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[1] Text with EEA relevance

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 345/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 April 2013

on European venture capital funds

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Acting in accordance with the ordinary legislative procedure [3],

Whereas:

(1) Venture capital provides finance to undertakings that are generally very small, that are in the initial stages of their corporate existence and that display a strong potential for growth and expansion. In addition, venture capital funds provide undertakings with valuable expertise and knowledge, business contacts, brand equity and strategic advice. By providing finance and advice to those undertakings, venture capital funds stimulate economic growth, contribute to the creation of jobs and capital mobilisation, foster the establishment and expansion of innovative undertakings, increase their investment in research and development and foster entrepreneurship, innovation and competitiveness in line with the objectives of the Europe 2020 Strategy set out in the Commission Communication of 3 March 2010 entitled 'Europe 2020: A strategy for delivering smart, sustainable and inclusive growth' (Europe 2020) and in the context of the long-term challenges of the Member States, such as those identified in the report of the European Strategy and Policy Analysis System of March 2012 entitled 'Global Trends 2030 — citizens in an interconnected and polycentric world'.

(2) It is necessary to lay down a common framework of rules regarding the use of the designation 'EuVECA' for qualifying venture capital funds, in particular the composition of the portfolio of funds that operate under that designation, their eligible investment targets, the investment tools they may employ and the categories of investors that are eligible to invest in them by uniform rules in the Union. In the absence of such a common framework, there is a risk that Member States take diverging measures at national level having a direct negative impact on, and creating obstacles to, the proper functioning of the internal market, since venture capital funds that wish to operate across the Union would be subject to different rules in different Member States. Moreover, diverging quality requirements on portfolio composition, investment targets and eligible investors could lead to different levels of investor protection and generate confusion as to the investment proposition associated with qualifying venture capital funds. Investors should, furthermore, be able to compare the investment propositions of different qualifying venture capital funds. It is necessary to remove significant obstacles to cross-border fundraising by qualifying venture capital funds, to avoid distortions of competition between those funds, and to prevent any further likely obstacles to trade and significant distortions of competition from arising in the future. Consequently, the appropriate legal basis for this Regulation is Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted by consistent case law of the Court of Justice of the European Union.

[1] OJ C 175, 19.6.2012, p. 11.
[2] OJ C 191, 29.6.2012, p. 72.
[3] Position of the European Parliament of 12 March 2013 (not yet published in the Official Journal) and decision of the Council of 21 March 2013.

(3) It is necessary to adopt a Regulation establishing uniform rules applicable to qualifying venture capital funds and imposing corresponding obligations on their managers in all Member States that wish to raise capital across the Union using the designation 'EuVECA'. Those requirements should ensure the confidence of investors that wish to invest in venture capital funds.

(4) Defining the quality requirements for the use of the designation 'EuVECA' in the form of a regulation ensures that those requirements are directly applicable to the managers of collective investment undertakings that raise funds using that designation. This also ensures uniform conditions for the use of the designation by preventing diverging national requirements as a result of the transposition of a directive. Managers of collective investment undertakings that use the designation should follow the same rules across the Union, which will also boost the confidence of investors. This Regulation reduces regulatory complexity and the managers' costs of compliance with often divergent national rules governing venture capital funds, especially for those managers that want to raise capital on a cross-border basis. It also contributes to eliminating competitive distortions.

(5) As stated in the Commission Communication of 7 December 2011, entitled 'An action plan to improve access to finance for SMEs', the Commission was to complete its examination of tax obstacles to cross-border venture capital investments in 2012, with a view to presenting solutions in 2013 aimed at eliminating the obstacles while at the same time preventing tax avoidance and tax evasion.

(6) It should be possible for a qualifying venture capital fund to be externally or internally managed. Where a qualifying venture capital fund is internally managed, the fund is also the manager and should therefore comply with all relevant requirements for managers under this Regulation and be registered in accordance with this Regulation. A qualifying venture capital fund which is internally managed should not, however, be permitted to be the external manager of other collective investment undertakings or of undertakings for collective investment in transferable securities (UCITS).

(7) In order to clarify the relationship between this Regulation and other rules on collective investment undertakings and their managers, it is necessary to establish that this Regulation only apply to managers of collective investment undertakings, other than UCITS falling within the scope of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) [1], which are established in the Union and are registered with the competent authority in their home Member State in accordance with Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers [2], provided that those managers manage portfolios of qualifying venture capital funds. However, external managers of qualifying venture capital funds that are registered in accordance with this Regulation should also be allowed to manage UCITS, subject to authorisation under Directive 2009/65/EC.

(8) Furthermore, this Regulation applies only to managers of those collective investment undertakings with assets under management that in total do not exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU. The calculation of the threshold for the purposes of this Regulation is the same as for the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU.

(9) However, venture capital fund managers registered in accordance with this Regulation with assets under management that in total subsequently exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU, and that therefore become subject to authorisation with the competent authorities of their home Member State in accordance with Article 6 of that Directive, should be able to continue to use the designation 'EuVECA' in relation to the marketing of qualifying venture capital funds in the Union, provided that they comply with the requirements laid down in that Directive and that they continue to comply with certain requirements for the use of the designation 'EuVECA' specified in this Regulation at all times in relation to the qualifying venture capital funds. This applies both to existing qualifying venture capital funds and to qualifying venture capital funds established after exceeding the threshold.

(10) Where managers of collective investment undertakings do not wish to use the designation 'EuVECA', this Regulation should not apply. In these cases, existing national rules and general Union rules should continue to apply.

(11) This Regulation should establish uniform rules on the nature of qualifying venture capital funds, in particular on qualifying portfolio undertakings into which the qualifying venture capital funds are to be permitted to invest and the investment instruments to be used. This is necessary so that a clear demarcation line can be drawn between a qualifying venture capital fund and alternative investment funds that engage in other, less specialised, investment strategies, for example buyouts or speculative real estate investments, which this Regulation is not seeking to promote.

[1] OJ L 302, 17.11.2009, p. 32.

[2] OJ L 174, 1.7.2011, p. 1.

(12) In line with the aim of precisely circumscribing the collective investment undertakings which are to be covered by this Regulation and in order to ensure a focus on providing capital to small undertakings in the initial stages of their corporate existence, qualifying venture capital funds should be deemed to be funds that intend to invest at least 70 % of their aggregate capital contributions and uncalled committed capital in such undertakings. Qualifying venture capital funds should not be permitted to invest more than 30 % of their aggregate capital contributions and uncalled committed capital in assets other than qualifying investments. This means that whereas the 30 % threshold should be the maximum limit for non-qualifying investments at all times, the 70 % threshold should be reserved for qualifying investments during the life of the qualifying venture capital fund. Those thresholds should be calculated on the basis of amounts investible after deduction of all relevant costs and holdings of cash and cash equivalents. This Regulation should set out the details necessary for the calculation of the thresholds.

(13) The purpose of this Regulation is to enhance the growth and innovation of small and medium-sized enterprises (SMEs) in the Union. Investments in qualifying portfolio undertakings established in third countries can bring more capital to qualifying venture capital funds and thereby benefit SMEs in the Union. However, under no circumstances should this Regulation benefit investments made in portfolio undertakings established in third countries characterised by a lack of appropriate cooperation arrangements between the competent authorities of the home Member State of the manager of a qualifying venture capital fund and with each other Member State in which units or shares of the qualifying venture capital fund are intended to be marketed or by a lack of effective exchange of information in tax matters.

(14) A qualifying venture capital fund should, as a first step, be established in the Union in order to be entitled to use the designation 'EuVECA' as established by this Regulation. The Commission should, within two years of the date of application of this Regulation, review the limitation on the use of the designation 'EuVECA' to funds established in the Union, taking into account experience of applying the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters.

(15) Managers of qualifying venture capital funds should be able to attract additional capital commitments during the life of that fund. Such additional capital commitments during the life of the qualifying venture capital fund should be taken into account when the next investment in assets other than qualifying assets is contemplated. Additional capital commitments should be permitted in accordance with criteria and subject to conditions set out in the qualifying venture capital fund's rules or instruments of incorporation.

(16) Qualifying investments should be in the form of equity or quasi-equity instruments. Quasi-equity instruments comprise a 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. Such instruments include a variety of financing instruments such as subordinated loans, silent participations, participating loans, profit participating rights, convertible bonds and bonds with warrants. As a possible complement to — but not a substitute for — equity and quasi-equity instruments, secured or unsecured loans, such as bridge financing, granted by the qualifying venture capital fund to a qualifying portfolio undertaking in which the qualifying venture capital fund already holds qualifying investments, should be permitted, provided that no more than 30 % of the aggregate capital contributions and uncalled committed capital in the qualifying venture capital fund is used for such loans. Furthermore, to reflect existing business practices in the venture capital market, a qualifying venture capital fund should be allowed to buy existing shares of a qualifying portfolio undertaking from existing shareholders of that undertaking. Also, for the purposes of ensuring the widest possible opportunities for fundraising, investments into other qualifying venture capital funds should be permitted. To prevent dilution of the investments into qualifying portfolio undertakings, qualifying venture capital funds should only be permitted to invest into other qualifying venture capital funds, provided that those qualifying venture capital funds have not themselves invested more than 10 % of their aggregate capital contributions and uncalled committed capital in other qualifying venture capital funds.

(17) The core activities of venture capital funds are providing finance to SMEs through primary investments. Venture capital funds should neither participate in systemically important banking activities outside of the usual prudential regulatory framework (so-called 'shadow banking') nor follow typical private equity strategies, such as leveraged buyouts.

(18) In line with Europe 2020, this Regulation aims to promote venture capital investments into innovative SMEs anchored in the real economy. Credit institutions, investment firms, insurance undertakings, financial holding companies and mixed-activity holding companies should therefore be excluded from the definition of qualifying portfolio undertakings under this Regulation.

(19) In order to put in place an essential safeguard that differentiates qualifying venture capital funds under this Regulation from the broader category of alternative investment funds which trade in issued securities on secondary markets, it is necessary to lay down rules so that qualifying venture capital funds make investments primarily in directly issued instruments.

(20) In order to allow managers of qualifying venture capital funds a certain degree of flexibility in the investment and liquidity management of their qualifying venture capital funds, trading, such as in shares or participations in non-qualifying portfolio undertakings or acquisitions of non-qualifying investments, should be permitted up to a maximum threshold of 30 % of aggregate capital contributions and uncalled capital.

(21) In order to ensure that the designation 'EuVECA' is reliable and easily recognisable for investors across the Union, only managers of qualifying venture capital funds which comply with the uniform quality criteria as set out in this Regulation should be eligible to use the designation 'EuVECA' when marketing qualifying venture capital funds across the Union.

(22) In order to ensure that qualifying venture capital funds have a distinct and identifiable profile which is suited to their purpose, there should be uniform rules on the composition of the portfolio and on the investment techniques which are permitted for such funds.

(23) In order to ensure that qualifying venture capital funds do not contribute to the development of systemic risks, and that such funds concentrate, in their investment activities, on supporting qualifying portfolio undertakings, the use of leverage at the level of the fund should not be permitted. Managers of qualifying venture capital funds should only be permitted to borrow, issue debt obligations or provide guarantees, at the level of the qualifying venture capital fund, provided that such borrowings, debt obligations or guarantees are covered by uncalled commitments and thus do not increase the exposure of the fund beyond the level of its committed capital. Cash advances from investors of qualifying venture capital funds that are fully covered by capital commitments from those investors do not increase the exposure of the qualifying venture capital fund and should therefore be allowed. Also, in order to permit the fund to cover extraordinary liquidity needs that might arise between a call of committed capital from investors and the actual reception of the capital in its accounts, short-term borrowing should be allowed provided that the amount of such borrowing does not exceed the fund's uncalled committed capital.

(24) In order to ensure that qualifying venture capital funds are only marketed to investors who have the experience, knowledge and expertise to make their own investment decisions and properly assess the risks that those funds carry, and in order to maintain investor confidence and trust in qualifying venture capital funds, certain specific safeguards should be laid down. Therefore, qualifying venture capital funds should only be marketed to investors who are professional clients or who can be treated as professional clients under Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ([1]). However, in order to have a sufficiently broad investor base for investment into qualifying venture capital funds it is also desirable that certain other investors have access to qualifying venture capital funds, including high net worth individuals. For those other investors, however, specific safeguards should be laid down in order to ensure that qualifying venture capital funds are only marketed to investors that have the appropriate profile for making such investments. These safeguards exclude marketing through the use of periodic savings plans. Furthermore, investments made by executives, directors or employees involved in the management of a manager of a qualifying venture capital fund should be possible when investing in the qualifying venture capital fund that they manage, as such individuals are knowledgeable enough to participate in venture capital investments.

([1]) OJ L 145, 30.4.2004, p. 1.

(25) To ensure that only managers of qualifying venture capital funds that fulfil uniform quality criteria as regards their behaviour in the market use the designation 'EuVECA', there should be rules on the conduct of business and the relationship of those managers with their investors. For the same reason, uniform conditions concerning the handling of conflicts of interest by those managers should be established. Those rules and conditions should also require the managers to have the necessary organisational and administrative arrangements in place to ensure a proper handling of conflicts of interest.

(26) Where a manager of a qualifying venture capital fund intends to delegate functions to third parties, the manager's liability towards the venture capital 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 venture capital fund and has become a letter-box entity. The manager should remain responsible for the proper performance of delegated functions and compliance with this Regulation at all time. The delegation of functions should not undermine the effectiveness of supervision of the manager, and, in particular, should not prevent the manager from acting, or the fund from being managed, in the best interests of its investors.

(27) In order to ensure the integrity of the designation 'EuVECA' quality criteria as regards the organisation of a manager of a qualifying venture capital fund should be established. Therefore, uniform, proportionate requirements for the need to maintain adequate technical and human resources should be laid down.

(28) In order to ensure the proper management of qualifying venture capital funds and the ability of their managers to cover potential risks arising from their activities, uniform, proportionate requirements for managers of qualifying venture capital funds to maintain sufficient own funds should be laid down. The amount of such own funds should be sufficient to ensure the continuity and proper management of qualifying venture capital funds.

(29) It is necessary for the purpose of investor protection to ensure that the assets of the qualifying venture capital fund are properly evaluated. The rules or instruments of incorporation of qualifying venture capital funds should therefore contain provisions on the valuation of assets. This should ensure the integrity and transparency of the valuation.

(30) In order to ensure that managers of qualifying venture capital funds which make use of the designation 'EuVECA' give sufficient account of their activities, uniform rules on annual reports should be established.

(31) It is necessary, for the purposes of ensuring the integrity of the designation 'EuVECA' in the eyes of investors, that it is only used by managers of qualifying venture capital funds that are fully transparent as to their investment policy and their investment targets. Uniform rules on disclosure requirements that are incumbent on such managers in relation to their investors should therefore be laid down. In particular, there should be pre-contractual disclosure obligations related to the investment strategy and objectives of the qualifying venture capital funds, the investment instruments which are used, information on costs and associated charges, and the risk/reward profile of the investment proposed by a qualifying fund. In view of achieving a high degree of transparency, such disclosure requirements should also include information on how the remuneration of the managers is calculated.

(32) 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 managers of qualifying venture capital funds with the uniform requirements set out in this Regulation. To that end, the managers that intend to market their qualifying funds under the designation 'EuVECA' 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.

(33) In order to facilitate the efficient cross-border marketing of qualifying venture capital funds, registration of the manager should be effected as quickly as possible.

(34) While safeguards are included in this Regulation to ascertain that funds are properly used, supervisory authorities should be vigilant in ensuring that those safeguards are complied with.

(35) In order to ensure effective supervision of compliance with the uniform criteria laid down in this Regulation, rules on the circumstances under which information supplied to the competent authority in the home Member State needs to be updated should be established.

(36) For the effective supervision of the requirements laid down in this Regulation, a process for cross-border notifications between the competent supervisory authorities, to be triggered by the registration of a manager of a qualifying venture capital fund in its home Member State should also be established.

(37) In order to maintain transparent conditions for the marketing of qualifying venture capital funds across the Union, the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1], should be entrusted with maintaining a central database listing managers of qualifying venture capital funds and the qualifying venture capital funds that they manage that are registered in accordance with this Regulation.

(38) Where the competent authority of the host Member State has clear and demonstrable grounds for believing that a manager of a qualifying venture capital fund is acting in breach of this Regulation within its territory, it should promptly inform the competent authority of the home Member State, which should take appropriate measures.

(39) If a manager of a qualifying venture capital fund persists in acting in a manner that is clearly in conflict with this Regulation despite the measures taken by the competent authority of the home Member State or because the competent authority of the home Member State fails to take measures within a reasonable timeframe, the competent authority of the host Member State should be able, after informing the competent authority of the home Member State, to take all the appropriate measures in order to protect investors, including the possibility of preventing the manager concerned from carrying out any further marketing of its venture capital funds within the territory of the host Member State.

(40) In order to ensure the effective supervision of the uniform criteria established in this Regulation, this Regulation contains a list of supervisory powers that competent authorities must have at their disposal.

(41) In order to ensure proper enforcement, this Regulation contains administrative penalties and other measures for the breach of key provisions of this Regulation, which are the rules on portfolio composition, on safeguards relating to the identity of eligible investors, and on the use of the designation 'EuVECA' only by managers of qualifying venture capital funds that are registered in accordance with this Regulation. A breach of those key provisions should entail, where appropriate, the prohibition of the use of the designation and the removal of the manager concerned from the register.

(42) Supervisory information should be exchanged between the competent authorities in the home and host Member States and ESMA.

(43) Effective regulatory cooperation among the entities tasked with supervising compliance with the uniform criteria set out in this Regulation requires that a high level of professional secrecy should apply to all relevant national authorities and to ESMA.

(44) In order to specify the requirements set out in this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the types of conflicts of interests managers of qualifying venture capital funds need to avoid and the steps to be taken in that respect. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(45) Technical standards in financial services should ensure consistent harmonisation and a high level of supervision across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA with the elaboration of draft implementing technical standards where these do not involve policy choices, for submission to the Commission.

(46) The Commission should be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010. ESMA should be entrusted with drafting implementing technical standards for the format of the notification referred to in this Regulation.

[1] OJ L 331, 15.12.2010, p. 84.

(47) Within four years of the date of application of this Regulation, the Commission should conduct a review of this Regulation in order to assess the development of the venture capital market. The review should include a general survey of the functioning of the rules in this Regulation and the experience acquired in applying them. On the basis of the review, the Commission should submit a report to the European Parliament and to the Council accompanied, if appropriate, by legislative proposals.

(48) Furthermore, within four years of the date of application of this Regulation, the Commission should start a review of the interaction between this Regulation and other rules on collective investment undertakings and their managers, in particular those of Directive 2011/61/EU. In particular, that review should address the scope of this Regulation assessing whether it is necessary to extend the scope to allow larger alternative investment funds managers to use the designation 'EuVECA'. On the basis of the review, the Commission should submit a report to the European Parliament and to the Council accompanied, if appropriate, by legislative proposals.

(49) In the context of that review, the Commission should evaluate any barriers that may have impeded the uptake of the funds by investors, including the impact on institutional investors of other regulation as may apply to them of a prudential nature. In addition, the Commission should gather data for assessing the contribution of the designation 'EuVECA' to other Union programmes, such as Horizon 2020, which also seek to support innovation in the Union.

(50) In light of the Commission Communication of 6 October 2010 entitled 'European 2020 Flagship Initiative: Innovation Union' and the Commission Communication of 7 December 2011 entitled 'An action plan to improve access to finance for SMEs', it is important to ensure the effectiveness of public schemes across the Union to support the venture capital market, and the coordination and mutual coherence of different Union policies aimed at fostering innovation, including policies on competition and research. A key focus of Union policies on innovation and growth is green technology, given the objective of the Union to be a global leader on smart and sustainable growth and on energy and resource efficiency, including in respect of financing for SMEs. When reviewing this Regulation, the Commission should assess its impact on progress towards that objective.

(51) ESMA should assess its staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, to the Council and to the Commission.

(52) The European Investment Fund (EIF) invests, inter alia, in venture capital funds across the Union. The measures in this Regulation to allow for the easy identification of venture capital funds with defined common features should make it easier for the EIF to identify venture capital funds under this Regulation as possible investment targets. The EIF should therefore be encouraged to invest in qualifying venture capital funds.

(53) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to respect for private and family life (Article 7) and freedom to conduct a business (Article 16).

(54) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1] governs the processing of personal data carried out in the Member States in the context of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [2], governs the processing of personal data carried out by ESMA within the framework of this Regulation and under the supervision of the European Data Protection Supervisor.

(55) This Regulation should be without prejudice to the application of State aid rules to qualifying venture capital funds.

(56) Since the objectives of this Regulation, namely to ensure uniform requirements apply to the marketing of qualifying venture capital funds and to establish a simple registration system for managers of qualifying venture capital funds, thereby facilitating the marketing of qualifying venture capital funds throughout the Union, while taking full account of the need to balance safety and reliability associated with the use of the designation 'EuVECA' with the efficient operation of the venture capital market and the cost for its various stakeholders, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

This Regulation lays down uniform requirements and conditions for managers of collective investment undertakings that wish to use the designation 'EuVECA' in relation to the marketing of qualifying venture capital 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 venture capital funds to eligible investors across the Union, for the portfolio composition of qualifying venture capital funds, for the eligible investment instruments and techniques to be used by qualifying venture capital funds as well as for the organisation, conduct and transparency of managers that market qualifying venture capital funds across the Union.

Article 2

1. This Regulation applies to managers of collective investment undertakings as defined in point (a) of Article 3 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 venture capital funds.

2. Where the total assets under management of managers of qualifying venture capital funds registered in accordance with Article 14 subsequently exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU, and where those managers are therefore subject to authorisation in accordance with Article 6 of that Directive, they may continue to use the designation 'EuVECA' in relation to the marketing of qualifying venture capital funds in the Union, provided that, at all times in relation to the qualifying venture capital funds that they manage, they:

(a) comply with the requirements laid down in Directive 2011/61/EU; and

(b) continue to comply with Articles 3 and 5 and points (c) and (i) of Article 13(1) of this Regulation.

3. Where managers of qualifying venture capital funds are external managers and are registered in accordance with Article 14, they may additionally manage undertakings for collective investment in transferable securities (UCITS), subject to authorisation under Directive 2009/65/EC.

Article 3

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

(a) 'collective investment undertaking' means an AIF as defined in point (a) of Article 4(1) of Directive 2011/61/EU;

(b) 'qualifying venture capital 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 venture capital fund' means a legal person the regular business of which is managing at least one qualifying venture capital fund;

(d) 'qualifying portfolio undertaking' means an undertaking that:

(i) at the time of an investment by the qualifying venture capital fund

— is not admitted to trading on a regulated market or on a multilateral trading facility (MTF) as defined in points (14) and (15) of Article 4(1) of Directive 2004/39/EC,

— employs fewer than 250 persons, and

— has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million;

(ii) is not itself a collective investment undertaking;

(iii) is not one or more of the following:

— a credit institution as defined in point (1) of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions [1],

— an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC,

— an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) [2],

— a financial holding company as defined in point (19) of Article 4 of Directive 2006/48/EC, or

— a mixed-activity holding company as defined in point (20) of Article 4 of Directive 2006/48/EC;

(iv) 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 venture capital fund and with each other Member State in which the units or shares of the qualifying venture capital 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 venture capital 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 venture capital fund in exchange for an equity instrument issued by the qualifying portfolio undertaking;

(ii) secured or unsecured loans granted by the qualifying venture capital fund to a qualifying portfolio undertaking in which the qualifying venture capital fund already holds qualifying investments, provided that no more than 30 % of the aggregate capital contributions and uncalled committed capital in the qualifying venture capital fund is used for such loans;

(iii) shares of a qualifying portfolio undertaking acquired from existing shareholders of that undertaking;

(iv) units or shares of one or several other qualifying venture capital funds, provided that those qualifying venture capital funds have not themselves invested more than 10 % of their aggregate capital contributions and uncalled committed capital in qualifying venture capital funds;

(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 venture capital fund and the investors therein;

[1] OJ L 177, 30.6.2006, p. 1.
[2] OJ L 335, 17.12.2009, p. 1.

(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 venture capital fund, or on its behalf, of units or shares of a venture capital fund it manages 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 venture capital fund, to acquire an interest in, or to make capital contributions to, that fund;

(k) 'home Member State' means the Member State where the manager of a qualifying venture capital fund is established and is subject to registration with the competent authorities in accordance with point (a) of Article 3(3) of Directive 2011/61/EU;

(l) 'host Member State' means the Member State, other than the home Member State, where the manager of a qualifying venture capital fund markets qualifying venture capital funds in accordance with this Regulation;

(m) 'competent authority' means the national authority which the home Member State designates, by law or regulation, to undertake the registration of managers of collective investment undertakings falling within the scope of this Regulation.

In regard to point (c) of the first subparagraph, where the legal form of a qualifying venture capital fund permits internal management and where the governing body of the fund does not appoint an external manager, the qualifying venture capital fund itself shall be registered as the manager of a qualifying venture capital fund in accordance with Article 14. A qualifying venture capital fund that is registered as an internal manager of a qualifying venture capital fund shall not be registered as an external manager of a qualifying venture capital fund of other collective investment undertakings.

CHAPTER II

CONDITIONS FOR THE USE OF THE DESIGNATION 'EuVECA'

Article 4

Managers of qualifying venture capital funds that comply with the requirements set out in this Chapter shall be entitled to use the designation 'EuVECA' in relation to the marketing of qualifying venture capital funds in the Union.

Article 5

1. Managers of qualifying venture capital funds shall ensure that, when acquiring assets other than qualifying investments, no more than 30 % of the 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 venture capital funds shall not employ at the level of the qualifying venture capital 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, the engagement into derivative positions or by any other means.

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

Article 6

1. Managers of qualifying venture capital funds shall market the units and shares of qualifying venture capital funds 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 investing a minimum of EUR 100 000; and

(b) state in writing, in a separate document from the contract to be concluded for the commitment to invest, that they are aware of the risks associated with the envisaged commitment or investment.

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

Article 7

Managers of qualifying venture capital funds shall, in relation to the qualifying venture capital 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 best interests of the qualifying venture capital funds 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;

(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 venture capital fund.

Article 8

1. Where a manager of a qualifying venture capital fund delegates functions to third parties, the manager's liability towards the qualifying venture capital 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 a qualifying venture capital 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 venture capital fund, and, in particular, shall not prevent that manager from acting, or the qualifying venture capital fund from being managed, in the best interests of the investors therein.

Article 9

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

2. Managers of qualifying venture capital funds shall identify in particular those conflicts of interest that may arise between:

(a) managers of qualifying venture capital 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 venture capital fund managed by those managers, or the investors therein;

(b) the qualifying venture capital fund or the investors therein, and another qualifying venture capital fund managed by the same manager, or the investors therein;

(c) the qualifying venture capital fund or the investors therein, and a collective investment undertaking or UCITS managed by the same manager, or the investors therein.

3. Managers of qualifying venture capital funds shall maintain and operate effective organisational and administrative arrangements in order to comply with the requirements set out 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 venture capital 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 venture capital 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 25 specifying:

(a) the types of conflicts of interest referred to in paragraph 2 of this Article;

(b) the steps that managers of qualifying venture capital funds 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. At all times, managers of qualifying venture capital funds shall have sufficient own funds and shall use adequate and appropriate human and technical resources as necessary for the proper management of the qualifying venture capital funds that they manage.

2. At all times, managers of qualifying venture capital funds shall ensure that they are able to justify the sufficiency of their own funds to maintain operational continuity and disclose their reasoning as to why those funds are sufficient as specified in Article 13.

Article 11

1. Rules for the valuation of assets shall be laid down in the rules or instruments of incorporation of the qualifying venture capital 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.

Article 12

1. Managers of qualifying venture capital funds shall make available an annual report to the competent authority of the home Member State for each qualifying venture capital 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 venture capital fund and the activities of the previous year. It shall also disclose the profits earned by the qualifying venture capital 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 venture capital fund.

The annual report shall be produced in accordance with existing reporting standards and the terms agreed between the managers of qualifying venture capital funds and the investors. Managers of qualifying venture capital funds shall provide the report to investors on request. Managers of qualifying venture capital funds and investors may agree to make additional disclosures to each other.

2. An audit of the qualifying venture capital fund shall be conducted at least annually. The audit shall confirm that money and assets are held in the name of the qualifying venture capital fund and that the manager of a qualifying venture capital 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 venture capital fund and the investors therein.

3. Where the manager of a qualifying venture capital 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 of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market [1] in relation to the qualifying venture capital fund, the information referred to in paragraph 1 may be provided separately or as an additional part of the annual financial report.

Article 13

1. Managers of qualifying venture capital funds shall, in relation to the qualifying venture capital 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 any other service providers contracted by that manager in relation to their management of the qualifying venture capital funds, and a description of their duties;

(b) 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 qualifying venture capital funds;

(c) a description of the investment strategy and objectives of the qualifying venture capital fund, including:

(i) the types of the qualifying portfolio undertakings in which it intends to invest;

[1] OJ L 390, 31.12.2004, p. 38.

(ii) any other qualifying venture capital funds in which it intends to invest;

(iii) the types of qualifying portfolio undertakings in which any other qualifying venture capital 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) a description of the risk profile of the qualifying venture capital fund and any risks associated with the assets in which the fund may invest or investment techniques that may be employed;

(e) a description of the qualifying venture capital fund's valuation procedure and of the pricing methodology for the valuation of assets, including the methods used for the valuation of qualifying portfolio undertakings;

(f) a description of how the remuneration of the manager of a qualifying venture capital fund is calculated;

(g) a description of all relevant costs and of the maximum amounts thereof;

(h) where available, the historical financial performance of the qualifying venture capital fund;

(i) the business support services and the other support activities provided by the manager of a qualifying venture capital fund or arranged 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 venture capital fund invests, or, where these services or activities are not provided, an explanation of that fact;

(j) a description of the procedures by which the qualifying venture capital 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 qualifying venture capital 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 venture capital fund, the information referred to in paragraph 1 of this Article may be provided separately or as a part of the prospectus.

CHAPTER III

SUPERVISION AND ADMINISTRATIVE COOPERATION

Article 14

1. Managers of qualifying venture capital funds that intend to use designation 'EuVECA' for the marketing of their qualifying venture capital 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 venture capital funds;

(b) the identity of the qualifying venture capital 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 venture capital fund intends to market each qualifying venture capital fund;

(e) a list of Member States where the manager of a qualifying venture capital fund has established, or intends to establish, qualifying venture capital funds.

2. The competent authority of the home Member State shall only register the manager of a qualifying venture capital fund if the following conditions are met:

(a) the persons who effectively conduct the business of managing qualifying venture capital funds are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the manager of a qualifying venture capital fund;

[1] OJ L 345, 31.12.2003, p. 64.

(b) the information required under paragraph 1 is complete;

(c) the arrangements notified according to point (c) of paragraph 1 are suitable for complying with the requirements of Chapter II;

(d) the list notified under point (e) of paragraph 1 of this Article reveals that all of the qualifying venture capital funds are established in accordance with point (b)(iii) of Article 3.

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

Article 15

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

(a) a new qualifying venture capital fund; or

(b) an existing qualifying venture capital fund in a Member State not mentioned in the list referred to in point (d) of Article 14(1).

Article 16

1. Immediately after the registration of a manager of a qualifying venture capital fund, the addition of a new qualifying venture capital fund, the addition of a new domicile for the establishment of a qualifying venture capital fund or the addition of a new Member State where a manager of a qualifying venture capital fund intends to market qualifying venture capital funds, the competent authority of the home Member State shall notify the Member States indicated in accordance with point (d) of Article 14(1) and ESMA, accordingly.

2. The host Member States indicated in accordance with point (d) of Article 14(1) shall not impose, on the manager of a qualifying venture capital fund registered in accordance with Article 14, any requirements or administrative procedures in relation to the marketing of its qualifying venture capital funds, nor shall they require any approval of the marketing prior to its commencement.

3. In order to ensure uniform application of this Article, ESMA shall develop draft implementing technical standards to determine the format of 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 of this Article in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Article 17

ESMA shall maintain a central database, publicly accessible on the internet, listing all managers of qualifying venture capital funds registered in accordance with Article 14, and the qualifying venture capital funds that they market, as well as the countries in which those funds are marketed.

Article 18

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

2. Where there are clear and demonstrable grounds that lead the competent authority of the host Member State to believe that the manager of a qualifying venture capital 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 venture capital 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 venture capital fund from carrying out any further marketing of its qualifying venture capital funds within the territory of the host Member State.

Article 19

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 thereof;

(b) require the manager of a qualifying venture capital fund to provide information without delay;

(c) require information from any person related to the activities of the manager of a qualifying venture capital fund or of the qualifying venture capital fund;

(d) carry out on-site inspections with or without prior announcement;

(e) take appropriate measures to ensure that a manager of a qualifying venture capital fund continues to comply with this Regulation;

(f) issue an order to ensure that a manager of a qualifying venture capital fund complies with this Regulation and desists from a repetition of any conduct that may consist of a breach of this Regulation.

Article 20

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

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

Article 21

1. The competent authority of the home Member State shall, while respecting the principle of proportionality, take the appropriate measures referred to in paragraph 2 where a manager of a qualifying venture capital fund:

(a) fails to comply with the requirements that apply to portfolio composition, in breach of Article 5;

(b) markets, in breach of Article 6, the units and shares of a qualifying venture capital fund to non-eligible investors;

(c) uses the designation 'EuVECA' but is not registered in accordance with Article 14;

(d) uses the designation 'EuVECA' for the marketing of funds which are not established in accordance with point (b)(iii) of Article 3;

(e) has obtained registration through false statements or any other irregular means, in breach of Article 14;

(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 12 regarding the annual report;

(i) repeatedly fails to comply with the obligation to inform investors in accordance with Article 13.

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

(a) take measures to ensure that the manager of a qualifying venture capital fund concerned complies with Articles 5 and 6, points (a) and (b) of Article 7 and Articles 12, 13 and 14;

(b) prohibit the use of the designation 'EuVECA' and remove the manager of a qualifying venture capital fund concerned from the register.

3. The competent authority of the home Member State shall inform the competent authorities of the host Member States in accordance with point (d) of Article 14(1) and ESMA, without delay, of the removal of the manager of a qualifying venture capital fund from the register referred to in point (b) of paragraph 2 of this Article.

4. The right to market one or more qualifying venture capital funds under the designation 'EuVECA' expires with immediate effect from the date of the decision of the competent authority referred to in point (b) of paragraph 2.

Article 22

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 23

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 venture capital funds and qualifying venture capital 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 venture capital funds and qualifying venture capital 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 24

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 is not related to point (b)(iii) or to point (d)(iv) of Article 3 of this Regulation.

CHAPTER IV

TRANSITIONAL AND FINAL PROVISIONS

Article 25

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 9(5) 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 power referred to in Article 9(5) 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 9(5) 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 to 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 26

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 'EuVECA' has been used by managers of qualifying venture capital funds in different Member States, whether domestically or on a cross-border basis;

(b) the geographical and sectoral distribution of investments undertaken by qualifying venture capital funds;

(c) the appropriateness of the information requirements under Article 13, in particular whether they are sufficient to enable investors to take an informed investment decision;

(d) the use of the different qualifying investments by managers of qualifying venture capital funds and, in particular, whether there is a need to adjust the qualifying investments in this Regulation;

(e) the possibility of extending the marketing of qualifying venture capital funds to retail investors;

(f) the effectiveness, proportionality and application of administrative penalties and other administrative measures provided for by Member States in accordance with this Regulation;

(g) the impact of this Regulation on the venture capital market;

(h) the possibility of allowing venture capital funds established in a third country to use the designation 'EuVECA', 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;

(i) the appropriateness of complementing this Regulation with a depositary regime;

(j) an evaluation of any barriers that may have impeded investment into funds using the designation 'EuVECA', including the impact on institutional investors of other Union law of a prudential nature.

2. The review referred to in paragraph 1 shall be conducted:

(a) by 22 July 2017 as regards points (a) to (g), (i) and (j); and

(b) by 22 July 2015 as regards point (h).

3. Following the review referred to in paragraph 1, and after consulting ESMA, the Commission shall submit a report to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal.

Article 27

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 venture capital funds with assets under management that in total exceed the threshold provided for in Article 2(1) to become managers of qualifying venture capital funds 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 28

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 9(5), which shall apply from 15 May 2013.

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

Done at Strasbourg, 17 April 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
L. CREIGHTON

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Acting in accordance with the ordinary legislative procedure [3],

Whereas:

(1) Increasingly, as investors also pursue social goals and are not only seeking financial returns, a social investment market has been emerging in the Union, comprising, in part, investment funds targeting social undertakings. Such investment funds provide funding to social undertakings that act as drivers of social change by offering innovative solutions to social problems, for example by helping to tackle the social consequences of the financial crisis, and by making a valuable contribution to meeting the objectives of the Europe 2020 Strategy set out in the Commission Communication of 3 March 2010 entitled 'Europe 2020: A strategy for delivering smart, sustainable and inclusive growth'.

(2) This Regulation is part of the Social Business Initiative established by the Commission in its Communication of 25 October 2011 entitled 'Social Business Initiative — Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation'.

(3) It is necessary to lay down a common framework of rules regarding the use of the designation 'EuSEF' for qualifying social entrepreneurship funds, in particular on the composition of the portfolio of funds that operate under that designation, their eligible investment targets, the investment tools they may employ and the categories of investors that are eligible to invest in them by uniform rules in the Union. In the absence of such a common framework, there is a risk that Member States take diverging measures at national level having a direct negative impact on, and creating obstacles to, the proper functioning of the internal market, since funds that wish to operate across the Union would be subject to different rules in different Member States. Moreover, diverging quality requirements on portfolio composition, investment targets and eligible investors could lead to different levels of investor protection and generate confusion as to the investment proposition associated with qualifying social entrepreneurship funds. Investors should, furthermore, be able to compare the investment propositions of different qualifying social entrepreneurship funds. It is necessary to remove significant obstacles to cross-border fundraising by qualifying social entrepreneurship funds, to avoid distortions of competition between those funds, and to prevent any further likely obstacles to trade and significant distortions of competition from arising in the future. Consequently, the appropriate legal basis for this Regulation is Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted by consistent case law of the Court of Justice of the European Union.

(4) It is necessary to adopt a regulation establishing uniform rules applicable to qualifying social entrepreneurship funds and imposing corresponding obligations on their managers in all Member States that wish to raise capital across the Union using the designation 'EuSEF'. Those requirements should ensure the confidence of investors that wish to invest in such funds. The regulation should not apply to existing national schemes that allow investment in social businesses and that do not use the designation 'EuSEF'.

[1] OJ C 175, 19.6.2012, p. 11.
[2] OJ C 229, 31.7.2012, p. 55.
[3] Position of the European Parliament of 12 March 2013 (not yet published in the Official Journal) and decision of the Council of 21 March 2013.

(5) Defining the quality requirements for the use of the designation 'EuSEF' in the form of a regulation ensures that those requirements are directly applicable to the managers of collective investment undertakings that raise funds using that designation. This also ensures uniform conditions for the use of the designation by preventing diverging national requirements as a result of the transposition of a directive. Managers of collective investment undertakings that use the designation should follow the same rules across the Union, which will also boost the confidence of investors. This Regulation reduces regulatory complexity and the managers' costs of compliance with often divergent national rules governing such funds, especially for those managers that want to raise capital on a cross-border basis. It also contributes to eliminating competitive distortions.

(6) It should be possible for a qualifying social entrepreneurship fund to be externally or internally managed. Where a qualifying social entrepreneurship fund is internally managed, the fund is also the manager and should therefore comply with all relevant requirements for managers under this Regulation and be registered in accordance with this Regulation. A qualifying social entrepreneurship fund which is internally managed should not, however, be permitted to be the external manager of other collective investment undertakings or of undertakings for collective investment in transferable securities (UCITS).

(7) In order to clarify the relationship between this Regulation and other rules on collective investment undertakings and their managers, it is necessary to establish that this Regulation only apply to managers of collective investment undertakings other than UCITS falling within the scope of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations, and administrative provisions, relating to undertakings for collective investment in transferable securities (UCITS) ([1]), which are established in the Union and are registered with the competent authority in their home Member State in accordance with Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers ([2]), provided that those managers manage portfolios of qualifying social entrepreneurship funds. However, external managers of qualifying social entrepreneurship funds that are registered under this Regulation should also be allowed to manage UCITS, subject to authorisation under Directive 2009/65/EC.

([1]) OJ L 302, 17.11.2009, p. 32.
([2]) OJ L 174, 1.7.2011, p. 1.

(8) Furthermore, this Regulation applies only to managers of those collective investment undertakings with assets under management that in total do not exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU. The calculation of the threshold for the purposes of this Regulation is the same as for the threshold of point (b) of Article 3(2) of Directive 2011/61/EU.

(9) However, managers registered in accordance with this Regulation and with assets under management that in total subsequently exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU, and that therefore become subject to authorisation with the competent authorities of their home Member State in accordance with Article 6 of that Directive, should be able to continue to use the designation 'EuSEF' in relation to the marketing of qualifying social entrepreneurship funds in the Union, provided that they comply with the requirements laid down in that Directive and that they continue to comply with certain requirements for the use of the designation 'EuSEF' specified in this Regulation at all times in relation to the qualifying social entrepreneurship fund. This applies both to existing qualifying social entrepreneurship funds and to qualifying social entrepreneurship funds established after exceeding the threshold.

(10) Where managers of collective investment undertakings do not wish to use the designation 'EuSEF' then this Regulation does not apply. In those cases, existing national rules and general Union rules should continue to apply.

(11) This Regulation should establish uniform rules on the nature of qualifying social entrepreneurship funds, in particular on qualifying portfolio undertakings into which the qualifying social entrepreneurship funds are to be permitted to invest, and the investment instruments to be used. This is necessary so that a clear demarcation line can be drawn between a qualifying social entrepreneurship fund and alternative investment funds that engage in other, less specialised, investment strategies, for example buyouts, which this Regulation is not seeking to promote.

(12) In order to ensure the necessary clarity and certainty, this Regulation should also lay down uniform criteria to identify social undertakings as qualifying portfolio undertakings. A social undertaking should be defined as an operator in the social economy, the main objective of which is to have a social impact rather than to make a profit for its owners or shareholders. It operates by providing goods and services for the market and uses its profits primarily to achieve social objectives. It is managed in an accountable and transparent manner, in particular, by involving employees, consumers and stakeholders that are affected by its commercial activities.

(13) As the principal objective of social undertakings is to have a positive social impact rather than to maximise profits this Regulation should only promote support for qualifying portfolio undertakings that have the achievement of a measurable and positive social impact as their focus. A measurable and positive social impact could include the provision of services to immigrants who are otherwise excluded, or the reintegration of marginalised groups into the labour market by providing employment, training or other support. Social undertakings use their profits to achieve their primary social objective and are managed in an accountable and transparent way. Where, on an exceptional basis, a qualifying portfolio undertaking wishes to distribute profits to its shareholders and owners, it should have predefined procedures and rules on how profits are to be distributed. Those rules should specify that such distribution of profits does not undermine the primary social objective of the qualifying social portfolio undertaking.

(14) Social undertakings include a large range of undertakings, taking various legal forms, which provide social services or goods to vulnerable, marginalised, disadvantaged or excluded persons. Such services include access to housing, healthcare, assistance for elderly or disabled persons, child care, access to employment and training as well as dependency management. Social undertakings also include undertakings that employ a method of production of goods or services which embodies their social objective, but the activities of which be outside the realm of the provision of social goods or services. Those activities include social and professional integration by means of access to employment for people disadvantaged in particular by insufficient qualifications or social or professional problems leading to exclusion and marginalisation. Those activities may also concern environmental protection with a societal impact, such as anti-pollution, recycling and renewable energy.

(15) In line with the aim of precisely circumscribing the collective investment undertakings which are to be covered by this Regulation and in order to ensure a focus on providing capital to social undertakings, qualifying social entrepreneurship funds should be deemed to be funds that intend to invest at least 70 % of their aggregate capital contributions and uncalled committed capital in such undertakings. Qualifying social entrepreneurship funds should not be permitted to invest more than 30 % of their aggregate capital contributions and uncalled committed capital in assets other than qualifying investments. This means that whereas the 30 % threshold should be the maximum limit for non-qualifying investments at all times, the 70 % threshold should be reserved for qualifying investments during the life of the qualifying social entrepreneurship fund. Those thresholds should be calculated on the basis of amounts investible after deduction of all relevant costs and holdings of cash and cash equivalents. This Regulation should set out the details necessary for the calculation of the referred investment thresholds.

(16) The purpose of this Regulation is to enhance the growth of social undertakings in the Union. Investments in qualifying portfolio undertakings established in third countries can bring more capital to qualifying social entrepreneurship funds and can thereby benefit social undertakings in the Union. However, under no circumstances should this Regulation benefit investments made in portfolio undertakings established in third countries characterised by a lack of appropriate cooperation arrangements between the competent authorities of the home Member State of the manager of the qualifying social entrepreneurship fund and with each other Member State in which the units or shares of the qualifying social entrepreneurship fund are intended to be marketed or by a lack of effective exchange of information in tax matters.

(17) A qualifying social entrepreneurship fund should, as a first step, be established in the Union in order to be entitled to use the designation 'EuSEF' as established by this Regulation. The Commission should, within two years of the date of application of this Regulation, review the limitation on the use of the designation 'EuSEF' to funds established in the Union, taking into account experience of applying the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters.

(18) Managers of social entrepreneurship funds should be able to attract additional capital commitments during the life of a fund. Such additional capital commitments during the life of the qualifying social entrepreneurship fund should be taken into account when the next investment in assets other than qualifying assets is contemplated. Additional capital commitments should be permitted in accordance with criteria and subject to conditions set out in the qualifying social entrepreneurship fund's rules or instruments of incorporation.

(19) Taking into account the specific funding needs of social undertakings, it is necessary to achieve clarity regarding the types of instruments that a qualifying social entrepreneurship fund should use for such funding. Therefore, this Regulation lays down uniform rules on the eligible instruments to be used by a qualifying social entrepreneurship fund when making investments, which include equity and quasi-equity instruments, debt instruments, such as promissory notes and certificates of deposit, investments into other qualifying social entrepreneurship funds, secured or unsecured loans, and grants. To prevent dilution of the investments into qualifying portfolio undertakings, qualifying social entrepreneurship funds should only be permitted to invest in other qualifying social entrepreneurship funds where those other qualifying social entrepreneurship funds have not themselves invested more than 10 % of their aggregate capital contributions and uncalled committed capital into other qualifying social entrepreneurship funds.

(20) The core activities of qualifying social entrepreneurship funds are to provide financing to social undertakings through primary investments. Qualifying social entrepreneurship funds should neither participate in systemically important banking activities outside of the usual prudential regulatory framework (so-called 'shadow banking') nor follow typical private equity strategies, such as leveraged buyouts.

(21) To maintain the necessary flexibility in its investment portfolio, qualifying social entrepreneurship funds should be able to invest in assets other than qualifying investments to the extent that those other investments do not exceed the 30 % threshold for non-qualifying investments. Holdings of cash and cash equivalents should not be taken into account for the calculation of that threshold because such holdings are not to be considered as investments. Qualifying social entrepreneurship funds should invest in a manner consistent with their ethical investment strategy, for instance they should not undertake investments that finance the weapons industry, that risk breaches of human rights or that entail electronic waste-dumping.

(22) In order to ensure that the designation 'EuSEF' is reliable and easily recognisable for investors across the Union only managers of qualifying social entrepreneurship funds that comply with the uniform quality criteria as set out in this Regulation should be eligible to use the designation 'EuSEF' when marketing qualifying social entrepreneurship funds across the Union.

(23) In order to ensure that qualifying social entrepreneurship funds have a distinct and identifiable profile which is suited to their purpose, there should be uniform rules on the composition of the portfolio and on the investment techniques which are permitted for such funds.

(24) In order to ensure that qualifying social entrepreneurship funds do not contribute to the development of systemic risks, and that such funds concentrate, in their investment activities, on supporting qualifying portfolio undertakings, the use of leverage at the level of the fund should not be permitted. Managers of qualifying social entrepreneurship funds should only be permitted to borrow, issue debt obligations or provide guarantees, at the level of the qualifying social entrepreneurship fund, provided that such borrowings, debt obligations or guarantees are covered by uncalled commitments and thus do not increase the exposure of the fund beyond the level of its committed capital. Cash advances from investors of qualifying social entrepreneurship funds that are fully covered by capital commitments from those investors do not increase the exposure of the qualifying social entrepreneurship fund and should therefore be allowed. Also, in order to permit the fund to cover extraordinary liquidity needs that might arise between a call of committed capital from investors and the actual reception of the capital in its accounts, short-term borrowing should be allowed provided that the amount of such borrowing does not exceed the fund's uncalled committed capital.

(25) In order to ensure that qualifying social entrepreneurship funds are only marketed to investors who have the experience, knowledge and expertise to make their own investment decisions and properly assess the risks that those funds carry, and in order to maintain investor confidence and trust in qualifying social entrepreneurship funds, certain specific safeguards should be laid down. Therefore, qualifying social entrepreneurship funds should only be marketed to investors who are professional clients or who can be treated as professional clients under Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments [1]. However, in order to have a sufficiently broad investor base for investments into qualifying social entrepreneurship funds it is also desirable that certain other investors have access to these funds, including high net worth individuals. For those other investors, specific safeguards should be laid down in order to ensure that qualifying social entrepreneurship funds are only marketed to investors that have the appropriate profile for making such investments. Those safeguards exclude marketing through the use of periodic savings plans. Furthermore, investments made by executives, directors or employees involved in the management of a manager of a qualifying social entrepreneurship fund should be possible when investing in the qualifying social entrepreneurship funds they manage, as such individuals are knowledgeable enough to participate in such investments.

(26) To ensure that only managers of qualifying social entrepreneurship funds that fulfil uniform quality criteria as regards their behaviour in the market use the designation 'EuSEF', there should be rules on the conduct of business and the relationship of those managers with their investors. For the same reason, uniform conditions concerning the handling of conflicts of interest by such managers should be established. Those rules and conditions should also require the manager to have the necessary organisational and administrative arrangements in place to ensure a proper handling of conflicts of interest.

(27) Where a manager of a qualifying social entrepreneurship fund intends to delegate functions to third parties, the manager's liability towards the qualifying social entrepreneurship fund and the investors therein should not be affected by such delegation of functions to a third party. Moreover, the manager should not delegate functions to the extent that, in essence, it can no longer be considered to be a manager of a qualifying social entrepreneurship fund and has become a letter-box entity. The manager should remain responsible for the proper performance of delegated functions and compliance with this Regulation at all time. The delegation of functions should not undermine the effectiveness of supervision of the manager, and, in particular, should not prevent the manager from acting, or the fund from being managed, in the best interests of its investors.

(28) The creation of positive social impacts in addition to the generation of financial returns for investors is a key characteristic of investment funds targeting social undertakings, one which distinguishes them from other types of investment funds. This Regulation should therefore require that a manager of a qualifying social entrepreneurship fund put in place procedures for measuring the positive social impacts which are to be achieved by investment into qualifying portfolio undertakings.

(29) Currently funds that target social outcomes or impacts typically assess and collate information on the extent to which social undertakings achieve the outcomes or impacts that they are targeting. There are a wide range of different kinds of social outcomes or impacts that a social undertaking might target. Different ways of identifying and measuring the social outcomes or impacts have thereby developed. For instance, a firm that seeks to employ disadvantaged persons may report on the numbers of such persons employed who would not otherwise have been employed and a firm that seeks to improve the rehabilitation of prisoners may assess its performance in terms of recidivism rates. The funds aid the social undertakings in preparing and providing information on their goals and achievements, and gathering it for investors. While information about social outcomes and impacts is very important for investors, it is difficult to compare between different social undertakings and different funds both because of the differences in social outcomes or impacts targeted and because of the variety of approaches. In order to encourage the greatest consistency and comparability of such information in the longer term and the greatest efficiency in the procedures for obtaining the information, delegated acts should be developed in this area. Such delegated acts should also ensure greater clarity for supervisors, qualifying social entrepreneurship funds and social undertakings.

[1] OJ L 145, 30.4.2004, p. 1.

(30) In order to ensure the integrity of the designation 'EuSEF', quality criteria as regards the organisation of a manager of a qualifying social entrepreneurship fund should be established. Therefore, uniform, proportionate requirements for the need to maintain adequate technical and human resources should be laid down.

(31) In order to ensure the proper management of qualifying social entrepreneurship funds and the ability of their managers to cover potential risks arising from their activities, uniform, proportionate requirements for managers of qualifying social entrepreneurship funds to maintain sufficient own funds should be laid down. The amount of such own funds should be sufficient to ensure the continuity and proper management of the qualifying social entrepreneurship funds.

(32) It is necessary for the purpose of investor protection to ensure that the assets of qualifying social entrepreneurship funds are properly evaluated. The rules or instruments of incorporation of qualifying social entrepreneurship funds should therefore contain provisions on the valuation of assets. This should ensure the integrity and the transparency of the valuation.

(33) In order to ensure that managers of qualifying social entrepreneurship funds which make use of the designation 'EuSEF' give sufficient account of their activities, uniform rules on annual reports should be established.

(34) While safeguards are included in this Regulation to ascertain that funds are properly used, supervisory authorities should be vigilant in ensuring that those safeguards are complied with.

(35) To ensure the integrity of the designation 'EuSEF' in the eyes of investors, it is necessary that the designation only be used by managers of qualifying social entrepreneurship funds that are fully transparent as to their investment policy and their investment targets. Uniform rules on disclosure requirements that are incumbent on managers in relation to its investors should therefore be laid down. Those rules should include those elements that are specific to investments into social undertakings, so that greater consistency and comparability of such information can be achieved. This includes information about the criteria and the procedures which are used to select particular qualifying portfolio undertakings as investment targets. This also includes information about the positive social impact to be achieved by the investment policy and how this should be monitored and assessed. To ensure the necessary confidence and the trust of investors in such investments, this further includes information about the assets of the qualifying social entrepreneurship fund which are not invested into qualifying portfolio undertakings and how these are selected.

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

(37) In order to facilitate the efficient cross-border marketing of qualifying social entrepreneurship fund, registration of the manager should be effected as quickly as possible.

(38) In order to ensure effective supervision of compliance with the uniform criteria laid down in this Regulation, rules on the circumstances under which information supplied to the competent authority in the home Member State needs to be updated should be established.

(39) For the effective supervision of the requirements laid down in this Regulation, a process for cross-border notifications between the competent supervisory authorities, to be triggered by the registration of a manager of a qualifying social entrepreneurship fund in its home Member State, should also be established.

(40) In order to maintain transparent conditions for the marketing of qualifying social entrepreneurship funds across the Union, the European Supervisory Authority (European Securities and Markets Authority) ('ESMA') established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1] should be entrusted with maintaining a central database listing all managers of qualifying social entrepreneurship fund and the qualifying social entrepreneurship funds that they manage that are registered in accordance with this Regulation.

(41) Where the competent authority of the host Member State has clear and demonstrable grounds for believing that a manager of a qualifying social entrepreneurship fund is acting in breach of this Regulation within its territory, it should promptly inform the competent authority of the home Member State, which should take appropriate measures.

(42) If a manager of a qualifying social entrepreneurship fund persists in acting in a manner that is clearly in conflict with this Regulation despite the measures taken by the competent authority of the home Member State or because the competent authority of the home Member State fails to take measures within a reasonable timeframe, the competent authority of the host Member State should be able, after informing the competent authority of the home Member State, to take all the appropriate measures in order to protect investors, including the possibility of preventing the manager concerned from carrying out any further marketing of its qualifying social entrepreneurship funds within the territory of the host Member State.

(43) In order to ensure the effective supervision of the uniform criteria established, this Regulation contains a list of supervisory powers that competent authorities must have at their disposal.

(44) In order to ensure proper enforcement, this Regulation contains administrative penalties and other measures for the breach of its key provisions, namely the rules on portfolio composition, on safeguards relating to the identity of eligible investors, and on the use of the designation 'EuSEF' only by managers of qualifying social entrepreneurship funds managers that are registered in accordance with this Regulation. A breach of those key provisions should entail, where appropriate, prohibition of the use of the designation and the removal of the manager concerned from the register.

(45) Supervisory information should be exchanged between the competent authorities in the home and host Member States and ESMA.

(46) Effective regulatory cooperation among the entities tasked with supervising compliance with the uniform criteria set out in this Regulation requires that a high level of professional secrecy should apply to all relevant national authorities and to ESMA.

(47) The contribution of qualifying social entrepreneurship funds to the growth of a European market for social investments will depend on the take-up of the designation 'EuSEF' by managers of qualifying social entrepreneurship funds, the recognition of the designation by investors and the development of a strong eco-system for social enterprises across the Union that aids those enterprises in availing themselves of the financing options provided. To that end, all stakeholders, including market operators, competent authorities in Member States, the Commission and other relevant entities within the Union, should endeavour to ensure a high level of awareness of the possibilities presented by this Regulation.

(48) In order to specify the requirements set out in this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying the types of goods and services or methods of production for goods and services embodying a social objective and the circumstances in which profits may be distributed to owners and investors, the types of conflicts of interest managers of qualifying social entrepreneurship funds need to avoid and the steps to be taken in that respect, the details of the procedures to measure the social impacts to be achieved by the qualifying portfolio undertakings, and the content and procedure for provision of information for investors. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, taking into account self-regulatory initiatives and codes of conduct. The consultations carried out by the Commission during its preparatory work regarding delegated acts on the details of the procedures to measure the social impacts to be achieved by the qualifying portfolio undertakings should involve relevant stakeholders and ESMA. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

[1] OJ L 331, 15.12.2010, p. 84.

(49) Technical standards in financial services should ensure consistent harmonisation and a high level of supervision across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA with the elaboration of draft implementing technical standards where these do not involve policy choices, for submission to the Commission.

(50) The Commission should be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010. ESMA should be entrusted with drafting implementing technical standards for the format of the notification referred to in this Regulation.

(51) Within four years of the date of application of this Regulation, the Commission should carry out a review of this Regulation in order to assess the development of the market of qualifying social entrepreneurship funds across the Union. The review should include a general survey of the functioning of the rules in this Regulation and the experience acquired in applying them. On the basis of the review, the Commission should submit a report to the European Parliament and the Council accompanied, if appropriate, by legislative proposals.

(52) Furthermore, within four years of the date of application of this Regulation, the Commission should start a review of the interaction between this Regulation and other rules on collective investment undertakings and their managers, in particular those of Directive 2011/61/EU. In particular, that review should address the scope of this Regulation assessing whether it is necessary to extend the scope to allow larger alternative investment funds managers to use the designation 'EuSEF'. On the basis of the review, the Commission should submit a report to the European Parliament and to the Council accompanied, if appropriate, by legislative proposals.

(53) In the context of that review, the Commission should evaluate any barriers that may have impeded the uptake of the funds by investors, including the impact on institutional investors of other regulation as may apply to them of a prudential nature. In addition, the Commission should gather data for assessing the contribution of the designation 'EuSEF' to other Union programmes such as Horizon 2020, which also seek to support innovation in the Union.

(54) In relation to the Commission's examination of tax obstacles to cross-border venture capital investments as provided for in the Commission Communication of 7 December 2011 entitled 'An action plan to improve access to finance for SMEs' and in the context of its review of this Regulation, the Commission should consider undertaking an equivalent examination of possible tax obstacles for social entrepreneurship funds and assess possible tax incentives aimed at encouraging social entrepreneurship in the Union.

(55) ESMA should assess its staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, to the Council and to the Commission.

(56) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to respect for private and family life (Article 7) and freedom to conduct a business (Article 16).

(57) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1] governs the processing of personal data carried out in the Member States in the context of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [2], governs the processing of personal data carried out by ESMA within the framework of this Regulation and under the supervision of the European Data Protection Supervisor.

(58) Since the objective of this Regulation, namely to develop an internal market for qualifying social entrepreneurship funds by laying down a framework for the registration of managers of qualifying social entrepreneurship funds, thereby facilitating the marketing of qualifying social entrepreneurship funds throughout the Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

This Regulation lays down uniform requirements and conditions for managers of collective investment undertakings that wish to use the designation 'EuSEF' in relation to the marketing of qualifying social entrepreneurship funds in the Union, thereby contributing to the smooth functioning of the internal market.

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

Article 2

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

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

(b) they are established in the Union;

(c) they are subject to registration with the competent authorities of their home Member State in accordance with point (a) of Article 3(3) of Directive 2011/61/EU; and

(d) they manage portfolios of qualifying social entrepreneurship funds.

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

(a) comply with the requirements laid down in Directive 2011/61/EU; and

(b) continue to comply with Articles 3, 5, 10, Article 13(2) and points (d), (e) and (f) of Article 14(1) of this Regulation.

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

Article 3

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

(a) 'collective investment undertaking' means an AIF as defined in point (a) of Article 4(1) of Directive 2011/61/EU;

(b) 'qualifying social entrepreneurship fund' means a collective investment undertaking that:

(i) intends to invest at least 70 % of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents, within a time frame laid down in its rules or instruments of incorporation;

(ii) does not use more than 30 % of its aggregate capital contributions and uncalled committed capital for the acquisition of assets other than qualifying investments, calculated on the basis of amounts investible after deduction of all relevant costs and holdings in cash and cash equivalents;

(iii) is established within the territory of a Member State;

(c) 'manager of a qualifying social entrepreneurship fund' means a legal person the regular business of which is managing at least one qualifying social entrepreneurship fund;

(d) 'qualifying portfolio undertaking' means an undertaking that:

(i) at the time of an investment by the qualifying social entrepreneurship fund is not admitted to trading on a regulated market or on a multilateral trading facility (MTF) as defined in point (14) and point (15) of Article 4(1) of Directive 2004/39/EC;

(ii) has the achievement of measurable, positive social impacts as its primary objective in accordance with its articles of association, statutes or any other rules or instruments of incorporation establishing the business, where the undertaking:

— provides services or goods to vulnerable or marginalised, disadvantaged or excluded persons,

— employs a method of production of goods or services that embodies its social objective, or

— provides financial support exclusively to social undertakings as defined in the first two indents;

(iii) uses its profits primarily to achieve its primary social objective in accordance with its articles of association, statutes or any other rules or instruments of incorporation establishing the business and with the predefined procedures and rules therein, which determine the circumstances in which profits are distributed to shareholders and owners to ensure that any such distribution of profits does not undermine its primary objective;

(iv) is managed in an accountable and transparent way, in particular by involving workers, customers and stakeholders affected by its business activities;

(v) is established within the territory of a Member State, or in a third country provided that the third country:

— is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force on Anti-Money Laundering and Terrorist Financing,

— has signed an agreement with the home Member State of the manager of a qualifying social entrepreneurship fund and with each other Member State in which the units or shares of the qualifying social entrepreneurship fund are intended to be marketed to ensure that the third country fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;

(e) 'qualifying investments' means any of the following instruments:

(i) equity or quasi-equity instruments that are issued by:

— a qualifying portfolio undertaking and acquired directly by the qualifying social entrepreneurship fund from the qualifying portfolio undertaking,

— a qualifying portfolio undertaking in exchange for an equity security issued by the qualifying portfolio undertaking, or

— an undertaking of which the qualifying portfolio undertaking is a majority-owned subsidiary and which is acquired by the qualifying social entrepreneurship fund in exchange for an equity instrument issued by the qualifying portfolio undertaking;

(ii) securitised and un-securitised debt instruments, issued by a qualifying portfolio undertaking;

(iii) units or shares of one or several other qualifying social entrepreneurship funds, provided that those qualifying social entrepreneurship funds have not themselves invested more than 10 % of their aggregate capital contributions and uncalled committed capital in qualifying social entrepreneurship funds;

(iv) secured or unsecured loans granted by the qualifying social entrepreneurship fund to a qualifying portfolio undertaking;

(v) any other type of participation in a qualifying portfolio undertaking;

(f) 'relevant costs' means all fees, charges and expenses which are directly or indirectly borne by investors and which are agreed between the manager of a qualifying social entrepreneurship fund and the investors therein;

(g) 'equity' means ownership interest in an undertaking, represented by the shares or other forms of participation in the capital of the qualifying portfolio undertaking issued to its investors;

(h) 'quasi-equity' means any type of financing instrument which is a combination of equity and debt, where the return on the instrument is linked to the profit or loss of the qualifying portfolio undertaking and where the repayment of the instrument in the event of default is not fully secured;

(i) 'marketing' means a direct or indirect offering or placement at the initiative of the manager of a qualifying social entrepreneurship fund, or on its behalf, of units or shares of a qualifying social entrepreneurship fund that is managed by that manager to or with investors domiciled or with a registered office in the Union;

(j) 'committed capital' means any commitment pursuant to which an investor is obliged, within the time frame laid down in the rules or instruments of incorporation of the qualifying social entrepreneurship fund, to acquire an interest in, or to make capital contributions to, that fund;

(k) 'home Member State' means the Member State where the manager of a qualifying social entrepreneurship fund is established and is subject to registration with the competent authorities in accordance with point (a) of Article 3(3) of Directive 2011/61/EU;

(l) 'host Member State' means the Member State, other than the home Member State, where the manager of a qualifying social entrepreneurship fund markets qualifying social entrepreneurship funds in accordance with this Regulation;

(m) 'competent authority' means the national authority which the home Member State designates, by law or regulation, to undertake the registration of managers of collective investment undertakings falling within the scope of this Regulation.

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

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 26 specifying the types of services or goods and the methods of production of services or goods that embody a social objective referred to in point (ii) of point (d) of paragraph 1 of this Article taking into account the different kinds of qualifying portfolio undertakings and those circumstances in which profits can be distributed to owners and investors.

CHAPTER II

CONDITIONS FOR THE USE OF THE DESIGNATION 'EuSEF'

Article 4

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

Article 5

1. Managers of qualifying social entrepreneurship funds shall ensure that, when acquiring assets other than qualifying investments, no more than 30 % of the qualifying social entrepreneurship fund's aggregate capital contributions and uncalled committed capital is used for the acquisition of such assets. The 30 % threshold shall be calculated on the basis of amounts investible after the deduction of all relevant costs. Holdings in cash and cash equivalents shall not be taken into account for calculating that threshold as cash and cash equivalents are not to be considered as investments.

2. Managers of qualifying social entrepreneurship funds shall not employ at the level of the qualifying social entrepreneurship fund any method by which the exposure of the fund will be increased beyond the level of its committed capital, whether through borrowing of cash or securities, engaging in derivative positions or by any other means.

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

Article 6

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

(a) commit to invest a minimum of EUR 100 000; and

(b) state in writing, in a separate document from the contract that is concluded for the commitment to invest, that they are aware of the risks associated with the envisaged commitment.

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

Article 7

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

(a) act honestly, fairly and with due skill, care and diligence in conducting their activities;

(b) apply appropriate policies and procedures for preventing malpractices that can reasonably be expected to affect the interests of the investors and the qualifying portfolio undertakings;

(c) conduct their business activities in such a way as to promote the positive social impact of the qualifying portfolio undertakings in which they have invested, the best interests of the qualifying social entrepreneurship funds that they manage, the investors therein and the integrity of the market;

(d) apply a high level of diligence in the selection and ongoing monitoring of investments in qualifying portfolio undertakings and the positive social impact of those undertakings;

(e) possess adequate knowledge and understanding of the qualifying portfolio undertakings in which they invest;

(f) treat their investors fairly;

(g) ensure that no investor obtains preferential treatment, unless such preferential treatment is disclosed in the rules or instruments of incorporation of the qualifying social entrepreneurship fund.

Article 8

1. Where a manager of a qualifying social entrepreneurship fund delegates functions to third parties, the manager's liability towards the qualifying social entrepreneurship fund or the investors therein shall remain unaffected. The manager shall not delegate functions to the extent that, in essence, it can no longer be considered to be the manager of the qualifying social entrepreneurship fund and to the extent that it becomes a letter-box entity.

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

Article 9

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

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

(a) managers of qualifying social entrepreneurship funds, persons who effectively conduct the business of those managers, employees of, or any person who directly or indirectly controls or is controlled by, those managers, and the qualifying social entrepreneurship fund managed by those managers, or the investors therein;

(b) a qualifying social entrepreneurship fund or the investors therein, and another qualifying social entrepreneurship fund managed by the same manager, or the investors therein;

(c) the qualifying social entrepreneurship fund or the investors therein, and a collective investment undertaking or UCITS managed by the same manager, or the investors therein.

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

4. Disclosures of conflicts of interest as referred to in paragraph 1 shall be provided, where organisational arrangements made by a manager of a qualifying social entrepreneurship fund to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented. A manager of a qualifying social entrepreneurship fund shall disclose in clear terms the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf.

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

(a) the types of conflicts of interest referred to in paragraph 2 of this Article;

(b) the steps that managers of a qualifying social entrepreneurship fund must take, in terms of structures and organisational and administrative procedures, in order to identify, prevent, manage, monitor and disclose conflicts of interest.

Article 10

1. Managers of a qualifying social entrepreneurship fund shall employ for each qualifying social entrepreneurship fund that they manage, procedures to measure the extent to which the qualifying portfolio undertakings, in which the qualifying social entrepreneurship fund invests, achieve the positive social impact to which they are committed. The managers shall ensure that these procedures are clear and transparent and include indicators that may, depending on the social objective and nature of the qualifying portfolio undertaking, include one or more of the following subjects:

(a) employment and labour markets;

(b) standards and rights related to job quality;

(c) social inclusion and protection of particular groups;

(d) equal treatment, equal opportunities and non-discrimination;

(e) public health and safety;

(f) access to and effects on social protection and on health and educational systems.

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

Article 11

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

2. At all times, managers of qualifying social entrepreneurship funds shall ensure that they are able to justify the sufficiency of their own funds to maintain operational continuity and disclose their reasoning as to why those funds are sufficient as specified in Article 14.

Article 12

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

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

3. In order to ensure consistency in the valuation of qualifying portfolio undertakings, ESMA shall develop guidelines setting out common principles on the treatment of investments in such undertakings taking into account their primary objective of achieving a measurable positive social impact and the use of their profits first and foremost for the achievement of that impact.

Article 13

1. Managers of qualifying social entrepreneurship funds shall make available an annual report to the competent authority of the home Member State for each qualifying social entrepreneurship fund that they manage, by six months following the end of the financial year. The report shall describe the composition of the portfolio of the qualifying social entrepreneurship fund and the activities of the previous year. It shall also disclose the profits earned by the qualifying social entrepreneurship fund at the end of its life and, where applicable, the profits distributed during its life. It shall contain the audited financial accounts for the qualifying social entrepreneurship fund. The annual report shall be produced in accordance with existing reporting standards and the terms agreed between the managers of qualifying social entrepreneurship funds and the investors. Managers of qualifying social entrepreneurship funds shall provide the report to investors on request. Managers of qualifying social entrepreneurship funds and investors may agree additional disclosures to each other.

2. The annual report shall at least include the following:

(a) details, as appropriate, of the overall social outcomes achieved by the investment policy and the method used to measure those outcomes;

(b) a statement of any divestments in relation to qualifying portfolio undertakings that have occurred;

(c) a description of whether divestments in relation to the other assets of the qualifying social entrepreneurship fund which are not invested into qualifying portfolio undertakings occurred on the basis of the criteria as referred to in point (f) of Article 14(1);

(d) a summary of the activities that the manager of a qualifying social entrepreneurship fund has undertaken in relation to the qualifying portfolio undertakings as referred to in point (l) of Article 14(1);

(e) information on the nature and purpose of the investments other than qualifying investments referred to in Article 5(1).

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

4. Where the manager of a qualifying social entrepreneurship fund is required to make public an annual financial report in accordance with Article 4 of Directive 2004/109/EC of the European Parliament and Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers the securities of which are admitted to trading on a regulated market [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.

Article 14

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

(a) the identity of that manager and of any other service providers contracted by that manager in relation to their management, and a description of their duties;

(b) the amount of own funds available to that manager, as well as a detailed statement as to why that manager considers that amount to be sufficient for maintaining the adequate human and technical resources necessary for the proper management of its qualifying social entrepreneurship funds;

(c) a description of the investment strategy and objectives of the qualifying social entrepreneurship fund, including:

(i) the types of qualifying portfolio undertakings in which it intends to invest;

(ii) any other qualifying social entrepreneurship fund in which it intends to invest;

(iii) the types of qualifying portfolio undertakings in which any other qualifying social entrepreneurship fund, as referred to in point (ii), intends to invest;

(iv) the non-qualifying investments which it intends to make;

(v) the techniques that it intends to employ; and

(vi) any applicable investment restrictions;

(d) the positive social impact being targeted by the investment policy of the qualifying social entrepreneurship fund, including, where relevant, projections of such outcomes as may be reasonable, and information on past performance in this area;

(e) the methodologies to be used to measure social impacts;

(f) a description of the assets other than qualifying portfolio undertakings and the process and the criteria which are used for selecting these assets unless they are cash or cash equivalents;

(g) a description of the risk profile of the qualifying social entrepreneurship fund and any risks associated with the assets in which the fund may invest or the investment techniques that may be employed;

(h) a description of the qualifying social entrepreneurship fund's valuation procedure and of the pricing methodology for valuing assets, including the methods used for valuing qualifying portfolio undertakings;

(i) a description of how the remuneration of the manager of a qualifying social entrepreneurship fund is calculated;

(j) a description of all relevant costs and of the maximum amounts thereof;

(k) where available, the historical financial performance of the qualifying social entrepreneurship fund;

(l) the business support services and the other support activities the manager of a qualifying social entrepreneurship fund is providing or arranging through third parties in order to facilitate the development, growth or in some other respect the ongoing operations of the qualifying portfolio undertakings in which the qualifying social entrepreneurship fund invests, or, where these services or activities are not provided, an explanation of that fact;

[1] OJ L 390, 31.12.2004, p. 38.

(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;

(e) a list of Member States where the manager of a qualifying social entrepreneurship fund has established, or intends to establish, qualifying social entrepreneurship funds.

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

(a) the persons who effectively conduct the business of managing qualifying social entrepreneurship funds are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the manager of a qualifying social entrepreneurship fund;

(b) the information required referred to in paragraph 1 is complete;

(c) the arrangements notified according to in point (c) of paragraph 1 are suitable for complying with the requirements of Chapter II;

(d) the list notified according to point (e) of paragraph 1 reveals that all of the qualifying social entrepreneurship funds are established in accordance with point (b)(iii) of Article 3(1) of this Regulation.

[1] OJ L 345, 31.12.2003, p. 64.

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

Article 16

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

(a) a new qualifying social entrepreneurship fund; or

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

Article 17

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

2. The host Member States indicated in accordance with point (d) of Article 15(1) of this Regulation shall not impose, on the manager of a qualifying social entrepreneurship fund registered in accordance with Article 15, any requirements or administrative procedures in relation to the marketing of its qualifying social entrepreneurship fund, nor shall they require any approval of the marketing prior to its commencement.

3. In order to ensure uniform application of this Article, ESMA shall develop draft implementing technical standards to determine the format of the notification under this Article.

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

5. Power is conferred on the Commission to adopt the implementing technical standards referred to in paragraph 3 in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Article 18

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

Article 19

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

2. Where there are clear and demonstrable grounds that lead the competent authority of the host Member State to believe that the manager of a qualifying social entrepreneurship fund is in breach of this Regulation within its territory, it shall promptly inform the competent authority of the home Member State accordingly. The competent authority of the home Member State shall take appropriate measures.

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

Article 20

Competent authorities shall, in accordance with national law, have all supervisory and investigatory powers that are necessary for the exercise of their functions. They shall, in particular, have the power to:

(a) request access to any document in any form, and to receive or take a copy of it thereof;

(b) require the manager of a qualifying social entrepreneurship fund to provide information without delay;

(c) require information from any person related to the activities of the manager of a qualifying social entrepreneurship fund or the qualifying social entrepreneurship fund;

(d) carry out on-site inspections with or without prior announcement;

(e) take appropriate measures to ensure that a manager of a qualifying social entrepreneurship fund continues to comply with this Regulation;

(f) issue an order to ensure that a manager of a qualifying social entrepreneurship fund complies with this Regulation and desists from a repetition of any conduct that may consist of a breach of this Regulation.

Article 21

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

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

Article 22

1. The competent authority of the home Member State shall, while respecting the principle of proportionality, take the appropriate measures referred to in paragraph 2 where a manager of a qualifying social entrepreneurship fund:

(a) fails to comply with the requirements that apply to the portfolio composition, in breach of Article 5;

(b) markets, in breach of Article 6, the units and shares of a qualifying social entrepreneurship fund to non-eligible investors;

(c) uses the designation 'EuSEF' but is not registered in accordance with Article 15;

(d) uses the designation 'EuSEF' for the marketing of funds which are not established in accordance with point (b)(iii) of Article 3(1);

(e) has obtained registration through false statements or any other irregular means in breach of Article 15;

(f) fails to act honestly, fairly or with due skill, care or diligence, in conducting their business, in breach of point (a) of Article 7;

(g) fails to apply appropriate policies and procedures for preventing malpractices, in breach of point (b) of Article 7;

(h) repeatedly fails to comply with the requirements under Article 13 regarding the annual report;

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

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

(a) take measures to ensure that the manager of a qualifying social entrepreneurship fund concerned complies with Articles 5 and 6, points (a) and (b) of Article 7 and Articles 13, 14 and 15;

(b) prohibit the use of the designation 'EuSEF' and remove the manager of a qualifying social entrepreneurship fund concerned from the register.

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

4. The right to market one or more qualifying social entrepreneurship funds under the designation 'EuSEF' in the Union expires with immediate effect from the date of the decision of the competent authority referred to in point (b) of paragraph 2.

Article 23

1. Competent authorities and ESMA shall cooperate with each other for the purpose of carrying out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010.

2. Competent authorities and ESMA shall exchange all information and documentation necessary to carry out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010, in particular to identify and remedy breaches of this Regulation.

Article 24

1. All persons who work or who have worked for the competent authorities or for ESMA, as well as auditors and experts instructed by the competent authorities or by ESMA, are bound by the obligation of professional secrecy. No confidential information which those persons receive in the course of their duties shall be divulged to any person or authority whatsoever, save in summary or aggregate form such that managers of qualifying social entrepreneurship funds and qualifying social entrepreneurship funds cannot be individually identified, without prejudice to cases covered by criminal law and proceedings under this Regulation.

2. The competent authorities of the Member States or ESMA shall not be prevented from exchanging information in accordance with this Regulation or other Union law applicable to managers of qualifying social entrepreneurship funds and qualifying social entrepreneurship funds.

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

Article 25

In the event of disagreement between competent authorities of Member States on an assessment, action or omission of one competent authority in areas where this Regulation requires cooperation or coordination between competent authorities from more than one Member State, competent authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010, in so far as the disagreement does not relate to point (b)(i) or to point (d)(i) of Article 3(1) of this Regulation.

CHAPTER IV

TRANSITIONAL AND FINAL PROVISIONS

Article 26

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions set out in this Article.

2. The delegation of power referred to in Article 3(2), Article 9(5), Article 10(2) and Article 14(4) shall be conferred on the Commission for a period of four years from 15 May 2013. The Commission shall draw up a report in respect of the delegation of powers not later than nine months before the end of the four year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

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

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

5. A delegated act adopted pursuant to Article 3(2), Article 9(5), Article 10(2) or Article 14(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

Article 27

1. The Commission shall review this Regulation in accordance with paragraph 2. The review shall include a general survey of the functioning of the rules in this Regulation and the experience acquired in applying them, including:

(a) the extent to which the designation 'EuSEF' has been used by managers of qualifying social entrepreneurship funds in different Member States, whether domestically or on a cross-border basis;

(b) the geographical and sectoral distribution of investments undertaken by qualifying social entrepreneurship funds;

(c) the appropriateness of the information requirements under Article 14, in particular whether they are sufficient to enable investors to take an informed investment decision;

(d) the use of the different qualifying investments by qualifying social entrepreneurship funds and what impact this has had on the development of social undertakings across the Union;

(e) the appropriateness of establishing a European label for 'social enterprises';

(f) the possibility of allowing social entrepreneurship funds established in a third country to use the designation 'EuSEF', taking into account experience in applying the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters;

(g) the practical application of the criteria for identifying qualifying portfolio undertakings, the impact of this on the development of social undertakings across the Union and their positive social impact;

(h) an analysis of the procedures implemented by managers of qualifying social entrepreneurship funds so as to measure the positive social impact generated by the qualifying portfolio undertakings referred to in Article 10 and an assessment of the feasibility of introducing harmonised standards for measuring the social impact at Union level in a manner consistent with Union social policy;

(i) the possibility of extending the marketing of qualifying social entrepreneurship funds to retail investors;

(j) the appropriateness of including qualifying social entrepreneurship funds within eligible assets under Directive 2009/65/EC;

(k) the appropriateness of complementing this Regulation with a depositary regime;

(l) an examination of possible tax obstacles for social entrepreneurship funds and an assessment of possible tax incentives aimed at encouraging social entrepreneurship in the Union;

(m) an evaluation of any barriers that may have impeded investment into funds using the designation 'EuSEF', including the impact on institutional investors of other Union law of a prudential nature.

2. The review referred to in paragraph 1 shall be conducted:

(a) by 22 July 2017 as regards points (a) to (e) and (g) to (m); and

(b) by 22 July 2015 as regards point (f).

3. Following the review referred to in paragraph 1, and after consulting ESMA, the Commission shall submit a report to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal.

Article 28

1. By 22 July 2017, the Commission shall start a review of the interaction between this Regulation and other rules on collective investment undertakings and their managers, in particular those laid down in Directive 2011/61/EU. That review shall address the scope of this Regulation. It shall gather data for assessing whether it is necessary to extend the scope to allow for managers of social entrepreneurship funds with assets under management that in total exceed the threshold provided for in Article 2(1) to become managers of qualifying social entrepreneurship fund in accordance with this Regulation.

2. Following the review referred to in paragraph 1, and after consulting ESMA, the Commission shall submit a report to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal.

Article 29

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the 22 July 2013, except for Article 3(2), Article 9(5), Article 10(2) and Article 14(4), which shall apply from 15 May 2013.

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

Done at Strasbourg, 17 April 2013.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	L. CREIGHTON

REGULATION (EU) No 347/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 April 2013

on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 172 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

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

Whereas:

(1) On 26 March 2010, the European Council agreed to the Commission's proposal to launch a new strategy 'Europe 2020'. One of the priorities of the Europe 2020 strategy is sustainable growth to be achieved by promoting a more resource-efficient, more sustainable and more competitive economy. That strategy put energy infrastructures at the forefront as part of the flagship initiative 'Resource efficient Europe', by underlining the need to urgently upgrade Europe's networks, interconnecting them at the continental level, in particular to integrate renewable energy sources.

(2) The target agreed in the conclusions of the March 2002 Barcelona European Council for Member States to have a level of electricity interconnections equivalent to at least to 10 % of their installed production capacity has not yet been achieved.

(3) The communication from the Commission entitled 'Energy infrastructure priorities for 2020 and beyond — A Blueprint for an integrated European energy network', followed by the Council conclusions of 28 February 2011 and the European Parliament resolution ([4]), called for a new energy infrastructure policy to optimise network development at European level for the period up to 2020 and beyond, in order to allow the Union to meet its core energy policy objectives of competitiveness, sustainability and security of supply.

(4) The European Council of 4 February 2011 underlined the need to modernise and expand Europe's energy infrastructure and to interconnect networks across borders, in order to make solidarity between Member States operational, to provide for alternative supply or transit routes and sources of energy and to develop renewable energy sources in competition with traditional sources. It insisted that no Member State should remain isolated from the European gas and electricity networks after 2015 or see its energy security jeopardised by lack of the appropriate connections.

(5) Decision No 1364/2006/EC of the European Parliament and of the Council ([5]) lays down guidelines for trans-European energy networks (TEN-E). Those guidelines have as objectives to support the completion of the Union internal energy market while encouraging the rational production, transportation, distribution and use of energy resources, to reduce the isolation of less-favoured and island regions, to secure and diversify the Union's energy supplies, sources and routes, including through cooperation with third countries, and to contribute to sustainable development and protection of the environment.

(6) Evaluation of the current TEN-E framework has clearly shown that this framework, while making a positive contribution to selected projects by giving them political visibility, lacks vision, focus, and flexibility to fill identified infrastructure gaps. The Union should therefore increase its efforts to meet future challenges in this field, and due attention should be paid to identifying potential future gaps in energy demand and supply.

([1]) OJ C 143, 22.5.2012, p. 125.
([2]) OJ C 277, 13.9.2012, p. 137.
([3]) Position of the European Parliament of 12 March 2013 (not yet published in the Official Journal) and decision of the Council of 21 March 2013.
([4]) European Parliament resolution of 5 July 2011 on energy infrastructure priorities for 2020 and beyond (OJ C 33 E, 5.2.2013, p. 46).
([5]) OJ L 262, 22.9.2006, p. 1.

(7) Accelerating the refurbishment of existing energy infrastructure and the deployment of new energy infrastructure is vital to achieve the Union's energy and climate policy objectives, consisting of completing the internal market in energy, guaranteeing security of supply, in particular for gas and oil, reducing greenhouse gas emissions by 20 % (30 % if the conditions are right), increasing the share of renewable energy in final energy consumption to 20 % [1] and achieving a 20 % increase in energy efficiency by 2020 whereby energy efficiency gains may contribute to reducing the need for construction of new infrastructures. At the same time, the Union has to prepare its infrastructure for further decarbonisation of its energy system in the longer term towards 2050. This Regulation should therefore also be able to accommodate possible future Union energy and climate policy objectives.

(8) Despite the fact that Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity [2] and Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas [3] provide for an internal market in energy, the market remains fragmented due to insufficient interconnections between national energy networks and to the suboptimal utilisation of existing energy infrastructure. However, Union-wide integrated networks and deployment of smart grids are vital for ensuring a competitive and properly functioning integrated market, for achieving an optimal utilisation of energy infrastructure, for increased energy efficiency and integration of distributed renewable energy sources and for promoting growth, employment and sustainable development.

(9) The Union's energy infrastructure should be upgraded in order to prevent technical failure and to increase its resilience against such failure, natural or man-made disasters, adverse effects of climate change and threats to its security, in particular as regards European critical infrastructures as set out in Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection [4].

(10) Transporting oil through land pipelines rather than over water can make an important contribution to lowering the environmental risk associated with the transportation of oil.

(11) The importance of smart grids in achieving the Union's energy policy objectives has been acknowledged in the communication from the Commission of 12 April 2011 entitled 'Smart grids: from innovation to deployment'.

(12) Energy storage facilities and reception, storage and regasification or decompression facilities for liquefied natural gas (LNG) and compressed natural gas (CNG) have an increasingly important role to play in the European energy infrastructure. The expansion of such energy infrastructure facilities forms an important component of a well-functioning network infrastructure.

(13) The communication from the Commission of 7 September 2011 entitled 'The EU Energy Policy: Engaging with Partners beyond Our Borders' underlined the need for the Union to include the promotion of energy infrastructure development in its external relations with a view to supporting socio-economic development beyond the Union borders. The Union should facilitate infrastructure projects linking the Union's energy networks with third-country networks, in particular with neighbouring countries and with countries with which the Union has established specific energy cooperation.

(14) To ensure voltage and frequency stability, particular attention should be focused on the stability of the European electricity network under the changing conditions caused by the growing inflow of energy from renewable resources that are variable in nature.

(15) The investment needs up to 2020 in electricity and gas transmission infrastructures of European relevance have been estimated at about EUR 200 billion. The significant increase in investment volumes compared to past trends and the urgency of implementing the energy infrastructure priorities requires a new approach in the way energy infrastructures, and in particular those of a cross-border nature, are regulated and financed.

(16) The Commission Staff Working Paper for the Council of 10 June 2011 entitled 'Energy infrastructure investment needs and financing requirements' stressed that approximately half of the total investments needed for the decade up to 2020 are at risk of not being delivered at all or not in time due to obstacles related to the granting of permits, regulatory issues and financing.

[1] Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources (OJ L 140, 5.6.2009, p. 16).
[2] OJ L 211, 14.8.2009, p. 55.
[3] OJ L 211, 14.8.2009, p. 94.
[4] OJ L 345, 23.12.2008, p. 75.

(17) This Regulation lays down rules for the timely development and interoperability of trans-European energy networks in order to achieve the energy policy objectives of the Treaty on the Functioning of the European Union (TFEU) to ensure the functioning of the internal energy market and security of supply in the Union, to promote energy efficiency and energy saving and the development of new and renewable forms of energy, and to promote the interconnection of energy networks. By pursuing these objectives, this Regulation contributes to smart, sustainable and inclusive growth and brings benefits to the entire Union in terms of competitiveness and economic, social and territorial cohesion.

(18) It is essential for the development of trans-European networks and their effective interoperability to ensure operational coordination between electricity transmission system operators (TSOs). In order to ensure uniform conditions for the implementation of the relevant provisions of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity [1] in this respect, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers [2]. The examination procedure should be used for the adoption of the guidelines on the implementation of operational coordination between electricity TSOs at Union level, given that those guidelines will apply generally to all TSOs.

(19) The Agency for the Cooperation of Energy Regulators (the 'Agency') established by Regulation (EC) No 713/2009 of the European Parliament and of the Council [3] is allocated important additional tasks under this Regulation and should be given the right to levy fees for some of these additional tasks.

(20) Following close consultations with all Member States and stakeholders, the Commission has identified 12 strategic trans-European energy infrastructure priorities, the implementation of which by 2020 is essential for the achievement of the Union's energy and climate policy objectives. These priorities cover different geographic regions or thematic areas in the field of electricity transmission and storage, gas transmission, storage and liquefied or compressed natural gas infrastructure, smart grids, electricity highways, carbon dioxide transport and oil infrastructure.

(21) Projects of common interest should comply with common, transparent and objective criteria in view of their contribution to the energy policy objectives. For electricity and gas, in order to be eligible for inclusion in the second and subsequent Union lists, projects should be part of the latest available 10-year network development plan. This plan should notably take account of the conclusions of the European Council of 4 February 2011 with regard to the need to integrate peripheral energy markets.

(22) Regional groups should be established for the purpose of proposing and reviewing projects of common interest, leading to the establishment of regional lists of projects of common interest. In order to ensure broad consensus, these regional groups should ensure close cooperation between Member States, national regulatory authorities, project promoters and relevant stakeholders. The cooperation should rely as much as possible on existing regional cooperation structures of national regulatory authorities and TSOs and other structures established by the Member States and the Commission. In the context of this cooperation, national regulatory authorities should, when necessary, advise the regional groups, inter alia on the feasibility of the regulatory aspects of proposed projects and on the feasibility of the proposed timetable for regulatory approval.

(23) In order to ensure that the Union list of projects of common interest ('Union list') is limited to projects which contribute the most to the implementation of the strategic energy infrastructure priority corridors and areas, the power to adopt and review the Union list should be delegated to the Commission in accordance with Article 290 of the TFEU, while respecting the right of the Member States to approve projects of common interest related to their territory. According to analysis carried out in the impact assessment accompanying the proposal that has led to this Regulation, the number of such projects is estimated at some 100 in the field of electricity and 50 in the field of gas. Taking into account this estimate, and the need to ensure the achievement of the objectives of this Regulation, the total number of projects of common interest should remain manageable, and therefore should not significantly exceed 220. The Commission, when preparing and drawing up delegated acts, should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

[1] OJ L 211, 14.8.2009, p. 15.
[2] OJ L 55, 28.2.2011, p. 13.
[3] OJ L 211, 14.8.2009, p. 1.

(24) A new Union list should be established every two years. Projects of common interest that are completed or that no longer fulfil the relevant criteria and requirements as set out in this Regulation should not appear on the next Union list. For that reason, existing projects of common interest that are to be included in the next Union list should be subject to the same selection process for the establishment of regional lists and for the establishment of the Union list as proposed projects; however, care should be taken to minimise the resulting administrative burden as much as possible, for example by using to the extent possible information submitted previously, and by taking account of the annual reports of the project promoters.

(25) Projects of common interest should be implemented as quickly as possible and should be closely monitored and evaluated, while keeping the administrative burden for project promoters to a minimum. The Commission should nominate European coordinators for projects facing particular difficulties.

(26) Permit granting processes should neither lead to administrative burdens which are disproportionate to the size or complexity of a project, nor create barriers to the development of the trans-European networks and market access. The conclusions of the Council of 19 February 2009 highlighted the need to identify and remove barriers to investment, including by means of streamlining of planning and consultation procedures. Those conclusions were reinforced by the conclusions of the European Council of 4 February 2011 which again underlined the importance of streamlining and improving permit granting processes while respecting national competences.

(27) The planning and implementation of Union projects of common interest in the areas of energy, transport and telecommunication infrastructure should be coordinated to generate synergies whenever to do so makes sense from an overall economic, technical, environmental or spatial planning point of view and with due regard to the relevant safety aspects. Thus, when the various European networks are being planned, preference could be given to integrating transport, communication and energy networks in order to ensure that as little land as possible is taken up, whilst ensuring, where possible, that existing or disused routes are reused, in order to reduce to a minimum any negative social, economic, environmental and financial impact.

(28) Projects of common interest should be given 'priority status' at national level to ensure rapid administrative treatment. Projects of common interest should be considered by competent authorities as being in the public interest. Authorisation should be given to projects which have an adverse impact on the environment, for reasons of overriding public interest, when all the conditions under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1] and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy [2] are met.

(29) The establishment of a competent authority or authorities integrating or coordinating all permit granting processes ('one-stop shop') should reduce complexity, increase efficiency and transparency and help enhance cooperation among Member States. Upon their designation, the competent authorities should be operational as soon as possible.

(30) Despite the existence of established standards for the participation of the public in environmental decision-making procedures, additional measures are needed to ensure the highest possible standards of transparency and public participation for all relevant issues in the permit granting process for projects of common interest.

(31) The correct and coordinated implementation of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment [3], of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment [4], where applicable, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 [5] (the 'Aarhus Convention'), and of the Espoo Convention on environmental impact assessment in a transboundary context (the 'Espoo Convention') should ensure the harmonisation of the main principles for the assessment of environmental effects, including in a cross-border context. Member States should coordinate their assessments for projects of common interest, and provide for joint assessments, where possible. Member States should be encouraged to exchange best practice and administrative capacity-building for permit granting processes.

[1] OJ L 206, 22.7.1992, p. 7.
[2] OJ L 327, 22.12.2000, p. 1.
[3] OJ L 26, 28.1.2012, p. 1.
[4] OJ L 197, 21.7.2001, p. 30.
[5] OJ L 124, 17.5.2005, p. 4.

(32) It is important to streamline and improve permit granting processes, while respecting — to the extent possible with due regard to the principle of subsidiarity — national competences and procedures for the construction of new infrastructure. Given the urgency of developing energy infrastructures, the simplification of permit granting processes should be accompanied by a clear time-limit for the decision to be taken by the respective authorities regarding the construction of the project. That time limit should stimulate a more efficient definition and handling of procedures, and should under no circumstances compromise the high standards for the protection of the environment and public participation. With regard to the maximum time limits established by this Regulation, Member States could nevertheless strive to further shorten them if feasible. The competent authorities should ensure compliance with the time limits, and Member States should endeavour to ensure that appeals challenging the substantive or procedural legality of a comprehensive decision are handled in the most efficient way possible.

(33) Where Member States consider it appropriate, they may include in the comprehensive decision decisions taken in the context of: negotiations with individual landowners to granting access to, ownership of, or a right to occupy property; spatial planning which determines the general land use of a defined region, includes other developments such as highways, railways, buildings and nature protection areas, and is not undertaken for the specific purpose of the planned project; granting of operational permits. In the context of the permit granting processes, a project of common interest could include related infrastructure to the extent that it is essential for the construction or functioning of the project.

(34) This Regulation, in particular the provisions on permit granting, public participation and the implementation of projects of common interest, should apply without prejudice to international and Union law, including provisions to protect the environment and human health, and provisions adopted under the Common Fisheries and Maritime Policy.

(35) The costs for the development, construction, operation and maintenance of projects of common interest should in general be fully borne by the users of the infrastructure. Projects of common interest should be eligible for cross-border cost allocation when an assessment of market demand or of the expected effects on the tariffs have indicated that costs cannot be expected to be recovered by the tariffs paid by the infrastructure users.

(36) The basis for the discussion on the appropriate allocation of costs should be the analysis of the costs and benefits of an infrastructure project on the basis of a harmonised methodology for energy-system-wide analysis, in the framework of the 10-year network development plans prepared by the European Networks of Transmission System Operators under Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks [1], and reviewed by the Agency. That analysis could take into consideration indicators and corresponding reference values for the comparison of unit investment costs.

(37) In an increasingly integrated internal energy market, clear and transparent rules for cost allocation across borders are necessary in order to accelerate investment in cross-border infrastructure. The European Council of 4 February 2011 recalled the importance of promoting a regulatory framework attractive to investment in networks, with tariffs set at levels consistent with financing needs and the appropriate cost allocation for cross-border investments, while enhancing competition and competitiveness and taking account of the impact on consumers. When deciding on cross-border cost allocation, national regulatory authorities should ensure that its impact on national tariffs does not represent a disproportionate burden for consumers. The national regulatory authorities should also avoid the risks of double support for projects by taking into account actual or estimated charges and revenues. Those charges and revenues should be taken into account only insofar as they are designed to cover the costs concerned and as much as possible related to the projects. When an investment request takes into account benefits beyond the borders of the Member States concerned, the national regulatory authorities should consult the TSOs concerned on the project-specific cost-benefit analysis.

(38) The existing internal energy market law requires that tariffs for access to gas and electricity networks provide appropriate incentives for investment. When applying the internal energy market law, national regulatory authorities should ensure a stable and predictable regulatory framework with incentives for projects of common interest, including long-term incentives, that are commensurate with the level of specific risk of the project. This applies in particular to innovative transmission technologies for electricity allowing for large scale integration of renewable energy, of distributed energy resources or of demand response in interconnected networks, and to gas transmission infrastructure offering advanced capacity or additional flexibility to the market to allow for short-term trading or back-up supply in case of supply disruptions.

[1] OJ L 211, 14.8.2009, p. 36.

(39) This Regulation applies only to the granting of permits for, public participation in, and the regulatory treatment of projects of common interest within the meaning set out herein. Member States may nevertheless apply, by virtue of their national law, the same or similar rules to other projects which do not have the status of projects of common interest within the scope of this Regulation. As regards the regulatory incentives, Member States may apply, by virtue of their national law, the same or similar rules to projects of common interest falling under the category of electricity storage.

(40) Member States that currently do not provide for a legal status of the highest national significance possible that is attributable to energy infrastructure projects in the context of permit granting processes should consider introducing such a status, in particular by evaluating if this would lead to a quicker permit granting process.

(41) The European Energy Programme for Recovery (EEPR), established by Regulation (EC) No 663/2009 of the European Parliament and of the Council [1] has demonstrated the added value of leveraging private funding through significant Union financial assistance to allow the implementation of projects of European significance. The European Council of 4 February 2011 recognised that some energy infrastructure projects may require limited public finance to leverage private funding. In the light of the economic and financial crisis and budgetary constraints, targeted support, through grants and financial instruments, should be developed under the next multiannual financial framework, which will attract new investors into the energy infrastructure priority corridors and areas, while keeping the budgetary contribution of the Union to a minimum. The relevant measures should draw on the experience gained during the pilot phase following the introduction of project bonds to finance infrastructure projects.

(42) Projects of common interest in the fields of electricity, gas and carbon dioxide should be eligible to receive Union financial assistance for studies and, under certain conditions, for works as soon as such funding becomes available under the relevant Regulation on a Connecting Europe Facility in the form of grants or in the form of innovative financial instruments. This will ensure that tailor-made support can be provided to those projects of common interest which are not viable under the existing regulatory framework and market conditions. It is important to avoid any distortion of competition, in particular between projects contributing to the achievement of the same Union priority corridor. Such financial assistance should ensure the necessary synergies with the Structural Funds, which will finance smart energy distribution networks of local or regional importance. A three-step logic applies to investments in projects of common interest. First, the market should have the priority to invest. Second, if investments are not made by the market, regulatory solutions should be explored, if necessary the relevant regulatory framework should be adjusted, and the correct application of the relevant regulatory framework should be ensured. Third, where the first two steps are not sufficient to deliver the necessary investments in projects of common interest, Union financial assistance could be granted if the project of common interest fulfils the applicable eligibility criteria.

(43) Since the objective of this Regulation, namely the development and interoperability of trans-European energy networks and connection to such networks, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(44) Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 should therefore be amended accordingly.

(45) Decision No 1364/2006/EC should therefore be repealed,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation lays down guidelines for the timely development and interoperability of priority corridors and areas of trans-European energy infrastructure set out in Annex I ('energy infrastructure priority corridors and areas').

[1] OJ L 200, 31.7.2009, p. 31.

2. In particular, this Regulation:

(a) addresses the identification of projects of common interest necessary to implement priority corridors and areas falling under the energy infrastructure categories in electricity, gas, oil, and carbon dioxide set out in Annex II ('energy infrastructure categories');

(b) facilitates the timely implementation of projects of common interest by streamlining, coordinating more closely, and accelerating permit granting processes and by enhancing public participation;

(c) provides rules and guidance for the cross-border allocation of costs and risk-related incentives for projects of common interest;

(d) determines the conditions for eligibility of projects of common interest for Union financial assistance.

Article 2

Definitions

For the purpose of this Regulation, in addition to the definitions provided for in Directives 2009/28/EC, 2009/72/EC and 2009/73/EC, Regulations (EC) No 713/2009, (EC) No 714/2009, and (EC) No 715/2009, the following definitions shall apply:

(1) 'energy infrastructure' means any physical equipment or facility falling under the energy infrastructure categories which is located within the Union or linking the Union and one or more third countries;

(2) 'comprehensive decision' means the decision or set of decisions taken by a Member State authority or authorities not including courts or tribunals, that determines whether or not a project promoter is to be granted authorisation to build the energy infrastructure to realise a project without prejudice to any decision taken in the context of an administrative appeal procedure;

(3) 'project' means one or several lines, pipelines, facilities, equipments or installations falling under the energy infrastructure categories;

(4) 'project of common interest' means a project necessary to implement the energy infrastructure priority corridors and areas set out in Annex I and which is part of the Union list of projects of common interest referred to in Article 3;

(5) 'energy infrastructure bottleneck' means limitation of physical flows in an energy system due to insufficient transmission capacity, which includes inter alia the absence of infrastructure;

(6) 'project promoter' means one of the following:

(a) a TSO, distribution system operator or other operator or investor developing a project of common interest;

(b) where there are several TSOs, distribution system operators, other operators, investors, or any group thereof, the entity with legal personality under the applicable national law, which has been designated by contractual arrangement between them and which has the capacity to undertake legal obligations and assume financial liability on behalf of the parties to the contractual arrangement;

(7) 'smart grid' means an electricity network that can integrate in a cost efficient manner the behaviour and actions of all users connected to it, including generators, consumers and those that both generate and consume, in order to ensure an economically efficient and sustainable power system with low losses and high levels of quality, security of supply and safety;

(8) 'works' means the purchase, supply and deployment of components, systems and services including software, the carrying out of development and construction and installation activities relating to a project, the acceptance of installations and the launching of a project;

(9) 'studies' means activities needed to prepare project implementation, such as preparatory, feasibility, evaluation, testing and validation studies, including software, and any other technical support measure including prior action to define and develop a project and decide on its financing, such as reconnaissance of the sites concerned and preparation of the financial package;

(10) 'national regulatory authority' means a national regulatory authority designated in accordance with Article 35(1) of Directive 2009/72/EC or Article 39(1) of Directive 2009/73/EC;

(11) 'commissioning' means the process of bringing a project into operation once it has been constructed.

CHAPTER II

PROJECTS OF COMMON INTEREST

Article 3

Union list of projects of common interest

1. This Regulation establishes twelve Regional Groups ('Groups') as set out in Annex III.1. The membership of each Group shall be based on each priority corridor and area and their respective geographical coverage as set out in Annex I. Decision-making powers in the Groups shall be restricted to Member States and the Commission, who shall, for those purposes, be referred to as the decision-making body of the Groups.

2. Each Group shall adopt its own rules of procedure, having regard to the provisions set out in Annex III.

3. The decision-making body of each Group shall adopt a regional list of proposed projects of common interest drawn up according to the process set out in Annex III.2, according to the contribution of each project to implementing the energy infrastructure priority corridors and areas and according to their fulfilment of the criteria set out in Article 4.

When a Group draws up its regional list:

(a) each individual proposal for a project of common interest shall require the approval of the Member States, to whose territory the project relates; if a Member State decides not to give its approval, it shall present its substantiated reasons for doing so to the Group concerned;

(b) it shall take into account advice from the Commission that is aimed at having a manageable total number of projects of common interest.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 16 that establish the Union list of projects of common interest ('Union list'), subject to the second paragraph of Article 172 of the TFEU. The Union list shall take the form of an annex to this Regulation.

In exercising its power, the Commission shall ensure that the Union list is established every two years, on the basis of the regional lists adopted by the decision-making bodies of the Groups as established in Annex III.1(2), following the procedure set out in paragraph 3 of this Article.

The first Union list shall be adopted by 30 September 2013.

5. The Commission shall, when adopting the Union list on the basis of the regional lists:

(a) ensure that only those projects that fulfil the criteria referred to in Article 4 are included;

(b) ensure cross-regional consistency, taking into account the opinion of the Agency as referred to in Annex III.2(12);

(c) take into account any opinions of Member States as referred to in Annex III.2(9); and

(d) aim for a manageable total number of projects of common interest on the Union list.

6. Projects of common interest included on the Union list pursuant to paragraph 4 of this Article shall become an integral part of the relevant regional investment plans under Article 12 of Regulations (EC) No 714/2009 and (EC) No 715/2009 and of the relevant national 10-year network development plans under Article 22 of Directives 2009/72/EC and 2009/73/EC and other national infrastructure plans concerned, as appropriate. Those projects shall be conferred the highest possible priority within each of those plans.

Article 4

Criteria for projects of common interest

1. Projects of common interest shall meet the following general criteria:

(a) the project is necessary for at least one of the energy infrastructure priority corridors and areas;

(b) the potential overall benefits of the project, assessed according to the respective specific criteria in paragraph 2, outweigh its costs, including in the longer term; and

(c) the project meets any of the following criteria:

(i) involves at least two Member States by directly crossing the border of two or more Member States;

(ii) is located on the territory of one Member State and has a significant cross-border impact as set out in Annex IV.1;

(iii) crosses the border of at least one Member State and a European Economic Area country.

2. The following specific criteria shall apply to projects of common interest falling within specific energy infrastructure categories:

(a) for electricity transmission and storage projects falling under the energy infrastructure categories set out in Annex II.1(a) to (d), the project is to contribute significantly to at least one of the following specific criteria:

(i) market integration, inter alia through lifting the isolation of at least one Member State and reducing energy infrastructure bottlenecks; competition and system flexibility;

(ii) sustainability, inter alia through the integration of renewable energy into the grid and the transmission of renewable generation to major consumption centres and storage sites;

(iii) security of supply, inter alia through interoperability, appropriate connections and secure and reliable system operation;

(b) for gas projects falling under the energy infrastructure categories set out in Annex II.2, the project is to contribute significantly to at least one of the following specific criteria:

(i) market integration, inter alia through lifting the isolation of at least one Member State and reducing energy infrastructure bottlenecks; interoperability and system flexibility;

(ii) security of supply, inter alia through appropriate connections and diversification of supply sources, supplying counterparts and routes;

(iii) competition, inter alia through diversification of supply sources, supplying counterparts and routes;

(iv) sustainability, inter alia through reducing emissions, supporting intermittent renewable generation and enhancing deployment of renewable gas;

(c) for electricity smart grid projects falling under the energy infrastructure category set out in Annex II.1(e), the project is to contribute significantly to all of the following specific criteria:

(i) integration and involvement of network users with new technical requirements with regard to their electricity supply and demand;

(ii) efficiency and interoperability of electricity transmission and distribution in day-to-day network operation;

(iii) network security, system control and quality of supply;

(iv) optimised planning of future cost-efficient network investments;

(v) market functioning and customer services;

(vi) involvement of users in the management of their energy usage;

(d) for oil transport projects falling under the energy infrastructure categories set out in Annex II.3, the project is to contribute significantly to all of the following specific criteria:

(i) security of supply reducing single supply source or route dependency;

(ii) efficient and sustainable use of resources through mitigation of environmental risks;

(iii) interoperability;

(e) for carbon dioxide transport projects falling under the energy infrastructure categories set out in Annex II.4, the project is contribute significantly to all of the following specific criteria:

(i) the avoidance of carbon dioxide emissions while maintaining security of energy supply;

(ii) increasing the resilience and security of carbon dioxide transport;

(iii) the efficient use of resources, by enabling the connection of multiple carbon dioxide sources and storage sites via common infrastructure and minimising environmental burden and risks.

3. For projects falling under the energy infrastructure categories set out in Annex II.1 to 3, the criteria listed in this Article shall be assessed in accordance with the indicators set out in Annex IV.2 to 5.

4. In order to facilitate the assessing of all projects that could be eligible as projects of common interest and that could be included in a regional list, each Group shall assess each project's contribution to the implementation of the same priority corridor or area in a transparent and objective manner. Each Group shall determine its assessment method on the basis of the aggregated contribution to the criteria referred to in paragraph 2; this assessment shall lead to a ranking of projects for internal use of the Group. Neither the regional list nor the Union list shall contain any ranking, nor shall the ranking be used for any subsequent purpose except as described in Annex III.2(14).

When assessing projects, each Group shall furthermore give due consideration to:

(a) the urgency of each proposed project in order to meet the Union energy policy targets of market integration, inter alia through lifting the isolation of at least one Member State and competition, sustainability and security of supply;

(b) the number of Member States affected by each project, whilst ensuring equal opportunities for projects involving peripheral Member States;

(c) the contribution of each project to territorial cohesion; and

(d) complementarity with regard to other proposed projects.

For smart grids projects falling under the energy infrastructure category set out in Annex II.1(e), ranking shall be carried out for those projects that affect the same two Member States, and due consideration shall also be given to the number of users affected by the project, the annual energy consumption and the share of generation from non-dispatchable resources in the area covered by these users.

Article 5

Implementation and monitoring

1. Project promoters shall draw up an implementation plan for projects of common interest, including a timetable for each of the following:

(a) feasibility and design studies;

(b) approval by the national regulatory authority or by any other authority concerned;

(c) construction and commissioning;

(d) the permit granting schedule referred to in Article 10(4)(b).

2. TSOs, distribution system operators and other operators shall co-operate with each other in order to facilitate the development of projects of common interest in their area.

3. The Agency and the Groups concerned shall monitor the progress achieved in implementing the projects of common interest and, if necessary, make recommendations to facilitate the implementation of projects of common interest. The Groups may request that additional information be provided in accordance with paragraphs 4, 5 and 6, convene meetings with the relevant parties and invite the Commission to verify the information provided on site.

4. By 31 March of each year following the year of inclusion of a project of common interest on the Union list pursuant to Article 3, project promoters shall submit an annual report, for each project falling under the categories set out in Annex II.1 and 2, to the competent authority referred to in Article 8 and either to the Agency or, for projects falling under the categories set out in Annex II.3 and 4, to the respective Group. That report shall give details of:

(a) the progress achieved in the development, construction and commissioning of the project, in particular with regard to permit granting and consultation procedures;

(b) where relevant, delays compared to the implementation plan, the reasons for such delays and other difficulties encountered;

(c) where relevant, a revised plan aiming at overcoming the delays.

5. Within three months of the receipt of the annual reports referred to in paragraph 4 of this Article, the Agency shall submit to the Groups a consolidated report for the projects of common interest falling under the categories set out in Annex II.1 and 2, evaluating the progress achieved and make, where appropriate, recommendations on how to overcome the delays and difficulties encountered. That consolidated report shall also evaluate, in accordance with Article 6(8) and (9) of Regulation (EC) No 713/2009, the consistent implementation of the Union-wide network development plans with regard to the energy infrastructure priority corridors and areas.

6. Each year, the competent authorities referred to in Article 8 shall report to the respective Group on the progress and, where relevant, on delays in the implementation of projects of common interest located on their respective territory with regard to the permit granting processes, and on the reasons for such delays.

7. If the commissioning of a project of common interest is delayed compared to the implementation plan, other than for overriding reasons beyond the control of the project promoter:

(a) in so far as measures referred to in Article 22(7)(a), (b) or (c) of Directives 2009/72/EC and 2009/73/EC are applicable according to respective national laws, national regulatory authorities shall ensure that the investment is carried out;

(b) if the measures of national regulatory authorities according to point (a) are not applicable, the project promoter shall choose a third party to finance or construct all or part of the project. The project promoter shall do so before the delay compared to the date of commissioning in the implementation plan exceeds two years;

(c) if a third party is not chosen according to point (b), the Member State or, when the Member State has so provided, the national regulatory authority may, within two months of the expiry of the period referred to in point (b), designate a third party to finance or construct the project which the project promoter shall accept;

(d) if the delay compared to the date of commissioning in the implementation plan exceeds two years and two months, the Commission, subject to the agreement and with the full cooperation of the Member States concerned, may launch a call for proposals open to any third party capable of becoming a project promoter to build the project according to an agreed timeline;

(e) when points (c) or (d) are applied, the system operator in whose area the investment is located shall provide the implementing operators or investors or third party with all the information needed to realise the investment, shall connect new assets to the transmission network and shall generally make its best efforts to facilitate the implementation of the investment and the secure, reliable and efficient operation and maintenance of the project of common interest.

8. A project of common interest may be removed from the Union list according to the procedure set out in Article 3(4) if its inclusion in that list was based on incorrect information which was a determining factor for that inclusion, or the project does not comply with Union law.

9. Projects which are no longer on the Union list shall lose all rights and obligations linked to the status of project of common interest arising from this Regulation.

However, a project which is no longer on the Union list but for which an application file has been accepted for examination by the competent authority shall maintain the rights and obligations arising from Chapter III, except where the project is no longer on the list for the reasons set out in paragraph 8.

10. This Article shall be without prejudice to any Union financial assistance granted to any project of common interest prior to its removal from the Union list.

Article 6

European coordinators

1. Where a project of common interest encounters significant implementation difficulties, the Commission may designate, in agreement with the Member States concerned, a European coordinator for a period of up to one year renewable twice.

2. The European coordinator shall:

(a) promote the projects, for which he has been designated European coordinator and the cross-border dialogue between the project promoters and all concerned stakeholders;

(b) assist all parties as necessary in consulting concerned stakeholders and obtaining necessary permits for the projects;

(c) if appropriate, advise project promoters on the financing of the project;

(d) ensure that appropriate support and strategic direction by the Member States concerned are provided for the preparation and implementation of the projects;

(e) submit every year, and if appropriate, upon completion of their mandate, a report to the Commission on the progress of the projects and on any difficulties and obstacles which are likely to significantly delay the commissioning date of the projects. The Commission shall transmit the report to the European Parliament and the Groups concerned.

3. The European coordinator shall be chosen on the basis of his experience with regard to the specific tasks assigned to him for the projects concerned.

4. The decision designating the European coordinator shall specify the terms of reference, detailing the duration of the mandate, the specific tasks and corresponding deadlines, and the methodology to be followed. The coordination effort shall be proportionate to the complexity and estimated costs of the projects.

5. The Member States concerned shall fully cooperate with the European coordinator in his execution of the tasks referred to in paragraphs 2 and 4.

CHAPTER III

PERMIT GRANTING AND PUBLIC PARTICIPATION

Article 7

'Priority status' of projects of common interest

1. The adoption of the Union list shall establish, for the purposes of any decisions issued in the permit granting process, the necessity of these projects from an energy policy perspective, without prejudice to the exact location, routing or technology of the project.

2. For the purpose of ensuring efficient administrative processing of the application files related to projects of common interest, project promoters and all authorities concerned shall ensure that the most rapid treatment legally possible is given to these files.

3. Where such status exists in national law, projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes — and if national law so provides, in spatial planning — including those relating to environmental assessments, in the manner such treatment is provided for in national law applicable to the corresponding type of energy infrastructure.

4. By 16 August 2013, the Commission shall issue non-binding guidance to support Member States in defining adequate legislative and non-legislative measures to streamline the environmental assessment procedures and to ensure the coherent application of environmental assessment procedures required under Union law for projects of common interest.

5. Member States shall assess, taking due account of the guidance referred to in paragraph 4, which measures to streamline the environmental assessment procedures and to ensure their coherent application are possible, and shall inform the Commission of the result.

6. By nine months from the date of issue of the guidance referred to in paragraph 4, Member States shall take the non-legislative measures that they have identified under paragraph 5.

7. By 24 months from the date of issue of the guidance referred to in paragraph 4, Member States shall take the legislative measures that they have identified under paragraph 5. These measures shall be without prejudice to obligations resulting from Union law.

8. With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest from an energy policy perspective, and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are fulfilled.

Should the opinion of the Commission be required in accordance with Directive 92/43/EEC, the Commission and the competent authority referred to in Article 9 of this Regulation shall ensure that the decision with regard to the overriding public interest of a project is taken within the time limit pursuant to Article 10(1) of this Regulation.

Article 8

Organisation of the permit granting process

1. By 16 November 2013, each Member State shall designate one national competent authority which shall be responsible for facilitating and coordinating the permit granting process for projects of common interest.

2. The responsibility of the competent authority referred to in paragraph 1 and/or the tasks related to it may be delegated to, or carried out by, another authority, per project of common interest or per particular category of projects of common interest, provided that:

(a) the competent authority notifies the Commission of that delegation and the information therein is published by either the competent authority or the project promoter on the website referred to in Article 9(7);

(b) only one authority is responsible per project of common interest, is the sole point of contact for the project promoter in the process leading to the comprehensive decision for a given project of common interest, and coordinates the submission of all relevant documents and information.

The competent authority may retain the responsibility to establish time limits, without prejudice to the time limits set in accordance with Article 10.

3. Without prejudice to relevant requirements under international and Union law, the competent authority shall take actions to facilitate the issuing of the comprehensive decision. The comprehensive decision shall be issued within the time limit referred to in Article 10(1) and (2) and according to one of the following schemes:

(a) integrated scheme: the comprehensive decision shall be issued by the competent authority and shall be the sole legally binding decision resulting from the statutory permit granting procedure. Where other authorities are concerned by the project, they may, in accordance with national law, give their opinion as input to the procedure, which shall be taken into account by the competent authority;

(b) coordinated scheme: the comprehensive decision comprises multiple individual legally binding decisions issued by several authorities concerned, which shall be coordinated by the competent authority. The competent authority may establish a working group where all concerned authorities are represented in order to draw up a permit granting schedule in accordance with Article 10(4)(b), and to monitor and coordinate its implementation. The competent authority shall, in consultation with the other authorities concerned, where applicable in accordance with national law, and without prejudice to time limits set in accordance with Article 10, establish on a case-by-case basis a reasonable time limit within which the individual decisions shall be issued. The competent authority may take an individual decision on behalf of another national authority concerned, if the decision by that authority is not delivered within the time limit and if the delay cannot be adequately justified; or, where provided under national law, and to the extent that this is compatible with Union law, the competent authority may consider that another national authority concerned has either given its approval or refusal for the project if the decision by that authority is not delivered within the time limit. Where provided under national law, the competent authority may disregard an individual decision of another national authority concerned if it considers that the decision is not sufficiently substantiated with regard to the underlying evidence presented by the national authority concerned; when doing so, the competent authority shall ensure that the relevant requirements under international and Union law are respected and shall duly justify its decision;

(c) collaborative scheme: the comprehensive decision shall be coordinated by the competent authority. The competent authority shall, in consultation with the other authorities concerned, where applicable in accordance with national law, and without prejudice to time limits set in accordance with Article 10, establish on a case-by-case basis a reasonable time limit within which the individual decisions shall be issued. It shall monitor compliance with the time limits by the authorities concerned.

If an individual decision by an authority concerned is not expected to be delivered within the time limit, that authority shall inform the competent authority without delay and include a justification for the delay. Subsequently, the competent authority shall reset the time limit within which that individual decision shall be issued, whilst still complying with the overall time limits set in accordance with Article 10.

Acknowledging the national specificities in planning and permit granting processes, Member States may choose among the three schemes referred to in points (a), (b) and (c) of the first subparagraph to facilitate and coordinate their procedures and shall opt to implement the most effective scheme. Where a Member State chooses the collaborative scheme, it shall inform the Commission of its reasons therefor. The Commission shall undertake an evaluation of the effectiveness of the schemes in the report referred to in Article 17.

4. Member States may apply different schemes as set out in paragraph 3 to onshore and offshore projects of common interest.

5. If a project of common interest requires decisions to be taken in two or more Member States, the respective competent authorities shall take all necessary steps for efficient and effective cooperation and coordination among themselves, including as regards the provisions referred to in Article 10(4). Member States shall endeavour to provide for joint procedures, particularly with regard to the assessment of environmental impacts.

Article 9

Transparency and public participation

1. By 16 May 2014, the Member State or competent authority shall, where applicable in collaboration with other authorities concerned, publish a manual of procedures for the permit granting process applicable to projects of common interest. The manual shall be updated as necessary and made available to the public. The manual shall at least include the information specified in Annex VI.1. The manual shall not be legally binding, but it may refer to or quote relevant legal provisions.

2. Without prejudice to any requirements under the Aarhus and Espoo Conventions and relevant Union law, all parties involved in the permit granting process shall follow the principles for public participation set out in of Annex VI.3.

3. The project promoter shall, within an indicative period of three months of the start of the permit granting process pursuant to Article 10(1)(a), draw up and submit a concept for public participation to the competent authority, following the process outlined in the manual referred to in paragraph 1 and in line with the guidelines set out in Annex VI. The competent authority shall request modifications or approve the concept for public participation within three months; in so doing, the competent authority shall take into consideration any form of public participation and consultation that took place before the start of the permit granting process, to the extent that such public participation and consultation has fulfilled the requirements of this Article.

Where the project promoter intends to make significant changes to an approved concept, it shall inform the competent authority thereof. In that case the competent authority may request modifications.

4. At least one public consultation shall be carried out by the project promoter, or, where required by national law, by the competent authority, before submission of the final and complete application file to the competent authority pursuant to Article 10(1)(a). This shall be without prejudice to any public consultation to be carried out after submission of the request for development consent according to Article 6(2) of Directive 2011/92/EU. The public consultation shall inform stakeholders referred to in Annex VI.3(a) about the project at an early stage and shall help to identify the most suitable location or trajectory and the relevant issues to be addressed in the application file. The minimum requirements applicable to this public consultation are specified in Annex VI.5.

The project promoter shall prepare a report summarising the results of activities related to the participation of the public prior to the submission of the application file, including those activities that took place before the start of the permit granting process. The project promoter shall submit that report together with the application file to the competent authority. Due account shall be taken of these results in the comprehensive decision.

5. For projects crossing the border of two or more Member States, the public consultations pursuant to paragraph 4 in each of the Member States concerned shall take place within a period of no more than two months from the date on which the first public consultation started.

6. For projects likely to have significant adverse cross-border impacts in one or more neighbouring Member States, where Article 7 of Directive 2011/92/EU and the Espoo Convention are applicable, the relevant information shall be made available to the competent authority of the neighbouring Member States. The competent authority of the neighbouring Member States shall indicate, in the notification process where appropriate, whether it, or any other authority concerned, wishes to participate in the relevant public consultation procedures.

7. The project promoter, or, where national law so provides, the competent authority, shall establish and regularly update a website with relevant information about the project of common interest, which shall be linked to the Commission website and which shall meet the requirements specified in Annex VI.6. Commercially sensitive information shall be kept confidential.

Project promoters shall also publish relevant information by other appropriate information means to which the public has open access.

Article 10

Duration and implementation of the permit granting process

1. The permit granting process shall consist of two procedures:

(a) The pre-application procedure, covering the period between the start of the permit granting process and the acceptance of the submitted application file by the competent authority, shall take place within an indicative period of two years.

This procedure shall include the preparation of any environmental reports to be prepared by the project promoters.

For the purpose of establishing the start of the permit granting process, the project promoters shall notify the project to the competent authority of the Member States concerned in written form, and shall include a reasonably detailed outline of the project. No later than three months following the receipt of the notification, the competent authority shall, including on behalf of other authorities concerned, acknowledge or, if it considers the project as not mature enough to enter the permit granting process, reject the notification in written form. In the event of a rejection, the competent authority shall justify its decision, including on behalf of other authorities concerned. The date of signature of the acknowledgement of the notification by the competent authority shall serve as the start of the permit granting process. Where two or more Member States are concerned, the date of the acceptance of the last notification by the competent authority concerned shall serve as the date of the start of the permit granting process.

(b) The statutory permit granting procedure, covering the period from the date of acceptance of the submitted application file until the comprehensive decision is taken, shall not exceed one year and six months. Member States may set an earlier date for the time-limit, if considered appropriate.

2. The combined duration of the two procedures referred to in paragraph 1 shall not exceed a period of three years and six months. However, where the competent authority considers that one or both of the two procedures of the permit granting process will not be completed before the time limits as set out in paragraph 1, it may decide, before their expiry and on a case by case basis, to extend one or both of those time limits by a maximum of nine months for both procedures combined.

In that case, the competent authority shall inform the Group concerned and present to the Group concerned the measures taken or to be taken to conclude the permit granting process with the least possible delay. The Group may request the competent authority to report regularly on progress achieved in this regard.

3. In Member States where the determination of a route or location undertaken solely for the specific purpose of a planned project, including the planning of specific corridors for grid infrastructures, cannot be included in the process leading to the comprehensive decision, the corresponding decision shall be taken within a separate period of six months, starting on the date of submission of the final and complete application documents by the promoter.

In that case, the extension period referred to in paragraph 2 shall be reduced to six months, including for the procedure referred to in this paragraph.

4. The pre-application procedure shall comprise the following steps:

(a) upon the acknowledgement of the notification pursuant to paragraph 1(a), the competent authority shall identify, in close cooperation with the other authorities concerned, and where appropriate on the basis of a proposal by the project promoter, the scope of material and level of detail of information to be submitted by the project promoter, as part of the application file, to apply for the comprehensive decision. The checklist referred to in Annex VI.1(e) shall serve as a basis for this identification;

(b) the competent authority shall draw up, in close cooperation with the project promoter and other authorities concerned and taking into account the results of the activities carried out under point (a), a detailed schedule for the permit granting process in line with the guidelines set out in Annex VI.(2);

For projects crossing the border between two or more Member States, the competent authorities of the Member States concerned shall prepare a joint schedule, in which they endeavour to align their timetables;

(c) upon receipt of the draft application file, the competent authority shall, if necessary, and including on behalf of other authorities concerned, make further requests regarding missing information to be submitted by the project promoter, which may only address subjects identified under point (a). Within three months of the submission of the missing information, the competent authority shall accept for examination the application in written form. Requests for additional information may only be made if they are justified by new circumstances.

5. The project promoter shall ensure the completeness and adequate quality of the application file and seek the competent authority's opinion on this as early as possible during the pre-application procedure. The project promoter shall cooperate fully with the competent authority to meet deadlines and comply with the detailed schedule as defined in paragraph 4(b).

6. The time limits laid down in this Article shall be without prejudice to obligations arising from international and Union law, and without prejudice to administrative appeal procedures and judicial remedies before a court or tribunal.

CHAPTER IV

REGULATORY TREATMENT

Article 11

Energy system wide cost-benefit analysis

1. By 16 November 2013, the European Network of Transmission System Operators (ENTSO) for Electricity and the ENTSO for Gas shall publish and submit to Member States, the Commission and the Agency their respective methodologies, including on network and market modelling, for a harmonised energy system-wide cost-benefit analysis at Union level for projects of common interest falling under the categories set out in Annex II.1(a) to (d) and Annex II.2. Those methodologies shall be applied for the preparation of each subsequent 10-year network development plan developed by the ENTSO for Electricity or the ENTSO for Gas pursuant to Article 8 of Regulation (EC) No 714/2009 and Article 8 of Regulation (EC) No 715/2009. The methodologies shall be drawn up in line with the principles laid down in Annex V and be consistent with the rules and indicators set out in Annex IV.

Prior to submitting their respective methodologies, the ENTSO for Electricity and the ENTSO for Gas shall conduct an extensive consultation process involving at least the organisations representing all relevant stakeholders — and, if deemed appropriate, the stakeholders themselves — national regulatory authorities and other national authorities.

2. Within three months of the day of receipt of the methodologies, the Agency shall provide an opinion to Member States and the Commission on the methodologies and publish it.

3. Within three months of the receipt of the opinion of the Agency, the Commission shall, and Member States may, deliver an opinion on the methodologies. The opinions shall be submitted to the ENTSO for Electricity or the ENTSO for Gas.

4. Within three months of the day of receipt of the last opinion received under paragraph 3, the ENTSO for Electricity and the ENTSO for Gas shall adapt their methodologies taking due account of the opinions received from Member States, the Commission's opinion and the Agency's opinion, and submit them to the Commission for approval.

5. Within two weeks of the approval by the Commission, the ENTSO for Electricity and the ENTSO for Gas shall publish their respective methodologies on their websites. They shall transmit the corresponding input data sets as defined in Annex V.1 and other relevant network, load flow and market data in a sufficiently accurate form according to national law and relevant confidentiality agreements to the Commission and the Agency, upon request. The data shall be valid at the date of the request. The Commission and the Agency shall ensure the confidential treatment of the data received, by themselves and by any party carrying out analytical work for them on the basis of those data.

6. The methodologies shall be updated and improved regularly in accordance with paragraphs 1 to 5. The Agency, on its own initiative or upon a duly reasoned request by national regulatory authorities or stakeholders, and after formally consulting the organisations representing all relevant stakeholders and the Commission, may request such updates and improvements with due justification and timescales. The Agency shall publish the requests by national regulatory authorities or stakeholders and all relevant non-commercially sensitive documents leading to a request from the Agency for an update or improvement.

7. By 16 May 2015, national regulatory authorities cooperating in the framework of the Agency shall establish and make publicly available a set of indicators and corresponding reference values for the comparison of unit investment costs for comparable projects of the infrastructure categories included in Annex II.1 and 2. Those reference values may be used by the ENTSO for Electricity and the ENTSO for Gas for the cost-benefit analyses carried out for subsequent 10-year network development plans.

8. By 31 December 2016, the ENTSO for Electricity and the ENTSO for Gas shall jointly submit to the Commission and the Agency a consistent and interlinked electricity and gas market and network model including both electricity and gas transmission infrastructure as well as storage and LNG facilities, covering the energy infrastructure priority corridors and areas and drawn up in line with the principles laid down in Annex V. After approval of this model by the Commission according to the procedure set out in paragraphs 2 to 4, it shall be included in the methodologies.

Article 12

Enabling investments with cross-border impacts

1. The efficiently incurred investment costs, which excludes maintenance costs, related to a project of common interest falling under the categories set out in Annex II.1(a), (b) and (d) and Annex II.2 shall be borne by the relevant TSO or the project promoters of the transmission infrastructure of the Member States to which the project provides a net positive impact, and, to the extent not covered by congestion rents or other charges, be paid for by network users through tariffs for network access in that or those Member States.

2. For a project of common interest falling under the categories set out in Annex II.1(a), (b) and (d) and Annex II.2, paragraph 1 shall apply only if at least one project promoter requests the relevant national authorities to apply this Article for all or parts of the costs of the project. For a project of common interest falling under the categories set out in Annex II.2, paragraph 1 shall apply only where an assessment of market demand has already been carried out and indicated that the efficiently incurred investment costs cannot be expected to be covered by the tariffs.

Where a project has several project promoters, the relevant national regulatory authorities shall without delay request all project promoters to submit the investment request jointly in accordance with paragraph 3.

3. For a project of common interest to which paragraph 1 applies, the project promoters shall keep all concerned national regulatory authorities regularly informed, at least once per year, and until the project is commissioned, of the progress of that project and the identification of costs and impacts associated with it.

As soon as such a project has reached sufficient maturity, the project promoters, after having consulted the TSOs from the Member States to which the project provides a significant net positive impact, shall submit an investment request. That investment request shall include a request for a cross-border cost allocation and shall be submitted to all the national regulatory authorities concerned, accompanied by the following:

(a) a project-specific cost-benefit analysis consistent with the methodology drawn up pursuant to Article 11 and taking into account benefits beyond the borders of the Member State concerned;

(b) a business plan evaluating the financial viability of the project, including the chosen financing solution, and, for a project of common interest falling under the category referred to in Annex II.2, the results of market testing; and

(c) if the project promoters agree, a substantiated proposal for a cross-border cost allocation.

If a project is promoted by several project promoters, they shall submit their investment request jointly.

For projects included in the first Union list, project promoters shall submit their investment request by 31 October 2013.

A copy of each investment request shall be transmitted for information without delay by the national regulatory authorities to the Agency on receipt.

The national regulatory authorities and the Agency shall preserve the confidentiality of commercially sensitive information.

4. Within six months of the date on which the last investment request was received by the national regulatory authorities concerned, the national regulatory authorities shall, after consulting the project promoters concerned, take coordinated decisions on the allocation of investment costs to be borne by each system operator for the project, as well as their inclusion in tariffs. The national regulatory authorities may decide to allocate only part of the costs, or may decide to allocate costs among a package of several projects of common interest.

When allocating the costs, the national regulatory authorities shall take into account actual or estimated:

— congestion rents or other charges,

— revenues stemming from the inter-transmission system operator compensation mechanism established under Article 13 of Regulation (EC) No 714/2009.

In deciding to allocate costs across borders, the economic, social and environmental costs and benefits of the projects in the Member States concerned and the possible need for financial support shall be taken into account.

In deciding to allocate costs across borders, the relevant national regulatory authorities, in consultation with the TSOs concerned, shall seek a mutual agreement based on, but not limited to, the information specified in paragraph 3(a) and (b).

If a project of common interest mitigates negative externalities, such as loop flows, and that project of common interest is implemented in the Member State at the origin of the negative externality, such mitigation shall not be regarded as a cross-border benefit and shall therefore not constitute a basis for allocating costs to the TSO of the Member States affected by those negative externalities.

5. National regulatory authorities shall, based on the cross-border cost allocation as referred to in paragraph 4 of this Article, take into account actual costs incurred by a TSO or other project promoter as a result of the investments when fixing or approving tariffs in accordance with Article 37(1)(a) of Directive 2009/72/EC and Article 41(1)(a) of Directive 2009/73/EC, insofar as these costs correspond to those of an efficient and structurally comparable operator.

The cost allocation decision shall be notified, without delay, by the national regulatory authorities to the Agency, together with all the relevant information with respect to the decision. In particular, the information shall contain detailed reasons on the basis of which costs were allocated among Member States, such as the following:

(a) an evaluation of the identified impacts, including concerning network tariffs, on each of the concerned Member States;

(b) an evaluation of the business plan referred to in paragraph 3(b);

(c) regional or Union-wide positive externalities, which the project would generate;

(d) the result of the consultation of the project promoters concerned.

The cost allocation decision shall be published.

6. Where the national regulatory authorities concerned have not reached an agreement on the investment request within six months of the date on which the request was received by the last of the national regulatory authorities concerned, they shall inform the Agency without delay.

In this case or upon a joint request from the national regulatory authorities concerned, the decision on the investment request including cross-border cost allocation referred to in paragraph 3 as well as the way the cost of the investments are reflected in the tariffs shall be taken by the Agency within three months of the date of referral to the Agency.

Before taking such a decision, the Agency shall consult the national regulatory authorities concerned and the project promoters. The three-month period referred to in the second subparagraph may be extended by an additional period of two months where further information is sought by the Agency. That additional period shall begin on the day following receipt of the complete information.

The cost allocation decision shall be published. Articles 19 and 20 of Regulation (EC) No 713/2009 shall be applicable.

7. A copy of all cost allocation decisions, together with all the relevant information with respect to each decision, shall be notified, without delay, by the Agency to the Commission. That information may be submitted in aggregate form. The Commission shall preserve the confidentiality of commercially sensitive information.

8. This cost allocation decision shall not affect the right of TSOs to apply and national regulatory authorities to approve charges for access to networks in accordance with Article 32 of Directive 2009/72/EC and of Directive 2009/73/EC, Article 14 of Regulation (EC) No 714/2009, and Article 13 of Regulation (EC) No 715/2009.

9. This Article shall not apply to projects of common interest having received:

(a) an exemption from Articles 32, 33, 34 and Article 41(6), (8) and (10) of Directive 2009/73/EC pursuant to Article 36 of Directive 2009/73/EC;

(b) an exemption from Article 16(6) of Regulation (EC) No 714/2009 or an exemption from Article 32 and Article 37(6) and (10) of Directive 2009/72/EC pursuant to Article 17 of Regulation (EC) No 714/2009;

(c) an exemption under Article 22 of Directive 2003/55/EC ([1]); or

(d) an exemption under Article 7 of Regulation (EC) No 1228/2003 ([2]).

Article 13

Incentives

1. Where a project promoter incurs higher risks for the development, construction, operation or maintenance of a project of common interest falling under the categories set out in Annex II.1(a), (b) and (d) and Annex II.2, compared to the risks normally incurred by a comparable infrastructure project, Member States and national regulatory authorities shall ensure that appropriate incentives are granted to that project in accordance with Article 37(8) of Directive 2009/72/EC, Article 41(8) of Directive 2009/73/EC, Article 14 of Regulation (EC) No 714/2009, and Article 13 of Regulation (EC) No 715/2009.

The first subparagraph shall not apply where the project of common interest has received:

(a) an exemption from Articles 32, 33, 34 and Article 41(6), (8) and (10) of Directive 2009/73/EC pursuant to Article 36 of Directive 2009/73/EC;

(b) an exemption from Article 16(6) of Regulation (EC) No 714/2009 or an exemption from Article 32 and Article 37(6) and (10) of Directive 2009/72/EC pursuant to Article 17 of Regulation (EC) No 714/2009;

(c) an exemption under Article 22 of Directive 2003/55/EC; or

(d) an exemption under Article 7 of Regulation (EC) No 1228/2003.

2. The decision of the national regulatory authorities for granting the incentives referred to in paragraph 1 shall consider the results of the cost-benefit analysis on the basis of the methodology drawn up pursuant to Article 11 and in particular the regional or Union-wide positive externalities generated by the project. The national regulatory authorities shall further analyse the specific risks incurred by the project promoters, the risk mitigation measures taken and the justification of this risk profile in view of the net positive impact provided by the project, when compared to a lower-risk alternative. Eligible risks shall notably include risks related to new transmission technologies, both onshore and offshore, risks related to under-recovery of costs and development risks.

3. The incentive granted by the decision shall take account of the specific nature of the risk incurred and may cover inter alia:

(a) the rules for anticipatory investment; or

(b) the rules for recognition of efficiently incurred costs before commissioning of the project; or

([1]) Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas (OJ L 176, 15.7.2003, p. 57).

([2]) Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (OJ L 176, 15.7.2003, p. 1).

(c) the rules for providing additional return on the capital invested for the project; or

(d) the any other measure deemed necessary and appropriate.

4. By 31 July 2013, each national regulatory authority shall submit to the Agency its methodology and the criteria used to evaluate investments in electricity and gas infrastructure projects and the higher risks incurred by them, where available.

5. By 31 December 2013, taking due account of the information received pursuant to paragraph 4 of this Article, the Agency shall facilitate the sharing of good practices and make recommendations in accordance with Article 7(2) of Regulation (EC) No 713/2009 regarding:

(a) the incentives referred to in paragraph 1 on the basis of a benchmarking of best practice by national regulatory authorities;

(b) a common methodology to evaluate the incurred higher risks of investments in electricity and gas infrastructure projects.

6. By 31 March 2014, each national regulatory authority shall publish its methodology and the criteria used to evaluate investments in electricity and gas infrastructure projects and the higher risks incurred by them.

7. Where the measures referred to in paragraphs 5 and 6 are not sufficient to ensure the timely implementation of projects of common interest, the Commission may issue guidelines regarding the incentives laid down in this Article.

CHAPTER V

FINANCING

Article 14

Eligibility of projects for Union financial assistance

1. Projects of common interest falling under the categories set out in Annex II.1, 2 and 4 are eligible for Union financial assistance in the form of grants for studies and financial instruments.

2. Projects of common interest falling under the categories set out in Annex II.1(a) to (d) and Annex II.2, except for hydro-pumped electricity storage projects, are also eligible for Union financial assistance in the form of grants for works if they fulfil all of the following criteria:

(a) the project specific cost-benefit analysis pursuant to Article 12(3)(a) provides evidence concerning the existence of significant positive externalities, such as security of supply, solidarity or innovation;

(b) the project has received a cross-border cost allocation decision pursuant to Article 12; or, for projects of common interest falling under the category set out in Annex II.1(c) and that therefore do not receive a cross-border cost allocation decision, the project shall aim to provide services across borders, bring technological innovation and ensure the safety of cross-border grid operation;

(c) the project is commercially not viable according to the business plan and other assessments carried out, notably by possible investors or creditors or the national regulatory authority. The decision on incentives and its justification referred to in Article 13(2) shall be taken into account when assessing the project's commercial viability.

3. Projects of common interest carried out in accordance with the procedure referred to in Article 5(7)(d) shall also be eligible for Union financial assistance in the form of grants for works if they fulfil the criteria set out in paragraph 2 of this Article.

4. Projects of common interest falling under the categories set out in Annex II.1(e) and 4 shall be also eligible for Union financial assistance in the form of grants for works, if the concerned project promoters can clearly demonstrate the significant positive externalities generated by the projects and their lack of commercial viability, according to the business plan and other assessments carried out, notably by possible investors or creditors or, where applicable, a national regulatory authority.

Article 15

Guidance for the award criteria of Union financial assistance

The specific criteria set out in Article 4(2) and the parameters set out in Article 4(4) shall also fulfil the role of objectives for the purpose of establishing award criteria for Union financial assistance in the relevant Regulation on a Connecting Europe Facility.

Article 16

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 3 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 power not later than nine months before the end of this 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 power referred to in Article 3 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 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two 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 two months at the initiative of the European Parliament or of the Council.

CHAPTER VI

FINAL PROVISIONS

Article 17

Reporting and evaluation

Not later than 2017, the Commission shall publish a report on the implementation of projects of common interest and submit it to the European Parliament and the Council. This report shall provide an evaluation of:

(a) the progress achieved for the planning, development, construction and commissioning of projects of common interest selected pursuant to Article 3, and, where relevant, delays in implementation and other difficulties encountered;

(b) the funds engaged and disbursed by the Union for projects of common interest, compared to the total value of funded projects of common interest;

(c) for the electricity and gas sectors, the evolution of the interconnection level between Member States, the corresponding evolution of energy prices, as well as the number of network system failure events, their causes and related economic cost;

(d) permit granting and public participation, in particular:

(i) the average and maximum total duration of permit granting processes for projects of common interest, including the duration of each step of the pre-application procedure, compared to the timing foreseen by the initial major milestones referred to in Article 10(4);

(ii) the level of opposition faced by projects of common interest (notably number of written objections during the public consultation process, number of legal recourse actions);

(iii) an overview of best and innovative practices with regard to stakeholder involvement and mitigation of environmental impact during permit granting processes and project implementation;

(iv) the effectiveness of the schemes foreseen in Article 8(3) regarding compliance with the time limits set under Article 10;

(e) regulatory treatment, in particular:

(i) the number of projects of common interest having been granted a cross-border cost allocation decision pursuant to Article 12;

(ii) the number and type of projects of common interest having received specific incentives pursuant to Article 13;

(f) the effectiveness of this Regulation in contributing to the goals for market integration by 2014 and 2015, to the climate and energy targets for 2020, and, in the longer term, to the move toward a low-carbon economy by 2050.

Article 18

Information and publicity

The Commission shall establish by six months after the date of adoption of the first Union list an infrastructure transparency platform easily accessible to the general public, including via the internet. This platform shall contain the following information:

(a) general, updated information, including geographic information, for each project of common interest;

(b) the implementation plan as set out in Article 5(1) for each project of common interest;

(c) the main results of the cost-benefit analysis on the basis of the methodology drawn up pursuant Article 11 for the projects of common interest concerned, except for any commercially sensitive information;

(d) the Union list;

(e) the funds allocated and disbursed by the Union for each project of common interest.

Article 19

Transitional provisions

This Regulation shall not affect the granting, continuation or modification of financial assistance awarded by the Commission on the basis of calls for proposals launched under Regulation (EC) No 680/2007 of the European Parliament and of the Council of 20 June 2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks [1] to projects listed in Annexes I and III to Decision No 1364/2006/EC or in view of the targets, based on the relevant categories of expenditure for TEN-E, as defined in Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund [2].

For projects of common interest in the permit granting process for which a project promoter has submitted an application file before 16 November 2013, the provisions of Chapter III shall not apply.

Article 20

Amendments to Regulation (EC) No 713/2009

In Regulation (EC) No 713/2009, paragraph 1 of Article 22 is replaced by the following:

'1. Fees shall be due to the Agency for requesting an exemption decision pursuant to Article 9(1) and for decisions on cross border cost allocation provided by the Agency pursuant to Article 12 of Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure (*).

(*) OJ L 115, 25.4.2013, p. 39.'.

[1] OJ L 162, 22.6.2007, p. 1.
[2] OJ L 210, 31.7.2006, p. 25.

Article 21

Amendments to Regulation (EC) No 714/2009

Regulation (EC) No 714/2009 is hereby amended as follows:

(1) Article 8 is amended as follows:

(a) in paragraph 3, point (a) is replaced by the following:

'(a) common network operation tools to ensure coordination of network operation in normal and emergency conditions, including a common incident classification scale, and research plans. These tools shall specify inter alia:

(i) the information, including appropriate day ahead, intra-day and real-time information, useful for improving operational coordination, as well as the optimal frequency for the collection and sharing of such information;

(ii) the technological platform for the exchange of information in real time and where appropriate, the technological platforms for the collection, processing and transmission of the other information referred to in point (i), as well as for the implementation of the procedures capable of increasing operational coordination between transmission system operators with a view to such coordination becoming Union-wide;

(iii) how transmission system operators make available the operational information to other transmission system operators or any entity duly mandated to support them to achieve operational coordination, and to the Agency; and

(iv) that transmission system operators designate a contact point in charge of answering inquiries from other transmission system operators or from any entity duly mandated as referred to in point (iii), or from the Agency concerning such information.

The ENTSO for Electricity shall submit the adopted specifications on points (i) to (iv) above to the Agency and to the Commission by 16 May 2015.

Within 12 months of the adoption of the specifications, the Agency shall issue an opinion in which it considers whether they sufficiently contribute to the promotion of cross-border trade and to ensuring the optimal management, coordinated operation, efficient use and sound technical evolution of the European electricity transmission network.';

(b) in paragraph 10 point (a) is replaced by the following:

'(a) build on national investment plans, taking into account regional investment plans as referred to in Article 12(1), and, if appropriate, Union aspects of network planning as set out in Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure (*); it shall be subject to a cost-benefit analysis using the methodology established as set out in Article 11 of that Regulation;

(*) OJ L 115, 25.4.2013, p. 39.';

(2) Article 11 is replaced by the following:

'*Article 11*

Costs

The costs related to the activities of the ENTSO for Electricity referred to in Articles 4 to 12 of this Regulation, and in Article 11 of Regulation (EU) No 347/2013 shall be borne by the transmission system operators and shall be taken into account in the calculation of tariffs. Regulatory authorities shall approve those costs only if they are reasonable and appropriate.';

(3) in Article 18, the following paragraph is inserted:

'4a. The Commission may adopt guidelines on the implementation of operational coordination between transmission system operators at Union level. Those guidelines shall be consistent with and build upon the network codes referred to in Article 6 of this Regulation and build upon the adopted specifications and the Agency opinion referred to in Article 8(3)(a) of this Regulation. When adopting those guidelines, the Commission shall take into account differing regional and national operational requirements.

Those guidelines shall be adopted in accordance with the examination procedure referred to in Article 23(3).';

(4) in Article 23 the following paragraph is inserted:

'3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (*) shall apply.

(*) OJ L 55, 28.2.2011, p. 13.'.

Article 22

Amendments to Regulation (EC) No 715/2009

Regulation (EC) No 715/2009 is amended as follows:

(1) in Article 8(10), point (a) is replaced by the following:

'(a) build on national investment plans, taking into account regional investment plans as referred to in Article 12(1), and, if appropriate, Union aspects of network planning as set out in Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure (*); it shall be the subject to a cost-benefit analysis using the methodology established as set out in Article 11 of that Regulation.

(*) OJ L 115, 25.4.2013, p. 39.';

(2) Article 11 is replaced by the following:

'*Article 11*

Costs

The costs related to the activities of the ENTSO for Gas referred to in Articles 4 to 12 of this Regulation, and in Article 11 of Regulation (EU) No 347/2013 shall be borne by the transmission system operators and shall be taken into account in the calculation of tariffs. Regulatory authorities shall approve those costs only if they are reasonable and appropriate.'.

Article 23

Repeal

Decision No 1364/2006/EC is hereby repealed from 1 January 2014. No rights shall arise under this Regulation for projects listed in Annexes I and III to Decision No 1364/2006/EC.

Article 24

Entry into force

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 1 June 2013 with the exception of Articles 14 and 15 which shall apply as from the date of application of the relevant Regulation on a Connecting Europe Facility.

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

Done at Strasbourg, 17 April 2013.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	L. CREIGHTON

ANNEX I

ENERGY INFRASTRUCTURE PRIORITY CORRIDORS AND AREAS

This Regulation shall apply to the following trans-European energy infrastructure priority corridors and areas:

1. PRIORITY ELECTRICITY CORRIDORS

(1) Northern Seas offshore grid ('NSOG'): integrated offshore electricity grid development and the related interconnectors in the North Sea, the Irish Sea, the English Channel, the Baltic Sea and neighbouring waters to transport electricity from renewable offshore energy sources to centres of consumption and storage and to increase cross-border electricity exchange.

Member States concerned: Belgium, Denmark, France, Germany, Ireland, Luxemburg, the Netherlands, Sweden, the United Kingdom;

(2) North-South electricity interconnections in Western Europe ('NSI West Electricity'): interconnections between Member States of the region and with the Mediterranean area including the Iberian peninsula, notably to integrate electricity from renewable energy sources and reinforce internal grid infrastructures to foster market integration in the region.

Member States concerned: Austria, Belgium, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Malta, Portugal, Spain, the United Kingdom;

(3) North-South electricity interconnections in Central Eastern and South Eastern Europe ('NSI East Electricity'): interconnections and internal lines in North-South and East-West directions to complete the internal market and integrate generation from renewable energy sources.

Member States concerned: Austria, Bulgaria, Croatia [1], Czech Republic, Cyprus, Germany, Greece, Hungary, Italy, Poland, Romania, Slovakia, Slovenia;

(4) Baltic Energy Market Interconnection Plan in electricity ('BEMIP Electricity'): interconnections between Member States in the Baltic region and reinforcing internal grid infrastructures accordingly, to end isolation of the Baltic States and to foster market integration inter alia by working towards the integration of renewable energy in the region.

Member States concerned: Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Sweden.

2. PRIORITY GAS CORRIDORS

(5) North-South gas interconnections in Western Europe ('NSI West Gas'): gas infrastructure for North-South gas flows in Western Europe to further diversify routes of supply and for increasing short-term gas deliverability.

Member States concerned: Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Spain, the United Kingdom;

(6) North-South gas interconnections in Central Eastern and South Eastern Europe ('NSI East Gas'): gas infrastructure for regional connections between and in the Baltic Sea region, the Adriatic and Aegean Seas, the Eastern Mediterranean Sea and the Black Sea, and for enhancing diversification and security of gas supply.

Member States concerned: Austria, Bulgaria, Croatia [1], Cyprus, Czech Republic, Germany, Greece, Hungary, Italy, Poland, Romania, Slovakia, Slovenia;

(7) Southern Gas Corridor ('SGC'): infrastructure for the transmission of gas from the Caspian Basin, Central Asia, the Middle East and the Eastern Mediterranean Basin to the Union to enhance diversification of gas supply.

[1] Subject to and as of the date of accession of Croatia.

Member States concerned: Austria, Bulgaria, Croatia [1], Czech Republic, Cyprus, France, Germany, Hungary, Greece, Italy, Poland, Romania, Slovakia, Slovenia;

(8) Baltic Energy Market Interconnection Plan in gas ('BEMIP Gas'): gas infrastructure to end the isolation of the three Baltic States and Finland and their dependency on a single supplier, to reinforce internal grid infrastructures accordingly, and to increase diversification and security of supplies in the Baltic Sea region.

Member States concerned: Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Sweden.

3. PRIORITY OIL CORRIDOR

(9) Oil supply connections in Central Eastern Europe ('OSC'): interoperability of the oil pipeline network in Central Eastern Europe to increase security of supply and reduce environmental risks.

Member States concerned: Austria, Croatia [1], Czech Republic, Germany, Hungary, Poland, Slovakia.

4. PRIORITY THEMATIC AREAS

(10) Smart grids deployment: adoption of smart grid technologies across the Union to efficiently integrate the behaviour and actions of all users connected to the electricity network, in particular the generation of large amounts of electricity from renewable or distributed energy sources and demand response by consumers.

Member States concerned: all;

(11) Electricity highways: first electricity highways by 2020, in view of building an electricity highways system across the Union that is capable of:

(a) accommodating ever-increasing wind surplus generation in and around the Northern and Baltic Seas and increasing renewable generation in the East and South of Europe and also North Africa;

(b) connecting these new generation hubs with major storage capacities in the Nordic countries, the Alps and other regions with major consumption centres; and

(c) coping with an increasingly variable and decentralised electricity supply and flexible electricity demand.

Member States concerned: all;

(12) Cross-border carbon dioxide network: development of carbon dioxide transport infrastructure between Member States and with neighbouring third countries in view of the deployment of carbon dioxide capture and storage.

Member States concerned: all.

[1] Subject to and as of the date of accession of Croatia.

ANNEX II

ENERGY INFRASTRUCTURE CATEGORIES

The energy infrastructure categories to be developed in order to implement the energy infrastructure priorities listed in Annex I are the following:

(1) concerning electricity:

(a) high-voltage overhead transmission lines, if they have been designed for a voltage of 220 kV or more, and underground and submarine transmission cables, if they have been designed for a voltage of 150 kV or more;

(b) concerning in particular electricity highways; any physical equipment designed to allow transport of electricity on the high and extra-high voltage level, in view of connecting large amounts of electricity generation or storage located in one or several Member States or third countries with large-scale electricity consumption in one or several other Member States;

(c) electricity storage facilities used for storing electricity on a permanent or temporary basis in above-ground or underground infrastructure or geological sites, provided they are directly connected to high-voltage transmission lines designed for a voltage of 110 kV or more;

(d) any equipment or installation essential for the systems defined in (a) to (c) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels and substations;

(e) any equipment or installation, both at transmission and medium voltage distribution level, aiming at two-way digital communication, real-time or close to real-time, interactive and intelligent monitoring and management of electricity generation, transmission, distribution and consumption within an electricity network in view of developing a network efficiently integrating the behaviour and actions of all users connected to it — generators, consumers and those that do both — in order to ensure an economically efficient, sustainable electricity system with low losses and high quality and security of supply and safety;

(2) concerning gas:

(a) transmission pipelines for the transport of natural gas and bio gas that form part of a network which mainly contains high-pressure pipelines, excluding high-pressure pipelines used for upstream or local distribution of natural gas;

(b) underground storage facilities connected to the above-mentioned high-pressure gas pipelines;

(c) reception, storage and regasification or decompression facilities for liquefied natural gas (LNG) or compressed natural gas (CNG);

(d) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;

(3) concerning oil:

(a) pipelines used to transport crude oil;

(b) pumping stations and storage facilities necessary for the operation of crude oil pipelines;

(c) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems and reverse-flow devices;

(4) concerning carbon dioxide:

(a) dedicated pipelines, other than upstream pipeline network, used to transport anthropogenic carbon dioxide from more than one source, i.e. industrial installations (including power plants) that produce carbon dioxide gas from combustion or other chemical reactions involving fossil or non-fossil carbon-containing compounds, for the purpose of permanent geological storage of carbon dioxide pursuant to Directive 2009/31/EC of the European Parliament and of the Council [1];

(b) facilities for liquefaction and buffer storage of carbon dioxide in view of its further transportation. This does not include infrastructure within a geological formation used for the permanent geological storage of carbon dioxide pursuant to Directive 2009/31/EC and associated surface and injection facilities;

(c) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems.

[1] OJ L 140, 5.6.2009, p. 114.

ANNEX III

REGIONAL LISTS OF PROJECTS OF COMMON INTEREST

1. RULES FOR GROUPS

(1) For electricity projects falling under the categories set out in Annex II.1, each Group shall be composed of representatives of the Member States, national regulatory authorities, TSOs, as well as the Commission, the Agency and the ENTSO for Electricity.

For gas projects falling under the categories set out in Annex II.2, each Group shall be composed of representatives of the Member States, national regulatory authorities, TSOs, as well as the Commission, the Agency and the ENTSO for Gas.

For oil and carbon dioxide transport projects falling under the categories referred to in Annex II.3 and 4, each Group shall be composed of the representatives of the Member States, project promoters concerned by each of the relevant priorities designated in Annex I and the Commission.

(2) The decision-making bodies of the Groups may merge. All Groups or decision-making bodies shall meet together, when relevant, to discuss matters common to all Groups; such matters may include issues relevant to cross-regional consistency or the number of proposed projects included on the draft regional lists at risk of becoming unmanageable.

(3) Each Group shall organise its work in line with regional cooperation efforts pursuant Article 6 of Directive 2009/72/EC, Article 7 of Directive 2009/73/EC, Article 12 of Regulation (EC) No 714/2009, and Article 12 of Regulation (EC) No 715/2009 and other existing regional cooperation structures.

(4) Each Group shall invite, as appropriate in view of implementing the relevant priority designated in Annex I, promoters of a project potentially eligible for selection as a project of common interest as well as representatives of national administrations, of regulatory authorities, and TSOs from EU candidate countries and potential candidates, the member countries of the European Economic Area and the European Free Trade Association, representatives from the Energy Community institutions and bodies, countries covered by the European Neighbourhood policy and countries, with which the Union has established specific energy cooperation. The decision to invite third country-representatives shall be based on consensus.

(5) Each Group shall consult the organisations representing relevant stakeholders — and, if deemed appropriate, stakeholders directly — including producers, distribution system operators, suppliers, consumers, and organisations for environmental protection. The Group may organise hearings or consultations, where relevant for the accomplishments of its tasks.

(6) The internal rules, an updated list of member organisations, regularly updated information on the progress of work, meeting agendas, as well as final conclusions and decisions of each Group shall be published by the Commission on the transparency platform referred to in Article 18.

(7) The Commission, the Agency and the Groups shall strive for consistency between the different Groups. For this purpose, the Commission and the Agency shall ensure, when relevant, the exchange of information on all work representing an interregional interest between the Groups concerned.

The participation of national regulatory authorities and the Agency in the Groups shall not jeopardise the fulfilment of their objectives and duties under this Regulation or under Articles 36 and 37 of Directive 2009/72/EC and Articles 40 and 41 of Directive 2009/73/EC, or under Regulation (EC) No 713/2009.

2. PROCESS FOR ESTABLISHING REGIONAL LISTS

(1) Promoters of a project potentially eligible for selection as a project of common interest wanting to obtain the status of projects of common interest shall submit an application for selection as project of common interest to the Group that includes:

— an assessment of their projects with regard to the contribution to implementing the priorities set out in Annex I,

— an analysis of the fulfilment of the relevant criteria defined in Article 4,

— for projects having reached a sufficient degree of maturity, a project-specific cost-benefit analysis in accordance with Articles 21 and 22 based on the methodologies developed by the ENTSO for electricity or the ENTSO for gas pursuant to Article 11, and

— any other relevant information for the evaluation of the project.

(2) All recipients shall preserve the confidentiality of commercially sensitive information.

(3) After adoption of the first Union list, for all subsequent Union lists adopted, proposed electricity transmission and storage projects falling under the categories set out in Annex II.1(a), (b) and (d) shall be part of the latest available 10-year network development plan for electricity, developed by the ENTSO for Electricity pursuant Article 8 of Regulation (EC) No 714/2009.

(4) After adoption of the first Union list, for all subsequent Union lists adopted, proposed gas infrastructure projects falling under the categories set out in Annex II.2 shall be part of the latest available 10-year network development plan for gas, developed by the ENTSO for Gas pursuant Article 8 of Regulation (EC) No 715/2009.

(5) The project proposals submitted for inclusion in the first Union list which were not previously evaluated pursuant to Article 8 of Regulation (EC) No 714/2009 shall be assessed at Union-wide system level by:

— the ENTSO for Electricity in line with the methodology applied in the latest available 10-year network development plan for projects falling under Annex II.1(a), (b) and (d),

— the ENTSO for Gas or by a third party in a consistent manner based on an objective methodology for projects falling under Annex II.2.

By 16 January 2014, the Commission shall issue Guidelines on criteria to be applied by the ENTSO for electricity and the ENTSO for gas when developing their respective 10-year network development plans referred to in points (3) and (4), in order to ensure equal treatment and transparency of the process.

(6) Proposed carbon dioxide transport projects falling under the category set out in Annex II.4 shall be presented as part of a plan, developed by at least two Member States, for the development of cross-border carbon dioxide transport and storage infrastructure, to be presented by the Member States concerned or entities designated by those Member States to the Commission.

(7) For proposed projects falling under the categories set out in Annex II.1 and 2, national regulatory authorities, and if necessary the Agency, shall, where possible in the context of regional cooperation (Article 6 of Directive 2009/72/EC, Article 7 of Directive 2009/73/EC), check the consistent application of the criteria/ cost-benefit analysis methodology and evaluate their cross-border relevance. They shall present their assessment to the Group.

(8) For proposed oil and carbon dioxide transport projects falling under the categories set out in Annex II.3 and 4, the Commission shall evaluate the application of the criteria set out in Article 4. For proposed carbon dioxide projects falling under the category set out in Annex II.4, the Commission shall also take into account the potential for future extension to include additional Member States. The Commission shall present its assessment to the Group.

(9) Each Member State to whose territory a proposed project does not relate, but on which the proposed project may have a potential net positive impact or a potential significant effect, such as on the environment or on the operation of the energy infrastructure on its territory, may present an opinion to the Group specifying its concerns.

(10) The decision-making body of the Group shall examine, at the request of a Member State of the Group, the substantiated reasons presented by a Member State pursuant to Article 3(3) for not approving a project of common interest related to its territory.

(11) The Group shall meet to examine and rank the proposed projects taking into account the assessment of the regulators, or the assessment of the Commission for oil and carbon dioxide transport projects.

(12) The draft regional lists of proposed projects falling under the categories set out in Annex II.1 and 2 drawn up by the Groups, together with any opinions as specified in point (9), shall be submitted to the Agency six months before the adoption date of the Union list. The draft regional lists and the accompanying opinions shall be assessed by the Agency within three months of the date of receipt. The Agency shall provide an opinion on the draft regional lists, in particular on the consistent application of the criteria and the cost-benefit analysis across regions. The opinion of the Agency shall be adopted in accordance with the procedure referred to in Article 15(1) of Regulation (EC) No 713/2009.

(13) Within one month of the date of receipt of the Agency's opinion, the decision-making body of each Group shall adopt its final regional list, respecting the provisions set out in Article 3(3), based on the Groups' proposal and taking into account the opinion of the Agency and the assessment of the national regulatory authorities submitted in accordance with point (7), or the assessment of the Commission for oil and carbon dioxide transport projects proposed in accordance with point (8). The Groups shall submit the final regional lists to the Commission, together with any opinions as specified in point (9).

(14) If, based on the regional lists received, and after having taken into account the Agency opinion, the total number of proposed projects of common interest on the Union list would exceed a manageable number, the Commission shall consider, after having consulted each Group concerned, not to include in the Union list projects that were ranked lowest by the Group concerned according to the ranking established pursuant to Article 4(4).

ANNEX IV

RULES AND INDICATORS CONCERNING CRITERIA FOR PROJECTS OF COMMON INTEREST

(1) A project with significant cross-border impact is a project on the territory of a Member State, which fulfils the following conditions:

(a) for electricity transmission, the project increases the grid transfer capacity, or the capacity available for commercial flows, at the border of that Member State with one or several other Member States, or at any other relevant cross-section of the same transmission corridor having the effect of increasing this cross-border grid transfer capacity, by at least 500 Megawatt compared to the situation without commissioning of the project;

(b) for electricity storage, the project provides at least 225 MW installed capacity and has a storage capacity that allows a net annual electricity generation of 250 Gigawatt-hours/year;

(c) for gas transmission, the project concerns investment in reverse flow capacities or changes the capability to transmit gas across the borders of the Member States concerned by at least 10 % compared to the situation prior to the commissioning of the project;

(d) for gas storage or liquefied/compressed natural gas, the project aims at supplying directly or indirectly at least two Member States or at fulfilling the infrastructure standard (N-1 rule) at regional level in accordance with Article 6(3) of Regulation (EU) No 994/2010 of the European Parliament and of the Council [1];

(e) for smart grids, the project is designed for equipments and installations at high-voltage and medium-voltage level designed for a voltage of 10 kV or more. It involves transmission and distribution system operators from at least two Member States, which cover at least 50 000 users that generate or consume electricity or do both in a consumption area of at least 300 Gigawatthours/year, of which at least 20 % originate from renewable resources that are variable in nature.

(2) Concerning projects falling under the categories set out in Annex II.1(a) to (d), the criteria listed in Article 4 shall be evaluated as follows:

(a) Market integration, competition and system flexibility shall be measured in line with the analysis made in the latest available Union-wide 10-year network development plan in electricity, notably by:

— calculating, for cross-border projects, the impact on the grid transfer capability in both power flow directions, measured in terms of amount of power (in megawatt), and their contribution to reaching the minimum interconnection capacity of 10 % installed production capacity or, for projects with significant cross-border impact, the impact on grid transfer capability at borders between relevant Member States, between relevant Member States and third countries or within relevant Member States and on demand-supply balancing and network operations in relevant Member States,

— assessing the impact, for the area of analysis as defined in Annex V.10, in terms of energy system-wide generation and transmission costs and evolution and convergence of market prices provided by a project under different planning scenarios, notably taking into account the variations induced on the merit order.

(b) Transmission of renewable energy generation to major consumption centres and storage sites shall be measured in line with the analysis made in the latest available 10-year network development plan in electricity, notably by:

— for electricity transmission, by estimating the amount of generation capacity from renewable energy sources (by technology, in megawatts), which is connected and transmitted due to the project, compared to the amount of planned total generation capacity from these types of renewable energy sources in the concerned Member State in 2020 according to the national renewable energy action plans as defined in Article 4 of Directive 2009/28/EC,

[1] OJ L 295, 12.11.2010, p. 1.

— for electricity storage, by comparing new capacity provided by the project with total existing capacity for the same storage technology in the area of analysis as defined in Annex V.10.

(c) Security of supply, interoperability and secure system operation shall be measured in line with the analysis made in the latest available 10-year network development plan in electricity, notably by assessing the impact of the project on the loss of load expectation for the area of analysis as defined in Annex V.10 in terms of generation and transmission adequacy for a set of characteristic load periods, taking into account expected changes in climate-related extreme weather events and their impact on infrastructure resilience. Where applicable, the impact of the project on independent and reliable control of system operation and services shall be measured.

(3) Concerning projects falling under the categories set out in Annex II.2, the criteria listed in Article 4 shall be evaluated as follows:

(a) Market integration and interoperability shall be measured by calculating the additional value of the project to the integration of market areas and price convergence, to the overall flexibility of the system, including the capacity level offered for reverse flows under various scenarios.

(b) Competition shall be measured on the basis of diversification, including the facilitation of access to indigenous sources of supply, taking into account, successively: diversification of sources; diversification of counterparts; diversification of routes; the impact of new capacity on the Herfindahl-Hirschmann index (HHI)calculated at capacity level for the area of analysis as defined in Annex V.10.

(c) Security of gas supply shall be measured by calculating the additional value of the project to the short and long-term resilience of the Union's gas system and to enhancing the remaining flexibility of the system to cope with supply disruptions to Member States under various scenarios as well as the additional capacity provided by the project measured in relation to the infrastructure standard (N-1 rule) at regional level in accordance with Article 6(3) of Regulation (EU) No 994/2010.

(d) Sustainability shall be measured as the contribution of a project to reduce emissions, to support the back-up of renewable electricity generation or power-to-gas and biogas transportation, taking into account expected changes in climatic conditions.

(4) Concerning projects falling under the category set out in Annex II.1(e), each function listed in Article 4 shall be evaluated against the following criteria:

(a) Level of sustainability: This criterion shall be measured by assessing the reduction of greenhouse gas emissions, and the environmental impact of electricity grid infrastructure.

(b) Capacity of transmission and distribution grids to connect and bring electricity from and to users: This criterion shall be measured by estimating the installed capacity of distributed energy resources in distribution networks, the allowable maximum injection of electricity without congestion risks in transmission networks, and the energy not withdrawn from renewable sources due to congestion or security risks.

(c) Network connectivity and access to all categories of network users: This criterion shall be measured by assessing the methods adopted to calculate charges and tariffs, as well as their structure, for generators, consumers and those that do both, and the operational flexibility provided for dynamic balancing of electricity in the network.

(d) Security and quality of supply: This criterion shall be measured by assessing the ratio of reliably available generation capacity and peak demand, the share of electricity generated from renewable sources, the stability of the electricity system, the duration and frequency of interruptions per customer, including climate related disruptions, and the voltage quality performance.

(e) Efficiency and service quality in electricity supply and grid operation: This criterion shall be measured by assessing the level of losses in transmission and in distribution networks, the ratio between minimum and maximum electricity demand within a defined time period, the demand side participation in electricity markets and in energy efficiency measures, the percentage utilisation (i.e. average loading) of electricity network components, the availability of network components (related to planned and unplanned maintenance) and its impact on network performances, and the actual availability of network capacity with respect to its standard value.

(f) Contribution to cross-border electricity markets by load-flow control to alleviate loop-flows and increase interconnection capacities: This criterion shall be estimated by assessing the ratio between interconnection capacity of a Member State and its electricity demand, the exploitation of interconnection capacities, and the congestion rents across interconnections.

(5) Concerning oil transport projects falling under the categories set out in Annex II.3, the criteria listed in Article 4 shall be evaluated as follows:

(a) Security of oil supply shall be measured by assessing the additional value of the new capacity offered by a project for the short and long-term resilience of the system and the remaining flexibility of the system to cope with supply disruptions under various scenarios.

(b) Interoperability shall be measured by assessing to what extent the project improves the operation of the oil network, in particular by providing the possibility of reverse flows.

(c) Efficient and sustainable use of resources shall be measured by assessing the extent to which the project makes use of already existing infrastructure and contributes to minimising environmental and climate change burden and risks.

ANNEX V

ENERGY SYSTEM-WIDE COST-BENEFIT ANALYSIS

The methodology for a harmonised energy system-wide cost-benefit analysis for projects of common interest shall satisfy the following principles laid down in this Annex.

(1) The methodology shall be based on a common input data set representing the Union's electricity and gas systems in the years n+5, n+10, n+15, and n+20, where n is the year in which the analysis is performed. This data set shall comprise at least:

(a) in electricity: scenarios for demand, generation capacities by fuel type (biomass, geothermal, hydro, gas, nuclear, oil, solid fuels, wind, solar photovoltaic, concentrated solar, other renewable technologies) and their geographical location, fuel prices (including biomass, coal, gas and oil), carbon dioxide prices, the composition of the transmission and, if relevant, the distribution network, and its evolution, taking into account all new significant generation (including capacity equipped for capturing carbon dioxide), storage and transmission projects for which a final investment decision has been taken and that are due to be commissioned by the end of year n+5;

(b) in gas: scenarios for demand, imports, fuel prices (including coal, gas and oil), carbon dioxide prices, the composition of the transmission network and its evolution, taking into account all new projects for which a final investment decision has been taken and that are due to be commissioned by the end of year n+5.

(2) The data set shall reflect Union and national law in force at the date of analysis. The data sets used for electricity and gas respectively shall be compatible, notably with regard to assumptions on prices and volumes in each market. The data set shall be elaborated after formally consulting Member States and the organisations representing all relevant stakeholders. The Commission and the Agency shall ensure access to the required commercial data from third parties when applicable.

(3) The methodology shall give guidance for the development and use of network and market modelling necessary for the cost- benefit analysis.

(4) The cost-benefit analysis shall be based on a harmonised evaluation of costs and benefits for the different categories of projects analysed and cover at least the period of time referred to in point (1).

(5) The cost-benefit analysis shall at least take into account the following costs: capital expenditure, operational and maintenance expenditure over the technical lifecycle of the project and decommissioning and waste management costs, where relevant. The methodology shall give guidance on discount rates to be used for the calculations.

(6) For electricity transmission and storage, the cost-benefit analysis shall at least take into account the impact and compensations resulting from the application of Article 13 of Regulation (EC) No 714/2009, the impacts on the indicators defined in Annex IV, and the following impacts:

(a) greenhouse gas emissions and transmission losses over the technical lifecycle of the project;

(b) future costs for new generation and transmission investment over the technical lifecycle of the project;

(c) operational flexibility, including optimisation of regulating power and ancillary services;

(d) system resilience, including disaster and climate resilience, and system security, notably for European critical infrastructures as defined in Directive 2008/114/EC.

(7) For gas, the cost-benefit analysis shall at least take into account the results of market testing the impacts on the indicators defined in Annex IV and the following impacts:

(a) disaster and climate resilience, and system security, notably for European critical infrastructures as defined in Directive 2008/114/EC;

(b) congestion in the gas network.

(8) For smart grids, the cost-benefit analysis shall take into account the impacts on the indicators defined in Annex IV.

(9) The detailed method used to take into account the indicators referred to in points 6 to 8 shall be elaborated after formally consulting Member States and the organisations representing all relevant stakeholders.

(10) The methodology shall define the analysis to be carried out, based on the relevant input data set, by determining the impacts with and without each project. The area for the analysis of an individual project shall cover all Member States and third countries, on whose territory the project shall be built, all directly neighbouring Member States and all other Member States significantly impacted by the project.

(11) The analysis shall identify the Member States on which the project has net positive impacts (beneficiaries) and those Member States on which the project has a net negative impact (cost bearers). Each cost-benefit analysis shall include sensitivity analyses concerning the input data set, the commissioning date of different projects in the same area of analysis and other relevant parameters.

(12) Transmission, storage system and compressed and liquefied natural gas terminal operators and distribution system operators shall exchange the information necessary for the elaboration of the methodology, including the relevant network and market modelling. Any transmission or distribution system operator collecting information on behalf of other transmission or distribution system operators shall give back to the participating transmission and distribution system operators the results of the collection of data.

(13) For the common electricity and gas market and network model set out in paragraph 8 of Article 11, the input data set referred to in point (1) shall cover the years n+10, n+20 and n+30 and the model shall allow for a full assessment of economic, social and environmental impacts, notably including external costs such as those related to greenhouse gas and conventional air pollutant emissions or security of supply.

ANNEX VI

GUIDELINES FOR TRANSPARENCY AND PUBLIC PARTICIPATION

(1) The manual of procedures referred to in Article 9(1) shall at least specify:

(a) the relevant law upon which decisions and opinions are based for the different types of relevant projects of common interest, including environmental law;

(b) the relevant decisions and opinions to be obtained;

(c) the names and contact details of the Competent Authority, other authorities and major stakeholders concerned;

(d) the work flow, outlining each stage in the process, including an indicative time frame and a concise overview of the decision-making process;

(e) information about the scope, structure and level of detail of documents to be submitted with the application for decisions, including a checklist;

(f) the stages and means for the general public to participate in the process.

(2) The detailed schedule referred to in Article 10(4)(b) shall specify as a minimum the following:

(a) the decisions and opinions to be obtained;

(b) the authorities, stakeholders, and the public likely to be concerned;

(c) the individual stages of the procedure and their duration;

(d) major milestones to be accomplished and their deadlines in view of the comprehensive decision to be taken;

(e) the resources planned by the authorities and possible additional resource needs.

(3) To increase public participation in the permit granting process and ensure in advance information and dialogue with the public, the following principles shall be applied:

(a) The stakeholders affected by a project of common interest, including relevant national, regional and local authorities, landowners and citizens living in the vicinity of the project, the general public and their associations, organisations or groups, shall be extensively informed and consulted at an early stage, when potential concerns by the public can still be taken into account and in an open and transparent manner. Where relevant, the competent authority shall actively support the activities undertaken by the project promoter.

(b) Competent authorities shall ensure that public consultation procedures for projects of common interest are grouped together where possible. Each public consultation shall cover all subject matters relevant to the particular stage of the procedure, and one subject matter relevant to the particular stage of the procedure shall not be addressed in more than one public consultation; however, one public consultation may take place in more than one geographical location. The subject matters addressed by a public consultation shall be clearly indicated in the notification of the public consultation.

(c) Comments and objections shall be admissible from the beginning of the public consultation until the expiry of the deadline only.

(4) The concept for public participation shall at least include information about:

(a) the stakeholders concerned and addressed;

(b) the measures envisaged, including proposed general locations and dates of dedicated meetings;

(c) the timeline;

(d) the human resources allocated to the respective tasks.

(5) In the context of the public consultation to be carried out before submission of the application file, the relevant parties shall at least:

(a) publish an information leaflet of no more than 15 pages, giving, in a clear and concise manner, an overview of the purpose and preliminary timetable of the project, the national grid development plan, alternative routes considered, expected impacts, including of cross-border nature, and possible mitigation measures, which shall be published prior to the start of the consultation; The information leaflet shall furthermore list the web addresses of the transparency platform referred to in Article 18 and of the manual of procedures referred to in point (1);

(b) inform all stakeholders affected about the project through the website referred to in Article 9(7) and other appropriate information means;

(c) invite in written form relevant affected stakeholders to dedicated meetings, during which concerns shall be discussed.

(6) The project website shall make available as a minimum the following:

(a) the information leaflet referred to in point (5);

(b) a non-technical and regularly updated summary of no more than 50 pages reflecting the current status of the project and clearly indicating, in case of updates, changes to previous versions;

(c) the project and public consultation planning, clearly indicating dates and locations for public consultations and hearings and the envisaged subject matters relevant for those hearings;

(d) contact details in view of obtaining the full set of application documents;

(e) contact details in view of conveying comments and objections during public consultations.

Statement by the European Commission as regards the eligibility of projects of common interest for EU financial assistance in the context of trans-European energy infrastructures (Chapter V of Regulation (EU) No 347/2013 of the European Parliament and of the Council [1]**)**

The Commission underlines that it considers important that the support from EU and national sources extends to grants for works to enable the implementation of projects of common interest enhancing the diversification of energy supply sources, routes and counterparts. The Commission reserves the right to make proposals in this direction based on the experience gained from the monitoring of the implementation of projects of common interest in the context of the report foreseen in Article 17 of the Regulation on guidelines for trans-European energy infrastructures.

[1] See page 39 of this Official Journal.

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