes are implemented.

If the competent authority of the home Member State decides to impose restrictions or reject the changes referred to in the first subparagraph, it shall inform the manager of the qualifying social entrepreneurship fund within one month of receipt of notification of those changes. The competent authority may extend that period by up to one month where it considers this to be necessary due to the specific circumstances of the case, after having notified the manager of the qualifying social entrepreneurship fund. The changes may be implemented if the relevant competent authority does not oppose the changes within the relevant assessment period.

7. In order to ensure the uniform application of this Article, ESMA may develop draft regulatory technical standards to further specify the information to be provided to the competent authorities in the application for registration as set out in paragraph 1 and to further specify the conditions as set out in paragraph 2.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

8. In order to ensure the uniform application of this Article, ESMA may develop draft implementing technical standards on standard forms, templates and procedures for the provision of information to the competent authorities in application for registration set out in paragraph 1 and the conditions set out in paragraph 2.



Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

9. ESMA shall organise and conduct peer reviews in accordance with Article 30 of Regulation (EU) No 1095/2010 in order to strengthen the consistency of the registration processes carried out by competent authorities pursuant to this Regulation.

Article 15 bis.

1. Managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU shall apply for registration of the qualifying social entrepreneurship funds for which they intend to use the designation 'EuSEF'.
2. The application for registration referred to in paragraph 1 shall be made to the competent authority of the qualifying social entrepreneurship fund and shall include the following:
 - a) the rules or instruments of incorporation of the qualifying social entrepreneurship fund;
 - b) information on the identity of the depositary;
 - c) the information referred to in Article 15(1);
 - d) a list of Member States in which the managers referred to in paragraph 1 have established, or intend to establish, qualifying social entrepreneurship funds.

For the purposes of point (c) of the first subparagraph, the information on the arrangements made for complying with the requirements of Chapter II shall refer to the arrangements made for complying with Articles 5, 6 and 10, Article 13(2) and points (d), (e) and (f) of Article 14(1).

3. Where the competent authority of a qualifying social entrepreneurship fund and the competent authority of the home Member State are different, the competent authority of the qualifying social entrepreneurship fund shall ask the competent authority of the home Member State whether the qualifying social entrepreneurship fund falls within the scope of the manager's authorisation to manage AIFs and whether the conditions laid down in point (a) of Article 15(2) are fulfilled.

The competent authority of the qualifying social entrepreneurship fund may also ask the competent authority of the home Member State for clarification and information as regards the documentation referred to in paragraph 2.

The competent authority of the home Member State shall provide an answer within one month of the date of receipt of the request by the competent authority of the qualifying social entrepreneurship fund.

4. Managers as referred to in paragraph 1 shall not be required to provide information or documents which they have already provided under Directive 2011/61/EU.
5. Having assessed the documentation received in accordance with paragraph 2 and having received any clarification and information referred to in paragraph 3, the competent authority of the qualifying social entrepreneurship fund shall register a fund as a qualifying social entrepreneurship fund if the manager of that fund meets the conditions laid down in Article 15(2).
6. The competent authority of a qualifying social entrepreneurship fund shall inform the manager as referred to in paragraph 1 whether that fund has been registered as a qualifying social entrepreneurship fund no later than two months after that manager has provided all the documentation referred to in paragraph 2.



7. Registration under this Article shall be valid in the entire territory of the Union and shall allow the marketing of those funds throughout the Union under the designation 'EuSEF'.
8. In order to ensure the uniform application of this Article, ESMA may develop draft regulatory technical standards to further specify the information to be provided to the competent authorities in accordance with paragraph 2.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

9. In order to ensure the uniform application of this Article, ESMA may develop draft implementing technical standards on standard forms, templates and procedures for the provision of information to the competent authorities in accordance with paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

10. ESMA shall organise and conduct peer reviews in accordance with Article 30 of Regulation (EU) No 1095/2010 in order to strengthen the consistency of the registration processes carried out by competent authorities pursuant to this Regulation.

Article 15 ter.

Member States shall ensure that any refusal to register a manager as referred to in Article 15 or a fund as referred to in Article 15a shall be substantiated, shall be notified to the managers referred to in those Articles and shall be subject to a right of appeal before a national judicial, administrative or other authority. That right of appeal shall also apply in respect of registration where no decision on registration has been taken within two months of the manager having provided all the required information. Member States may require that a manager exhaust any administrative preliminary remedy provided for under national law before exercising that right of appeal.

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. The competent authority of the home Member State shall notify the competent authorities of the host Member States and ESMA immediately of any registration or removal from the register of a manager of a qualifying social entrepreneurship fund, of any addition to or removal from the register of a qualifying social entrepreneurship fund, and of any addition to or removal from the list of Member States in which a manager of a qualifying social entrepreneurship fund intends to market those funds.

For the purposes of the first subparagraph, the competent authority of a qualifying social entrepreneurship fund that has been registered in accordance with Article 15a shall immediately notify the competent authority of the home Member State, the competent authorities of the host Member States, and ESMA, of any addition to or any removal from the register of a qualifying social entrepreneurship fund or of any addition to or removal from



the list of Member States in which the manager of that qualifying social entrepreneurship fund intends to market that fund.

2. The competent authorities of the host Member States shall not impose on the managers of qualifying social entrepreneurship funds any requirements or administrative procedures in relation to the marketing of their qualifying social entrepreneurship funds, nor shall they require any approval of that marketing prior to its commencement. Such requirements or administrative procedures include fees and other charges.
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 17 bis.

1. For the purpose of organising and conducting peer reviews in accordance with Article 15(9) and Article 15a(10), the competent authority of the home Member State or, where different, the competent authority of the qualifying social entrepreneurship fund, shall ensure that the final information on the basis of which the registration was granted as set out in Article 15(1) and (2) and Article 15a(2) is made available to ESMA in a timely manner after the registration. Such information shall be made available by means of the procedure referred to in Article 23.
2. In order to ensure the uniform application of this Article, ESMA may develop draft regulatory technical standards to further specify the information to be made available to ESMA in accordance with paragraph 1.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

3. In order to ensure the uniform application of this Article, ESMA shall develop draft implementing technical standards on standard forms, templates and procedures for the provision of information to be made available to ESMA in accordance with paragraph 1.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 18.

1. ESMA shall maintain a central database that is publicly accessible on the internet and that lists all managers of qualifying social entrepreneurship funds using the designation 'EuSEF' and the qualifying social entrepreneurship funds for which they use that designation, as well as the countries in which those funds are marketed.
2. On its website, ESMA shall provide weblinks to the relevant information regarding third countries that fulfil the applicable requirement under point (d)(v) of the first subparagraph of Article 3(1).



Article 19.

1. The competent authority of the home Member State shall supervise compliance with the requirements laid down in this Regulation.
- 1 bis. For managers as referred to in Article 2(2), the competent authority of the home Member State shall be responsible for supervising the compliance with and the adequacy of the arrangements and of the organisation of the manager, so that that manager is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the qualifying social entrepreneurship funds that it manages.
- 1 ter. For a qualifying social entrepreneurship fund managed by a manager as referred to in Article 2(2), the competent authority of the qualifying social entrepreneurship fund shall be responsible for supervising the qualifying social entrepreneurship fund's compliance with the rules laid down in Articles 5 and 6 and points (c) and (i) of Article 14(1). The competent authority of the qualifying social entrepreneurship fund shall also be responsible for supervising that fund's compliance with the obligations set out in the fund's rules or instruments of incorporation.
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; ▼M1
- 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.



ESMA shall organise and conduct peer reviews in accordance with Article 30 of Regulation (EU) No 1095/2010 in order to strengthen the consistency of the processes in relation to supervisory and investigatory powers carried out by competent authorities pursuant to 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 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.
3. Managers as referred to in Article 2(1) shall comply at all times with this Regulation and shall also be liable for any infringements of this Regulation, including for any losses or damages resulting therefrom.

Managers as referred to in Article 2(2) shall comply at all times with Directive 2011/61/EU. They shall be responsible for ensuring compliance with this Regulation and shall be liable in accordance with Directive 2011/61/EU. Those managers shall also be liable for any losses or damages resulting from the infringement of this Regulation.

Article 22.

1. While respecting the principle of proportionality, the competent authority shall take the appropriate measures referred to in paragraph 2, as applicable, where the manager of the 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, or the qualifying social entrepreneurship fund is not registered in accordance with Article 15a;
 - 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 or Article 15a;
 - 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 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 to 15a, as applicable;
 - b) prohibit the manager of the qualifying social entrepreneurship fund concerned from using the designation 'EuSEF' and remove that manager, or the qualifying social entrepreneurship fund concerned, from the register.
3. The competent authority referred to in paragraph 1 shall inform any other relevant competent authority, the competent authorities of any host Member States in accordance with point (d) of Article 15(1), and ESMA, without delay, of the removal of a manager of a qualifying social entrepreneurship fund or of a qualifying social entrepreneurship fund from the register.
 4. The right to market one or more qualifying social entrepreneurship funds under the designation 'EuSEF' in the Union shall expire with immediate effect from the date of the decision of the competent authority referred to in point (b) of paragraph 2.
 5. The competent authority of the home Member State or of the host Member State, as applicable, shall inform ESMA without delay if it has clear and demonstrable grounds for believing that the manager of a qualifying social entrepreneurship fund has committed any of the breaches referred to in points (a) to (i) of paragraph 1.

ESMA may, while respecting the principle of proportionality, issue recommendations in accordance with Article 17 of Regulation (EU) No 1095/2010 addressed to the competent authorities concerned to take any of the measures referred to in paragraph 2 of this Article, or to refrain from taking such measures.

Article 22 bis.

The powers conferred on competent authorities in accordance with Directive 2011/61/EU, including those related to penalties, shall also be exercised with respect to the managers referred to in Article 2(2) of this Regulation.

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 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.
4. In parallel with the review in accordance with Article 69 of Directive 2011/61/EU, in particular as regards managers registered under point (b) of Article 3(2) of that Directive, the Commission shall analyse:



- a) the management of qualifying social entrepreneurship funds and the appropriateness of introducing changes to the legal framework including the option of a management passport; and
- b) the suitability of the definition of marketing for qualifying social entrepreneurship funds and the impact that that definition and differing national interpretations thereof have on the operation and viability of qualifying social entrepreneurship funds and on the cross-border distribution of such funds.

Following that review, 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.