



9.6.2015

AGREED TEXT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS

Subject: Proposal for a regulation of the European Parliament and of the Council on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Projects Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013, – the European Fund for Strategic Investments
(COM(2015)0010 – C8-0007/2015 – 2015/0009(COD))

The interinstitutional negotiations on the aforementioned proposal for a regulation have led to a compromise. In accordance with Rule 73(5) of the Rules of Procedure, the agreed text, reproduced below, is submitted as a whole to the Committee on Budgets Committee on Economic and Monetary Affairs for consideration.

ANNEX A

REGULATION (EU) 2015/... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Projects Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013, – the European Fund for Strategic Investments

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 Articles 172 *and* 173, *the third paragraph of* Article 175 and Article 182(1) 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 Committee¹,

*Having regard to the opinion of the Committee of the Regions*²,

Acting in accordance with the ordinary legislative procedure³,

¹ Opinion of 19 March 2015 (not yet published in the Official Journal).

² Opinion of 16 April 2015 (not yet published in the Official Journal).

³ Position of the European Parliament of ... and decision of the Council of

Whereas:

- (1) The economic and financial crisis has led to a lowering of the level of investments within the Union. Investment has fallen by approximately 15% since its peak in 2007. The Union suffers in particular from a lack of investment as a consequence of **■** fiscal constraints on Member States *sluggish growth, thereby resulting in market uncertainty regarding the economic future*. That lack of investment, *which has been particularly severe in those Member States most affected by the crisis, has slowed down* economic recovery and negatively affects job creation, long-term growth prospects and competitiveness, *potentially preventing the attainment of the Europe 2020 targets and objectives for smart, sustainable and inclusive growth*. *There is a need to strengthen the attractiveness of investing in Europe and in the infrastructure of a modern knowledge economy*.

- (2) Comprehensive action is required to reverse the vicious circle created by a lack of investment *and by increasing disparities between regions, and to reinforce confidence in the Union economy, while incentives for creating an investment-inducing environment in Member States could boost economic recovery. Along with a renewed impetus towards investment financing, structural reforms that are effective and economically and socially sustainable* and fiscal responsibility *constitute a means of* establishing a virtuous circle *in which* investment projects help support employment and demand and lead to a sustained *reduction of the output gap as well as to an* increase in growth potential. *The EFSI, strengthened by Member State contributions, must be a complement to an overall strategy to improve Union competitiveness and attract investment.*

- (3) *In order to maximise the employment impact of the EFSI, Member States should continue to undertake structural reforms that are effective and economically and socially sustainable, as well as other initiatives such as training programmes and active labour market policies, the support of conditions for the creation of quality and sustainable jobs, and investment in targeted social policies in line with the 2013 Social Investment Package. In addition, Member States should undertake additional activities such as customised training programmes to match the skills of workers to the needs of sectors benefiting from EFSI, tailor-made business services for enterprises to prepare them to expand and create more jobs, as well as support for start-ups and self-employed individuals.*
- (4) The G20, through the Global Infrastructure Initiative, has recognised the importance of investment in boosting demand and lifting productivity and growth and has committed *itself* to creating a climate that facilitates higher levels of investment.

- (5) Throughout the economic and financial crisis, the Union has made efforts to promote growth, in particular through initiatives set out in the Europe 2020 *Strategy which* put in place an approach for smart, sustainable and inclusive growth ***and through the European Semester for economic policy coordination***. The European Investment Bank ('EIB') has also strengthened its role in instigating and promoting investment within the Union, partly by way of an increase in capital in January 2013. Further action is required to ensure that the investment ***and macro-economic*** needs of the Union are addressed ***adequately***, that the liquidity available on the market is used efficiently, and ***that the channelling of such liquidity*** towards the funding of viable investment projects ***is encouraged***.
- (6) On 15 July 2014, the then President-elect of the █ Commission presented █ Political Guidelines for the ***next*** Commission to the European Parliament. *Those* Political Guidelines called for the mobilisation of "up to EUR 300 billion in additional public and private investment in the real economy over the next three years" to stimulate investment for the purpose of job creation.

- (7) On 26 November 2014, the Commission *issued* a communication entitled "An Investment Plan for Europe" (*'Investment Plan'*) which envisaged the creation of a European Fund for Strategic Investments (EFSI), a transparent ***European Investment Project Portal ('EIPP')*** of investment projects at *Union level and an investment advisory hub ('European Investment Advisory Hub' – 'EIAH')* and ***emphasised an*** agenda to remove obstacles to investment and complete the ***internal market***.
- (8) The European Council on 18 December 2014 concluded that "fostering investment and addressing market failure in Europe is a key policy challenge" and that "The new focus on investment, coupled with Member States' commitment to intensifying structural reforms and to pursuing growth-friendly fiscal consolidation, will provide the foundation for growth and jobs in Europe". ***The European Council called*** for "setting up a European Fund for Strategic Investments (EFSI) in the EIB Group with the aim to mobilise 315 billion euro in new investments between 2015 and 2017", ***and invited the EIB Group 'to start activities by using its own funds as of January 2015'***. ***The European Council also underlined that 'the EFSI will complement and be additional to ongoing EU programmes and traditional EIB activities'***.

- (9) *On 13 January 2015, the European Commission issued a communication entitled “Making the best use of the flexibility within the existing rules of the Stability and Growth Pact” detailing how it will apply those rules.*
- (10) *On [date of Plenary], the Commission has declared that “without prejudice to the prerogatives of the Council in the implementation of the SGP, one-off contributions by Member States, either by a Member State or by National Promotional Banks classified in the general government sector or acting on behalf of a Member State, into EFSI, thematic or multi-country investment platforms established for the implementation of the Investment Plan, should in principle qualify as one-off measures, in the meaning of Article 5 of Council Regulation (EC) No 1466/97¹ and Article 3 of Council Regulation (EC) No 1467/97²”.*

¹ Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (OJ L 209, 2.8.1997, p. 1).

² Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 209, 2.8.1997, p. 6).

- (11) The EFSI *should be* part of a comprehensive *strategy designed* to address uncertainty surrounding public and private investments *and to reduce the investment gaps in the Union*. The strategy has three pillars: mobilising finance for investment, making investment reach the real economy and improving the investment environment in the Union. *The strategy should boost competitiveness and economic recovery and should be complementary to the objective of economic, social and territorial cohesion across the Union. The EFSI must be seen as a complement to all other actions needed to reduce the investment gaps in the Union and – by acting as a guarantee fund - as a stimulus for new investments.*

- (12) The investment environment within the Union should be improved by removing barriers to investment, *ensuring that there is no discrimination based on whether the management of the projects is private or public*, reinforcing the *internal market* and ■ enhancing regulatory predictability. *In its communication entitled “Commission Work Programme 2015: A New Start”, the Commission announced that "lightening the regulatory load while keeping high levels of social, health and environmental protection and consumer choice" was a political priority, and that it would "overhaul the rules to make sure they contribute to the jobs and growth agenda". The Commission and the Member States should embark on that task without delay.* The work of the EFSI, and investments across *the Union* generally, should benefit from *that* accompanying work.

- (13) The purpose of the EFSI should be to help resolve the difficulties in financing and implementing *strategic, transformative and* productive investments *with high economic, environmental and societal added value contributing to achieving Union policy objectives such as those set out in Regulation (EU) No 1287/2013 of the European Parliament and of the Council¹, Regulation (EU) No 1291/2013 of the European Parliament and of the Council², Regulation (EU) No 1315/2013 of the European Parliament and of the Council³ and Regulation (EU) No 1316/2013 of the European Parliament and of the Council¹. It should aim at providing an immediate boost to the Union economy and at improving access to financing and the competitiveness of enterprises and other entities, with a particular focus on small and medium-sized enterprises (SMEs) and small mid-cap companies, with the aim of reducing unemployment levels and boosting growth in the Union. It should therefore support strategic investments such as, but not limited to, projects of common interest which aim to complete the internal market in the transport, telecommunications and energy infrastructure sectors, including transport and energy interconnections, and digital infrastructure; to expand renewable energy and energy and resource efficiency; to develop and modernise the energy sector in accordance with the Energy Union priorities, including security of energy supply, and contribute to sustainable development, and exploit potential synergies between those sectors. Those investments should also include projects of common interest in the urban and rural development and social fields and in the environmental and natural resources fields, and projects which strengthen the Union's scientific and technological base and foster benefits for society as well as better exploitation of the economic and industrial potential of policies of innovation, research and*

¹ Regulation (EU) No 1287/2013 of the European Parliament and of the Council of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014 - 2020) and repealing Decision No 1639/2006/EC (OJ L 347, 20.12.2013, p.33).

² Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

³ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

technological development, including research infrastructure, pilot and demonstration facilities; and human capital, culture and health. Market based incentives and the additionality provided by the EFSI should ensure that the EFSI targets socially and economically viable projects without any sectorial or regional pre-allocation, in particular to address high investment needs or market failures. At the same time, the EFSI should be able to support environmentally sound projects and benefit industries and technologies with high growth potential and contribute to the transformation to a green, sustainable and resources efficient economy. Overcoming the Union's current investment difficulties and reducing regional disparities should seek to contribute to strengthening its competitiveness, research and innovation potential, economic, social and territorial cohesion, and to supporting an energy- and resource-efficient transition, including as regards infrastructure transition, towards a sustainable, renewable-based circular economy, through the creation of stable and fairly remunerated jobs. The EFSI should target projects of any size that promote quality job creation, short-, medium- and long-term sustainable growth and competitiveness, notably where such projects have the highest incremental value, thereby contributing to achieving the Union's policy objectives in accordance with Article 3 of the Treaty on the Functioning of the European Union (TFEU) and Article 9 of the Treaty on European Union (TEU). For the purpose of reaching the general objectives set out in Article 9(2)(a) and (b), the EFSI should contribute to achieve the objectives set out in Articles 170, 173 and 179 TFEU and Article 194(1) TFEU.

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¹ *Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).*

- (14) *The EFSI should support projects in the field of research, development and innovation. The investments supported under EFSI should contribute to achieve existing Union programmes and policies and the targets and objectives of the Europe 2020 Strategy for smart, sustainable and inclusive growth. They should support the implementation of the conclusions of the European Council of 17 June 2010.*

(15) *The EFSI should support projects for the development of the energy sector. In its communication entitled “A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy”, the Commission stressed the importance of energy efficiency as an energy source in its own right and stated clearly that EFSI "provides an opportunity to leverage major investments in renovating buildings". Investments in energy efficiency are acknowledged to create up to two million jobs by 2020 and possibly another two million jobs by 2030. In order to ensure that the EFSI fulfils its purpose of leveraging private investments, delivering jobs, fostering resilient economic developments, and reducing macro-economic imbalances, a special focus on energy efficiency is needed. The EFSI should support projects in accordance with the Union's energy, climate and efficiency targets laid down in the Europe 2020 Strategy and in the 2030 Framework for climate and energy policies and which aim to meet the objectives of the Europe 2020 Strategy for smart, sustainable and inclusive growth.*

- (16) *The EFSI should support projects for the development of transport infrastructures, equipment and innovative technologies for transport. EFSI support to transport infrastructure should contribute to the objectives of Regulations (EU) No 1315/2013 (CEF) and (EU) No 1316/2013 (TEN-T) by creating new or missing infrastructure and also by modernising and rehabilitating existing facilities while allowing the financing of research and innovation operations in this sector. Particular attention should be paid to synergy projects strengthening the connections between transport, telecommunications and energy sectors and also to smart and sustainable urban transport projects.*
- (17) *The EFSI should provide financial support to companies and other entities having up to 3 000 employees, with a particular focus on SMEs and small mid-cap companies. The increased access to financing should be of particular benefit to SMEs, including for the creation of start-ups and academic spin-offs, social economy enterprises and non-profit organisations.*

- (18) *The EFSI should support projects for the development and deployment of information and communication technologies (ICT), including projects of common interest which aim to complete the single market in the field of telecommunications and digital infrastructure.*
- (19) *The EFSI should support projects in the fields of environment and resource efficiency, including in the natural resources fields.*
- (20) *The EFSI should support projects in the fields of human capital, culture and health, including projects in the fields of education, training, the development of ICT skills and digital education, as well as projects in the cultural and creative sector, in tourism and in social fields. Investment in those fields should adopt a holistic approach which in each case displays appropriate respect for the intrinsic value of education and culture.*

- (21) Many *SMEs and* mid-cap companies across the Union require assistance to attract market financing, especially as regards investments that carry a **higher** degree of risk. The EFSI should help *those entities* to overcome capital shortages **and market failures and financial fragmentation resulting in an uneven playing field across the Union** by allowing the EIB and the European Investment Fund ('EIF') **and national promotional banks or institutions, investment platforms or funds** to provide direct and indirect equity injections, as well as to provide guarantees for high-quality securitisation of loans, and other products that are granted in pursuit of the aims of the EFSI.
- (22) The EFSI **is to** be established within the EIB █. The work of the EFSI *in* providing finance to *SMEs*, small mid-cap companies **and other entities is to** be **implemented mainly** through the EIF █.

- (23) **█** The EFSI should support a wide range of financial products, including equity, debt or guarantees, to best accommodate the needs of the individual project. This wide range of products should allow the EFSI to adapt to market needs whilst encouraging private investment in **█** projects. The EFSI should not be a substitute for private market finance *or products provided by national promotional banks or institutions* but should instead catalyse private finance by addressing market failures so as to ensure the most effective and strategic use of public money *and as a means of further enhancing cohesion across the Union.*
- (24) *With the aim of better protecting and reaping commercial and economic benefits from Union co-funded initiatives, a set of rules established in Horizon 2020 concerning the exploitation and dissemination of project results, including their protection through intellectual property, should, where possible, be respected by the participants of EFSI projects.*
- (25) *The impact of the EFSI on employment creation and, where possible, its quality should be systematically monitored by means of an annual assessment, on an aggregate basis, of outcomes and impact of EIB financing and investment operations supported under this Regulation.*

- (26) *The EFSI should ensure additionality by helping to address market failures or sub-optimal investment situations and supporting operations which could not have been carried out in the period during which the EU guarantee can be used, or not to the same extent, by the EIB, the EIF and existing Union financial instruments without EFSI support. For that purpose, the EFSI should typically target projects with a higher risk profile than projects supported by EIB normal operations.*
- (27) The EFSI should target investments that are expected to be economically and technically viable, *as confirmed by a cost benefit analysis following Union standards. At the same time, they should meet* the particular requirements for EFSI financing.
- (28) *The EFSI should target investments with a degree of appropriate risk typically higher than that of normal EIB operations activities, whilst being consistent with Union policies, including the objective of smart, sustainable and inclusive growth, quality job creation, economic, social and territorial cohesion, as well as whilst meeting the particular requirements for EFSI financing.*

(29) *The EFSI should be provided with an appropriate governance structure the function of which should be commensurate with its sole purpose of ensuring the appropriate use of the EU guarantee. That governance structure should be composed of a steering board, a managing director and an investment committee. It should not encroach upon or interfere with the decision making of the EIB, or be a substitute for the governing bodies of the latter. The Steering Board should in particular set the strategic orientations of the EFSI and the rules necessary to its functioning. The Managing Director should be responsible for the daily management of the EFSI and should carry out the preparatory work of the meetings of the Investment Committee.*

- (30) ***The Investment Committee should take decisions on the use of the EU guarantee for potential projects and for the operations with national promotional banks or investment platforms in a transparent and independent manner. The Investment Committee should be composed of eight independent experts representing a broad range of expertise as outlined in this Regulation.*** The Investment Committee should be accountable to *the* Steering Board, *which* should supervise the fulfilment of the EFSI's objectives ***and monitor on a continuous basis the respect by the members of the Investment Committee of their obligations under this Regulation.***

(31) In order to enable the EFSI to support investments, the Union should *provide* a guarantee *which should not, at any time, exceed* EUR 16 000 000 000. When provided on a portfolio basis, the guarantee coverage should be capped depending upon the type of instrument, such as debt, equity or guarantees, as a percentage of the volume of the portfolio of outstanding commitments. It is expected that when the guarantee is combined with EUR 5 000 000 000 to be provided by the EIB, the EFSI support should generate EUR 60 800 000 000 *of* additional investment by the EIB and *the* EIF. *The amount of* EUR 60 800 000 000 supported by the EFSI is expected to *further* generate a total of EUR 315 000 000 000 in investment in the Union within *an initial investment period of three years starting from the date of entry into force of this Regulation. The participation of Member States to the implementation of the Investment Plan is desirable to increase its impact.* Guarantees that are attached to projects which are completed without a call on a guarantee *should be* available to support new operations.

(32) *Within three years from the entry into force of this Regulation, the Commission should submit to the European Parliament and to the Council a report containing an independent evaluation of the application of this Regulation. That report should specify whether the EFSI is achieving its objectives and whether a dedicated scheme supporting investment in the Union is warranted. In particular, the report should assess the achievement of the general objectives laid down in this Regulation, the mobilisation of private capital, as well as an assessment of the additionality provided by the EFSI, of the risk profile of operations supported by the EFSI and of the macroeconomic impact of the EFSI, including its impact on growth and employment. If the report concludes that maintaining a scheme for supporting investments is warranted, the Commission should, where appropriate, submit a proposal to the European Parliament and to the Council to amend this Regulation, in particular with a view to setting a new investment period, ensuring continuation of investment and ensure its an appropriate financing. If the report concludes that the EFSI is not achieving its objectives and that maintaining a scheme for supporting investment is not warranted, the Commission should, where appropriate, submit a proposal to ensure a smooth termination of the EFSI while preserving the EU guarantee for the operations already approved under this Regulation..*

- (33) *The EIB will finance EFSI operation via its market issuances. The European Central Bank has communicated its decision to include EIB bonds in the list of bonds eligible for purchase under its Public Sector Purchase Programme (PSPP).*
- (34) *In order to reach the initial target of EUR 315 000 000 000 within the shortest possible time, national promotional banks or institutions and investment platforms and funds, with the support of the EU guarantee, should play a prominent role in identifying viable projects, developing and, where appropriate, bundling projects, and attracting potential investors. In that context, it should be possible to establish multi-country platforms to promote cross-border projects or a group of projects across Member States.*
- (35) *Investment platforms can, where appropriate, bring together co-investors, public authorities, experts, education, training and research institutions, the relevant social partners and representatives of the civil society and other relevant actors at EU, national and regional levels.*

- (36) *In order to allow for further increase of its resources, participation to the EFSI should be open to third parties, including Member States. Other third parties such as regional governments, national promotional banks or institutions, regional banks or public agencies owned or controlled by Member States, private sector entities and entities outside the Union may also contribute directly to the EFSI subject to the agreement of the Steering Board. A third party's participation in the EFSI should not entail membership in the Steering Board or any other right concerning the EFSI governance structure.*
- (37) *The EFSI should have the possibility to support private fund structures, such as European Long-Term Investment Funds (ELTIFs). ELTIFs that comply with the requirements of Regulation (EU) 2015/760 of the European Parliament and of the Council¹ focus on long-term asset classes which allows them to play a role in providing a complementary vehicle for delivering public or private/public investments to the wider economy. By virtue of their investment policies, ELTIFs can fulfil their designated role as a priority tool to accomplish the Investment Plan for Europe set out in the Commission communication of 26 November 2014. The Commission should prioritise and streamline its processes for all applications by ELTIFs for financing from the EIB.*

¹ *Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).*

- (38) ■ Third parties *should be able to* co-finance *projects* together with *the* EFSI, *either* on a project-by-project basis or *through* investment platforms ■ .
- (39) *In order to mobilise investments at both the national and regional level, the EIB should be able to grant a guarantee under the counter guarantee of the EU to national promotional banks or institutions, to investment platforms or funds, where applicable seeking to achieve capital relief. Such operations should be considered EFSI operations.*
- (40) *In light of the general objective of ensuring a regulatory environment conducive to investments and considering that infrastructure assets have a strong default and recovery record and that infrastructure project finance can be seen as a means of diversifying institutional investors' asset portfolios, the treatment of infrastructure investments, as currently foreseen in relevant Union prudential legislation, should be re-examined.*

- (41) *The EFSI should complement, and be additional to, ongoing regional, national and Union programmes as well as existing EIB activities. In that context, the full use of all existing and allocated Union resources should be encouraged, under the existing rules.* Provided that all relevant eligibility criteria are *met*, Member States *should be able to use any type of Union financing* to contribute to the financing of eligible projects that are *backed* by the EU guarantee, *and to support national promotional banks or institutions, investment platforms or funds.* The flexibility of *that* approach should maximise the potential to attract investors to the areas of investment targeted by the EFSI.
- (42) *Member States should be able to use European Structural and Investment Funds to contribute to the financing of eligible projects that are supported by the EU guarantee, in accordance with the objectives, principles and rules under the legal framework applicable to those funds, and in particular Regulation (EU) No 1303/2013 of the European Parliament and of the Council¹ (the "Common Provisions Regulation") and with Partnership Agreements. The Commission may provide guidance so as to ensure that the combined use of Union instruments with an EIB financing under the guarantee of the Union allows an appropriate level of complementarity and synergy.*

¹ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

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- (43) Given the need for urgent action within the Union, the EIB and the EIF may have financed additional projects outside of their usual profile *during* the course of 2015 *and* before the entry into force of this Regulation, ***the conclusion of the EFSI Agreement and the appointment of members of the Investment Committee and of the Managing Director.*** In order to maximise the benefit of the measures provided for in this Regulation, it should be possible for such additional projects to be included within the EU guarantee coverage in the event that they fulfil the substantive criteria set out in this Regulation.
- (44) EIB financing and investment operations supported by the EFSI should be managed in accordance with the EIB's own rules and procedures, including appropriate control measures and measures taken to avoid tax evasion, as well as with the relevant rules and procedures concerning the European Anti-Fraud Office (OLAF) and the Court of Auditors, including the Tripartite agreement between the European Commission, the European Court of Auditors and the European Investment Bank *of 27 October 2003.*

- (45) ***Recalling that the audit work of the European Court of Auditors constitutes an important basis for the discharge procedure of Article 319 TFEU, full respect for the audit rights of the Court of Auditors as laid down in Article 287 TFEU should be ensured in the application of this Regulation.***
- (46) The EIB should regularly evaluate ***and report on operations*** supported by the EFSI with a view to assessing their relevance, performance and impact, ***including their additionality and added value, as well as*** to identifying aspects that could improve future activities. Such evaluations ***and reporting*** should ***be made public and*** contribute to accountability and analysis of sustainability.
- (47) ***When implementing the Investment Guidelines and other relevant rules under this Regulation, the Investment Committee should take full account of the need to prevent any kind of discrimination, especially as regards accessibility for persons with disabilities. It should in particular take into account gender equality and mainstreaming.***

(48) Alongside the financing *and investment* operations that will be conducted through the EFSI, a European investment advisory hub ('EIAH') should be created. The EIAH should provide strengthened support for project development and preparation across the Union, by building on the expertise of the Commission, the EIB, national promotional banks *and institutions* and the managing authorities of the European Structural and Investment Funds. A single point of entry for questions *relating to technical assistance for investments within the Union should be established and technical assistance provided to project promoters at local level should be enhanced. The new services provided by the EIAH should be in addition to those already available under other Union programmes, thus, in no way affecting the level and the capacity of the support provided under those programmes. Those additional services should be adequately funded. The EIAH should provide expertise free of charge for public project promoters in order to ensure fair access to EFSI financing across the Union. Where possible, the EIAH should work closely with similar structures at national level, regional or sub-national level. The fees charged to SMEs for the technical assistance provided by the EIAH in addition to existing Union programmes should be capped to one third of their cost. The EIB should also submit to the budgetary authority and to the Commission as of 2016 an annual report on the fees received and the services provided by the EIAH, so as to allow an effective assessment of the financing needs, within the limits of the annual ceiling of EUR 20 000 000.*

- (49) *The EIAH should in particular build upon good practices in existing programmes, such as European Local ENergy Assistance (ELENA), European Efficiency Industrial Fund (EEIF), JEREMIE (Joint European Resources for Micro to Medium Enterprises), JASPERS (Joint Assistance to Support Projects in European Regions), JESSICA (Joint European Support for Sustainable Investment in City Areas) and JASMINE (Joint Action to Support Micro-finance Institutions in Europe).*
- (50) In order to cover the risks *relating* to the EU guarantee to the EIB, a guarantee fund ('guarantee fund') should be established. The guarantee fund should be *constituted* by a gradual payment from the *general budget of the Union*. The guarantee fund should subsequently also receive revenues ■ from projects that benefit from EFSI support and amounts recovered from defaulting debtors where the guarantee fund has already honoured the guarantee to the EIB. *Any surplus in the guarantee fund resulting from an adjustment of the target amount or from remunerations in excess of the target amount after a full reloading of the guarantee up to its initial amount of EUR 16 000 000 000 should be returned to the general budget of the Union as assigned revenue, in order to replenish any lines which may have been used as source of redeployment to the EU guarantee fund.*

(51) The guarantee fund is intended to provide a liquidity cushion for the *general budget of the Union* against losses incurred by the EFSI in pursuit of its objectives.

Experience on the nature of investments to be supported by the EFSI indicates that ***the level of resources in the guarantee fund should represent*** a ratio of 50 % of the Union's total guarantee obligations ■ .

(52) ***All payments to the guarantee fund and budget decisions otherwise associated with the operation of the EFSI should be fully consistent with the terms of the multiannual financial framework and authorised by the European Parliament and the Council through the annual budgetary procedure.***

(53) *In order to partly finance the contribution from the general budget of the Union, the available envelopes of Horizon 2020 – the Framework Programme for Research and Innovation 2014-2020, provided for in Regulation (EU) No 1291/2013, and of the Connecting Europe Facility, provided for in Regulation (EU) No 1316/2013, should be reduced. ■*

- (54) Within the Union, there *is* a significant number of potentially viable projects, ***from an economic and technical point of view***, that are not being financed due to a lack of certainty and transparency with respect to such projects. Often this is because private investors are not aware of the projects or have insufficient information to make an assessment of the investment risks, ***including regulatory risks***. The Commission ***with the support of*** the EIB **█** should promote the creation of a transparent ***portal*** of current and future **█** projects in the Union ***which are*** suitable for investment. *The 'project portal' ('European investment project portal' - EIPP)* should ensure that information **█** regarding investment projects *is made publicly available* on a regular and structured basis *so as* to ensure that investors have ***access to transparent and reliable information with due regard to the protection of essential business secrets***.
- (55) ***Member States, in cooperation with regional and local authorities, should be able to contribute to the establishment and management of the EIPP including by providing information on investment projects in their territory to the Commission. Before launching the EIPP, the Commission with the participation of the EIB should carry out appropriate consultations with Member States, experts and stakeholders, regarding the principles and guidelines for projects to be listed in the EIPP, including mechanisms to prevent the publication of projects which could undermine national security, and regarding the template for publishing information about individual projects.***

- (56) ***The EIPP should include projects across the Union for visibility to investors and for information purposes. It should be possible to include projects that are capable of being fully financed by the private sector or with the assistance of other instruments provided at Union or national level. Inclusion of a project in EIPP should neither imply nor exclude any public financial support, either at Union or national level.***
- (57) ***In order to ensure accountability to European citizens, the EIB should regularly report to the European Parliament and the Council on the progress, impact and operations of the EFSI, in particular as regards the additionality of operations conducted under the EFSI compared to normal EIB operations, including special operations. At the request of the European Parliament, the Chairperson of the Steering Group and the Managing Director should participate in hearings and reply to questions within a fixed period. The Commission should regularly report on the situation of the guarantee fund.***

(58) In order to *facilitate a prompt and flexible adaptation of non-essential elements of the investment guidelines laid down in Annex II to this Regulation to market conditions and the investment environment within the Union or parts of it*, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission with respect to the *amendment of the relevant parts of those investment guidelines without deleting any of these sections altogether. The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission with respect to the establishment of a scoreboard of indicators to be used by the Investment Committee to ensure an independent and transparent assessment of the potential and actual use of the EU guarantee. Given the unique nature of the EFSI and the central role of the EIB in its set-up, it is appropriate that the Commission pursues a close dialogue with the EIB in the context of the adoption of the Scoreboard and of any adjustment to the investment guidelines and to the Scoreboard.* 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.

- (59) *The unique features of the EFSI require exceptional efforts with a view to the entry into force of the delegated act that first establishes the scoreboard. At the same time, the effectiveness of the Parliament's and the Council's objection rights as foreseen in this Regulation in accordance with Article 290(2) TFEU should be ensured. Therefore, the objection period for the delegated act that first establishes the scoreboard should be exceptionally three weeks, which can be prolonged by three weeks at the initiative of the Parliament or of the Council. The Commission should take into account this objection period, as well as the procedures in Parliament and Council, as regards the date of transmission of the delegated act.*

- (60) *While following EIB pricing principles, the pricing levels for EFSI operations should take due account of market failures and gaps and the need to stimulate additional investment EFSI revenues attributed to the EU guarantee should contribute to the budgetary backing for the EU guarantee.*
- (61) *The Commission and the EIB should conclude an Agreement that specifies the conditions laid down in this Regulation for their management of the EFSI. That Agreement should not encroach upon the competences of the Union legislator, of the budgetary authority, and of the EIB, as laid down in the Treaties and should, therefore, be confined to elements which are mainly technical and administrative in nature and which, whilst not being essential, are necessary for the effective implementation of the EFSI.*

- (62) *This Regulation should not preclude entities managing projects within the Union from establishing or enhancing cooperation with third country partners.*
- (63) Since the objectives of this Regulation, namely to support investments in the Union and to ensure increased access to financing for *entities*, cannot, *as far as financial constraints to investment are concerned*, be sufficiently achieved by the Member States by reason of the disparities in their fiscal capacity to *finance investment* but can rather, 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 *TEU*. 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,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

Introductory provisions

Article 1

Subject matter

- 1. This Regulation establishes a European fund for strategic investments (EFSI), an EU guarantee and an EU guarantee fund. In addition, this Regulation establishes a European investment advisory hub (EIAH) and a European investment project portal (EIPP).***

- 2. To that end, this Regulation provides for the Commission to conclude an agreement with the EIB on the EFSI and an agreement with the EIB on the implementation of the EIAH.***

Article 2

Definitions

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

- (1) 'EFSI Agreement' means the legal instrument whereby the Commission and the EIB specify the conditions laid down in this Regulation for the management of the EFSI;*
- (2) 'EIAH Agreement' means the legal instrument whereby the Commission and the EIB specify the conditions laid down in this Regulation for the implementation of the EIAH;*
- (3) 'national promotional banks or institutions' means legal entities carrying out financial activities on a professional basis which are given a mandate by a Member State or a Member State's entity at central, regional or local level, to carry out development or promotional activities;*

- (4) *'investment platforms' means special purpose vehicles, managed accounts, contract-based co-financing or risk sharing arrangements or arrangements established by any other means by which entities channel a financial contribution in order to finance a number of investment projects. The scope of investment platforms may include:*
- (a) *national or sub-national platforms, that regroup several investment projects on the territory of a given Member State;*
 - (b) *multi-country or regional platforms, that regroup partners from several Member States or third countries interested in projects in a given geographic area;*
 - (c) *thematic platforms, that gather investment projects in a given sector.*
- (5) *'small and medium-sized enterprises' or 'SMEs' means micro, small and medium-sized enterprises as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC¹;*

¹ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

- (6) *'small mid-cap companies' means entities having up to 499 employees and that are not SMEs;*
- (7) *'mid-cap companies' means entities having up to 3000 employees and that are not SMEs or small mid-cap companies;*
- (8) *"additionality" means additionality as defined in Article 5(1).*

CHAPTER II
European Fund for Strategic Investments

Article 3

Purpose

The purpose of the EFSI shall be to support, *in the Union, through the supply of risk-bearing capacity to the EIB, the following:*

- (a) investments;
- (b) increased access to financing for companies *as well as other entities* having up to 3000 employees, with a particular focus on small and medium *sized* enterprises *and small mid-cap companies*.

Article 4

Terms of the EFSI Agreement

1. *The Commission shall conclude an agreement with the EIB for the management of the EFSI and on the granting of the EU guarantee, in accordance with the requirements of this Regulation.*

2. The EFSI Agreement shall contain, in particular, *provisions concerning*:

(a) ***the establishment of the EFSI, including:***

- (i) the establishment of the EFSI as a distinct, clearly identifiable and transparent facility and *as a separate account managed by the EIB, the operations of which are clearly distinguished from other operations of the EIB;*
- (ii) the amount, ***of no less than EUR 5 000 000 000 in guarantees or cash,*** and *the terms of the financial contribution which is to be provided by the EIB through the EFSI;*
- (iii) the terms of the funding ***or the guarantees*** which *are to be provided by the EIB through the EFSI to the EIF;*
- (iv) ***the pricing of operations under the EU guarantee which is to be in line with the EIB's general pricing policy;***

- (b) governance arrangements concerning the EFSI, in accordance with Article 7, without prejudice to *Protocol No 5 on the Statute of the European Investment Bank (the 'EIB Statute')*, **including:**
- (i) *the composition and number of members of the Steering Board;*
 - (ii) *provision that a representative of the Commission shall chair the Steering Board meetings;*
 - (iii) *provision that the Steering Board shall take decisions by consensus;*
 - (iv) *the procedure for the appointment of the Managing Director and of the Deputy Managing Director, their remuneration and working conditions, in accordance with the Staff Regulations of the EIB, the rules and procedures on their replacement in their functions and on accountability, without prejudice to this Regulation;*
 - (v) *the procedure for the appointment and dismissal of the members of the Investment Committee, their remuneration and working conditions and the voting arrangements within the Investment Committee, specifying the quorum and allocating one vote to each member;*

- (vi) *the requirement that the Steering Board and the Investment Committee adopt their respective rules of procedure;*
 - (vii) *the requirement that financing and investment operations carried out pursuant to this Regulation are to be ultimately approved by the EIB governing bodies in accordance with the EIB Statute;*
 - (viii) *provisions on avoidance and handling of possible conflicts of interest;*
- (c) *the EU guarantee, which is to be an unconditional, irrevocable, first demand guarantee in favor of the EIB, including:*
- (i) *in accordance with Article 11, detailed rules on the provision of the EU guarantee, including its arrangements on coverage and its defined coverage of portfolios of specific types of instruments;*
 - (ii) *requirements that remuneration for risk-taking be allocated among contributors to the EFSI in proportion with their respective share in the risk taking and that remuneration to the Union and payments on the EU guarantee are to be made in a timely manner and only after remuneration and losses from operations have been netted;*

- (iii) *in accordance with Article 9, requirements for the use of the EU guarantee, including the payment conditions, such as specific time frames, the interest to be paid on due amounts and the necessary liquidity arrangements;*
- (iv) *in accordance with Article 11(4), provisions and procedures relating to the recovery of claims that are to be entrusted to the EIB;*
- (d) *in accordance with this Regulation, and in particular Article 6 thereof, Annex II to this Regulation and any delegated act adopted pursuant to this Regulation, the arrangements for approval by the Investment Committee of the use of the EU guarantee for individual projects or through investment platforms, or national promotional banks or institutions;*
- (e) *the procedures for the submission and approval of investment proposals for the use of the EU guarantee, including:*

 - (i) *the procedure for the transmission of investment proposals to the Investment Committee;*

- (ii) provisions on the information to be provided in the submission of investment proposals to the Investment Committee;*
 - (iii) the requirement that the procedure for submission and approval of investment proposals for the use of the EU guarantee be without prejudice to the EIB decision-making rules laid down in the EIB Statute, and in particular Article 19 thereof;*
 - (iv) rules further detailing the transitional provisions which comply with Article 24 of this Regulation, and in particular the manner in which operations approved by the EIB during the period referred to in that Article are to be included under the EU guarantee coverage;*
- (f) the reporting, monitoring and accountability with regard to the EFSI, including:*
- (i) in accordance with Article 16, the operational reporting obligations incumbent on the EIB , where appropriate in cooperation with the EIF;*

- (ii) the financial reporting obligations with regard to the EFSI;*
- (iii) in accordance with Articles 20 and 21 of this Regulation, rules on auditing and fraud prevention;*
- (iv) key performance indicators, in particular as regards the use of the EU guarantee, the fulfilment of the objectives and criteria laid down in Articles 6. 9 and Annex II, the mobilisation of private capital, and the macroeconomic impact of the EFSI, including its effect on supporting investment;*
- (g) provisions concerning evaluations of the functioning of EFSI in accordance with Article 18;*
- (h) provisions concerning the communication and promotion strategy of EFSI;*
- (i) the procedures and conditions for the amendment of the EFSI Agreement, upon the initiative of the Commission or of the EIB, including the obligation to report to the European Parliament and the Council on such amendment;*

- (j) *any other administrative or organisational conditions necessary for the management of the EFSI in so far as they permit the proper use of the EU guarantee;*
- (k) *the arrangements concerning the contribution by Member States or other third parties with cash or guarantees to the EFSI, that shall not confer upon those Member States or other third parties any right to participate in the decision making and voting of the Steering Board.*

3. The EFSI Agreement shall *also* provide that:

- (a) EFSI activities conducted by the EIF are to be governed by the EIF governing bodies;
- (b) *EFSI activities conducted by the EIF are to be subject to reporting requirements in accordance with Article 16;*
- (c) remuneration attributable to the Union from *financing and investment operations carried out pursuant to this Regulation is to* be provided following the deduction of payments due to calls on the EU guarantee and, subsequently, of costs in accordance with **■** Article 9(5) *and with the EIAH Agreement.*

Article 5
Additionality

1. *'Additionality' means the support by EFSI of operations which address market failures or sub-optimal investment situations and which could not have been carried out in the period during which the EU guarantee can be used, or not to the same extent, by the EIB, the EIF and existing Union financial instruments without EFSI support. Projects supported by the EFSI shall typically have a higher risk profile than projects supported by EIB normal operations and the EFSI portfolio shall have overall a higher risk profile than the portfolio of investments supported by the EIB under its normal investment policies before the entry into force of this Regulation.*

The projects supported by the EFSI, while striving to create employment and sustainable growth, shall be considered additional if they carry a risk corresponding to EIB special activities, as defined in Article 16 of the EIB Statute and by the credit risk policy guidelines of the EIB.

EIB projects carrying a risk lower than the minimum risk under EIB special activities may also be supported by the EFSI if the use of the EU guarantee is required to ensure additionality as defined in the first subparagraph.

2. *In line with the investment guidelines laid down in Annex II to this Regulation, the steering board shall adjust the project mix as regards sectors and countries, on the basis of an ongoing monitoring of the developments of market conditions in the Member States and of the investment environment to help overcome market failures and suboptimal investment situations including problems coming from financial fragmentation. When carrying out this adjustment, the steering board shall avoid an approach which would be riskier than necessary.*

Where the risk level so requires, special activities under this Regulation shall be more broadly used than before the entry into force of this Regulation. This shall in particular apply to those Member States where special activities have not been used or have been used only exceptionally before the entry into force of this Regulation, in order to allow for the implementation of additional operations and projects, as well as additional financing by EIB and national promotional banks or financing platforms.

Article 6

Eligibility criteria for the use of the EU guarantee

- 1. *The EFSI Agreement shall provide that the EFSI is to support projects which:***
 - (a) are economically viable according to a cost benefit analysis following European standards, taking into account possible supports and cofinancing by private and public partners to a project;***
 - (b) are consistent with Union policies, including the objective of a smart, sustainable and inclusive growth, quality job creation, economic, social and territorial cohesion;***
 - (c) provide additionality;***
 - (d) maximise where possible the mobilisation of private sector capital; and***
 - (e) are technically viable.***

- 2. *There shall be no restriction on the size of projects eligible to the support of the EU guarantee for the operations conducted by the EIB or EIF via financial intermediaries.***

Article 7

Governance of the EFSI

1. ***When carrying out their tasks under this Regulation, the Steering Board, the Investment Committee and the Managing Director shall pursue only the objectives set out in this Regulation.***

2. The EFSI Agreement shall provide that the EFSI *is to* be governed by a Steering Board, which, ***for the purpose of the use of the EU guarantee, is to*** determine, ***in conformity with the objectives under Article 9(2):***
 - (a) ***the strategic orientation of the EFSI, including the allocation of the guarantee within the infrastructure and innovation windows and the possible decisions to be taken under Article 11(3) and section 7b of Annex II to this Regulation;***
 - (b) ***the operating policies and procedures necessary to the functioning of the EFSI;***
 - (c) ***the rules applicable to the operations with the investment platforms and national promotional banks;***
 - (d) the risk profile of the EFSI.

3. *The Steering Board shall comprise four members: three appointed by the Commission and one by the EIB. The Steering Board shall elect a Chairperson from among its members for a fixed term of three years, renewable once. The Steering Board shall take its decisions by consensus.*

The instruments used by the EIF for conducting the operations under this Regulation shall be approved jointly by the Steering Board and the Managing Director, after consultation of the Investment Committee.

4. *Member States and third parties - subject for the latter to the agreement of the Steering Board - shall be allowed to contribute to the EFSI in form of guarantees or cash as regards Member States, and only in the form of cash as regards third parties. They shall not be granted membership of the Steering Board neither shall they be granted a role in the appointment of other EFSI staff including members of the investment committee, nor shall they have any right concerning other aspects of governance of the fund as set out in this Regulation.*

The minutes of Steering Board meetings shall be published as soon as they have been approved by the Board.

The Steering Board shall organise regularly a consultation of relevant stakeholders - notably co-investors, public authorities, experts, education, training and research institutions, the relevant social partners and representatives of the civil society - on the orientation and implementation of the investment policy carried out by the EIB under this Regulation.

5. The EFSI Agreement shall provide that the EFSI *is to* have a managing director, who is to be responsible for the day-to-day management of the EFSI and the preparation and chairing of meetings of the Investment Committee referred to in paragraph 6.

The Managing Director shall be assisted by a deputy managing director. The Managing Director shall report every quarter on the activities of the EFSI to the Steering Board.

Following an open and transparent selection process in line with EIB procedures, the Steering Board shall select a candidate for the position of Managing Director and Deputy Managing Director.

The European Parliament and the Council shall be kept duly informed in a timely manner at all the stages of the selection procedure, subject to strict confidentiality requirements. This applies regardless of the conclusion of the agreement between the European Parliament and the EIB referred to in Article 17(5).

The European Parliament shall organise as rapidly as possible, and at the latest within four weeks from the communication of the name of a selected candidate, a hearing with the candidate for each position.

Following the approval from the European Parliament, the Managing Director and deputy Managing Director shall be appointed by the President of the EIB for a once renewable fixed term of three years.

■

6. The EFSI Agreement shall provide that the EFSI *is to* have an investment committee, which *is to* be responsible for examining potential **projects** in line with the EFSI investment policies and *for* approving the support of the EU guarantee for **EIB projects** in accordance with Article 9, irrespective of their geographic location. *Furthermore, the Investment Committee shall be the competent body for approving operations with investment platforms and national promotional banks or institutions.*

7. The Investment Committee shall be composed of *eight* independent experts and the Managing Director. *The experts of the Investment Committee shall be appointed by the Steering Board for a fixed term of up to three years, following an open and transparent selection procedure. Their term shall be renewable but shall not exceed six years in total. The independent experts shall have a high level of relevant market experience in project structuring and project financing, as well as micro and macro-economic expertise.*

In appointing the experts to the Investment Committee, the Steering Board shall ensure that the composition of the Investment Committee is diversified, so as to ensure that it has a wide knowledge of the sectors covered in Article 9 and geographic markets within the Union.

The composition of the Investment Committee shall be gender-balanced. The Steering Board shall strive to select experts having experience in investment in one or more of the following fields:

- *research, development and innovation*
- *transport infrastructures and innovative technologies for transport*
- *energy infrastructures, energy efficiency and renewable energy*
- *information and communication technologies infrastructures*
- *environmental protection and management*

- *education, training*
- *health and medicines*
- *SMEs*
- *cultural and creative industries*
- *urban mobility*
- *social infrastructures and social and solidarity economy.*

8. When participating in the activities of the Investment Committee its members shall perform their duties impartially and in the interests of the EFSI. When implementing the investment guidelines and taking decisions on the use of the EU guarantee, they shall not seek nor take instructions from the EIB, the institutions of the Union, the Member States or any other public or private body. Without prejudice to the provision of analytical, logistical and administrative support by the staff of the EIB to the Investment Committee, adequate organisational arrangements shall be established and maintained to ensure the operational independence of the Investment Committee. Any project assessment conducted by EIB staff shall not be binding on the Investment Committee for the purposes of granting the guarantee.

CVs and declarations of interest of each member of the Investment Committee shall be made public and constantly updated. The members of the Investment Committee shall communicate without delay to the Steering Board all information needed to check on a continuous basis the absence of conflict of interest.

On a request from the Steering Board, the contract of any member of the Investment Committee which would breach the obligations set out in the first and second subparagraphs shall be terminated, in accordance with applicable employment and labour law rules.

9. *The Investment Committee shall decide on the use of the EU guarantee in accordance with the provisions of this Regulation, including the investment guidelines set out in Annex II thereto.*

Decisions of the Investment Committee shall be taken by simple majority. *Decisions approving the use of the guarantee shall be public and accessible.*

The EIB shall submit twice a year to the European Parliament, the Council and the Commission a list of all decisions of the Investment Committee rejecting the use of the guarantee, subject to strict confidentiality requirements.

10. *The Commission shall be empowered to adopt delegated acts in accordance with Article 23 concerning the amendments of the non-essential elements of sections 6 to 8 of the investment guidelines laid down in Annex II to this Regulation, without deleting any of those sections altogether. Such amendments shall be prepared in close dialogue with the EIB.*

11. *The Commission shall be empowered to adopt delegated acts in accordance with Article 23(1) to (4) and (6) to supplement this Regulation by establishing a scoreboard of indicators to be used by the Investment committee to ensure an independent and transparent assessment of the potential and actual use of the EU guarantee. Such delegated act shall be prepared in close dialogue with the EIB.*

CHAPTER III

EU Guarantee and EU Guarantee Fund

Article 8

EU *guarantee*

The Union shall provide ***an irrevocable and unconditional*** guarantee to the EIB for financing or investment operations **■** covered by this Regulation ***and by the EFSI Agreement*** ('EU guarantee') ***and carried out within the Union, or operations involving entities located or established in one or more member states and extending to one or more third countries falling within the scope of the European Neighbourhood Policy including the Strategic Partnership, the Enlargement Policy, and the European Economic Area or the European Free Trade Association, or to an Overseas Country or Territory, as set out in Annex II to the TFEU, whether or not there is a partner in those countries or overseas countries or territories.*** The EU guarantee shall be granted as a guarantee on demand in respect of instruments referred to in Article 10.

Article 9

Requirements for *the* use of the EU guarantee

1. The granting of the EU guarantee shall be subject to the entry into force of the EFSI Agreement.

2. The EU guarantee shall be granted for EIB financing and investment operations approved by the Investment Committee referred to in **Article 7(6)** or for funding **or guarantee** to the EIF in order to conduct EIB financing and investment operations in accordance with **Article 11(2)**. The operations concerned shall be consistent with Union policies and support any of the following general objectives:

(a) Research, development and innovation, in particular through:

- **Projects fitting with Horizon 2020;**
- **Research infrastructures;**
- **Demonstration projects and programmes as well as deployment of relating infrastructures, technologies and processes;**
- **Support to Academia including collaboration with industry;**
- **Knowledge and technology transfer;**

(b) *Development of the energy sector, in accordance with the Energy Union priorities, including security of energy supply, and the 2020, 2030 and 2050 Climate and Energy frameworks, in particular through:*

- ***Expansion of renewable energy;***
- ***Energy efficiency and energy savings (with a focus on reducing demand through demand side management and the refurbishment of buildings);***
- ***Development and modernization of energy infrastructure (in particular interconnections, smart grids at distribution level, energy storage and synchronisation of networks);***

(c) *Development of transport infrastructures, equipment and innovative technologies for transport, in particular through:*

- ***Projects and horizontal priorities eligible under Regulations (EU) No 1316/2013 and (EU) No 1315/2013;***
- ***Smart and sustainable urban mobility projects (targetting accessibility, reduction of greenhouse gases, energy and accidents);***
- ***Projects connecting nodes to TEN-T infratsructures;***

(d) Financial support through the EIF and EIB to companies as well as other entities having up to 3000 employees, with a focus on SMEs, in particular through:

- Provision of working capital and investment;*
- Provision of risk financing from seed to expansion stages for SMEs, start-ups, small mid caps and mid-caps companies, to ensure technology leadership in innovative and sustainable sectors;*

(e) Development and deployment of information and communication technologies, in particular through:

- Digital content;*
- Digital services;*
- Telecommunications infrastructures of high speed;*
- Broadband network;*

(f) *Environment and resource efficiency, in particular through:*

- *Projects and infrastructures in the field of environmental protection and management;*
- *Strengthening of eco-system services;*
- *Sustainable urban and rural development;*
- *Climate change actions;*

(g) *Human capital, culture and health, in particular through:*

- *Education and training;*
- *Cultural and creative industries;*
- *Innovative health solutions;*
- *New effective medicines;*
- *Social infrastructures, social and solidarity economy;*
- *Tourism.*

3. *The initial investment period during which the EU guarantee may be granted for supporting financing and investment operations under this Regulation shall last until:*
- (a) *...*, for EIB operations for which a contract between the EIB and the beneficiary or financial intermediary has been signed by 30 June 2020;*
 - (b) *...*, for EIF operations for which a contract between the EIF and the financial intermediary has been signed by 30 June 2020.*
4. *A new investment period may be set in accordance with the procedure established in Article 18.*

** OJ please insert the date: 4 years after of entry into force of this Regulation.*

The EIB shall use the EU guarantee ■ for supporting dedicated investment platforms or funds and national promotional banks or other institutions that invest in operations meeting the requirements of this Regulation, after approval by the Investment Committee.

The Steering Board shall specify policies, *in accordance with Article 7(2)*, regarding eligible *vehicles referred to in the second subparagraph of this paragraph. The Investment Committee shall evaluate the conformity of vehicles and their specific instruments seeking support from the EFSI with the policies specified by the Steering Board.*

The Investment Committee may decide to retain the right to approve new projects put forward within approved eligible vehicles.

5. In accordance with Article 17 of the **EIB** Statute, the EIB shall *require that all its expenses related to the EFSI are met by the beneficiaries of the financing and investment operations*. Without prejudice to ***the second and third subparagraphs of this paragraph***, no administrative expenditure or any other fees of the EIB for financing and investment *operations carried out by the EIB pursuant to this Regulation shall be met by the general budget of the Union*.

The EIB may *use the EU guarantee* ■ within a cumulated maximum limit corresponding to 1% of the total outstanding EU guarantee obligations to cover expenses that *would have been met by beneficiaries of the financing and investment operations but which have not been recovered as of default*.

In addition, the EIB may use the EU guarantee to meet the relevant share of any recovery costs, unless deducted from recovery proceeds, and any costs linked to liquidity management.

■ Should the EIB provide funding *or guarantees* to the EIF on behalf of the EFSI which *are* backed by the EU guarantee in accordance with *Article 11(3)*, *fees of the EIF* may be met by the general budget of the Union *to the extent not deducted from the remuneration referred to in Article 4(2)(b) or from revenues, recoveries or other payments received by the EIF*.

6. ■ Member States may use *any source of Union funding, including instruments under the* European Structural and Investment Funds *and the trans-European networks and industry policies*, to contribute to the financing of eligible projects in which the EIB *itself, or through the EIF*, is investing with the support of the EU guarantee, *provided that the eligibility criteria, the objectives and principles applicable under the legal framework of the relevant instruments and of the EFSI are complied with*.

The Commission shall as appropriate provide guidance on combining the use of Union instruments with EIB financing under the EU guarantee, so as to ensure coordination, complementarity and synergies.

Article 10
Eligible Instruments

1. For the purposes of Article 9(2) *and in accordance with Article 11*, the EIB shall use the EU guarantee towards risk coverage for instruments *referred to in paragraph 2 of this Article*.
2. *The following instruments shall be eligible for coverage by the EU guarantee:*
 - (a) EIB loans, guarantees, counter-guarantees, capital market instruments, any other form of funding or credit enhancement instrument, equity or quasi-equity participations, *including through national promotional banks or institutions, investment platforms or funds*. These Instruments shall be granted, acquired or issued for the benefit of operations carried out in the Union, including cross-border operations between a Member State and a third country as defined in Article 8, in compliance with this Regulation and where EIB financing has been granted in accordance with a *financing agreement or transaction signed or entered into by the EIB* which has neither expired nor been cancelled;

(b) EIB funding to the EIF enabling it to undertake loans, guarantees, counter-guarantees, any other form of credit enhancement instrument, capital market instruments and equity or quasi-equity participations, ***including through national promotional banks or institutions, investment platforms or funds***. These Instruments shall be granted, acquired or issued for the benefit of operations carried out in the Union, in compliance with this Regulation and where EIF financing has been granted in accordance with a ***financing agreement or transaction signed or entered into by the EIF*** which has neither expired nor been cancelled;

(c) ***EIB guarantee to national promotional banks or institutions, investment platforms or funds under a counter-guarantee of the Union.***

3. ***EIB guarantees granted to a National Promotional Bank or institution under the counter-guarantee of the Union shall, where appropriate, seek to achieve capital relief.***

4. ***Within its operations under EFSI, the EIF may also grant a guarantee to a national promotional bank or institution or investment platform or invest in an investment platform.***

Article 11

Coverage and terms of the EU guarantee

1. The EU guarantee shall *not, at any time, exceed* EUR 16 000 000 000, of which a *part* may be allocated for EIB funding *or guarantees* to the EIF in accordance with *paragraph 3*. Aggregate *net* payments from the *general budget of the* Union under the EU guarantee shall not exceed **EUR 16 000 000 000**.
2. ***The remuneration for risk taking of a portfolio shall be allocated amongst contributors in proportion with their respective share in the risk-taking.*** The EU guarantee shall be eligible to provide either first loss guarantees on a portfolio basis or a full guarantee. The EU guarantee may be granted on a *pari passu* basis with other contributors.

3. Where the EIB provides funding *or guarantees* to the EIF in order to conduct EIB financing and investment operations, the EU guarantee shall provide for a full guarantee on funding by the EIB provided that an equal amount of funding *or guarantees* is provided by the EIB without *coverage by the* EU guarantee, *within an initial limit of* EUR 2 500 000 000. *Without prejudice to paragraph 1, this limit may where appropriate be adjusted by the Steering Board up to a maximum of EUR 3 000 000 000, without an obligation on the EIB to match the amounts over and above the initial limit.*
4. Where the EIB calls the EU guarantee in accordance with the EFSI Agreement, the Union shall pay on demand in accordance with the terms of that Agreement.
5. Where the Union makes *a* payment *to the EIB upon a call on* the EU guarantee, *the Union shall be subrogated into the relevant rights of the EIB relating to any financing operation under the EU guarantee and* the EIB shall, *on behalf of the Union*, pursue the recovery of claims for the amounts paid and reimburse the Union from the sums recovered *in accordance with the provisions and procedures referred to in Article 4(1)(f).*

6. *The EU guarantee shall be granted as a guarantee on demand in respect of the instruments referred to in Article 10 and shall cover:*

- (a) for debt instruments referred to in Article 10(2)(a), the principal and all interest and amounts due to the EIB but not received by it in accordance with the terms of the financing operations until the point of default;***
- (b) for equity investments referred to in Article 10(2)(a), the amounts invested and their associated funding cost;***
- (c) for operations referred to in Article 10(2)(b), the amounts used and their associated funding costs.***

The EU guarantee shall also cover the amounts referred to in the second and third subparagraphs of Article 9(5).

Article 12

EU guarantee fund

1. An EU guarantee fund ('guarantee fund') shall be established ***which shall constitute a liquidity cushion*** from which the EIB ***shall*** be paid in the event of a call on the EU guarantee.
2. The guarantee fund shall be endowed by:
 - (a) ***contributions*** from the general budget of the Union;
 - (b) returns on guarantee fund resources invested;
 - (c) amounts recovered from defaulting debtors in accordance with the recovery procedure laid down in the EFSI Agreement as provided for in Article 4(1)(f);
 - (d) ***revenues and*** any other payments received by the Union in accordance with the EFSI Agreement.
3. Endowments to the guarantee fund provided for in points ***(b)***, (c) and (d) of paragraph 2 *of this Article* shall constitute internal assigned revenues in accordance with Article 21(4) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council¹.

¹ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

4. The resources of the guarantee fund provided to it under paragraph 2 shall be directly managed by the Commission and invested in accordance with the principle of sound financial management and *shall* follow appropriate prudential rules.
5. Endowments to the guarantee fund referred to in paragraph 2 shall be used to reach an appropriate level to reflect the total EU guarantee obligations ('target amount'). The target amount shall be set at 50 % of the Union's total guarantee obligations.

The target amount shall initially be met by the gradual payment of resources referred to in *point (a) of* paragraph 2. If there have been calls on the guarantee during the initial constitution of the guarantee fund, endowments to the guarantee fund provided for in points (b), (c) and (d) of paragraph 2 shall ■ contribute to *meeting* the target amount up to an amount equal to the calls on the guarantee.

■

6. Following an **■** assessment on the adequacy of the level of the guarantee fund in accordance with the *report* provided for in **Article 16(6)**, *the following payments shall be made:*
- (a) any surplus shall be paid *to the general budget of the Union as assigned revenue in accordance with Article 21(4) of Regulation (EU, Euratom) No 966/2012 for any budget lines which may have been used as a source of redeployment to the EFSI guarantee fund;*
 - (b) any replenishment of the guarantee fund shall be paid in annual tranches during a maximum period of three years starting *in the* year n+1.
7. From 1 January 2019, if, as a result of calls on the *EU* guarantee, the level of the guarantee fund falls below 50 % of the target amount, the Commission shall submit a report on exceptional measures that may be required to replenish *the guarantee fund*.

8. *After a call on the EU guarantee, endowments to the guarantee fund provided for in points (b) ■ and (d) of paragraph 2 above the target amount shall be used **within the limits of the investment period set in Article 9** to restore the EU guarantee up to its initial amount.*
9. *Endowments to the guarantee fund provided for in point (c) of paragraph 2 shall be used to restore the guarantee up to its initial amount.*
10. *In the event that the guarantee is fully restored up to its maximum initial amount of EUR 16 000 000 000, any amount in the guarantee fund in excess of the target amount shall be paid to the general budget as assigned revenue in accordance with Article 21(4) of Regulation (EU, Euratom) No 966/2012 for any budget lines which may have been used as a source of redeployment to the EFSI guarantee fund.*

Article 13

Financing of the guarantee fund from the general budget of the Union

Regulation (EU) No 1291/2013 and Regulation (EU) No 1316/2013 are amended as set out in Annex I to this Regulation.

If necessary, payment appropriations may be entered in the general budget of the Union beyond 2020 and up to and including the financial year 2023 to fulfil the obligations stemming from the second subparagraph of Article 12(5).

The annual appropriations from the general budget of the Union for provisioning the guarantee fund shall be authorised by the European Parliament and by the Council within the framework of the annual budgetary procedure in full compliance with Council Regulation (EU, Euratom) No 1311/2013¹.

¹ *Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).*

CHAPTER IV

European investment *advisory hub*

Article 14

European Investment Advisory Hub

- 1. The Commission shall conclude an agreement with the EIB for the implementation of a European Investment Advisory Hub (EIAH) within the EIB (EIAH Agreement).*

The EIAH Agreement shall contain in particular provisions on necessary financing of the EIAH in accordance with paragraph 8.

2. *The EIAH shall have as its objective to build upon existing EIB and Commission advisory services in order to provide advisory support for the identification, preparation and development of investment projects and to act as a single technical advisory hub for project financing within the Union. Such support shall include providing targeted support on the use of technical assistance for project structuring, on the use of innovative financial instruments and on the use of public-private partnerships and advice, as appropriate, on relevant issues relating to Union law, taking into account the specificities and needs of Member States with less developed financial markets.*

EIAH shall be able to provide technical assistance in the areas listed in Article 9(2), in particular energy efficiency, TEN-T and urban mobility.

3. *The EIAH shall provide services in addition to those already available under other Union programmes, including:*
- (a) *providing a single point of entry for technical assistance for authorities and project promoters;*

- (b) assisting project promoters, where appropriate, in developing their projects so that they fulfil the eligibility criteria set out in this Regulation;*
 - (c) leveraging local knowledge to facilitate EFSI support across the Union;*
 - (d) providing a platform for peer-to-peer exchange and sharing of know-how regarding project development;*
 - (e) providing advice on the establishment of investment platforms.*
- 4. The EIAH services shall be available for public and private project promoters, including national promotional banks or institutions and investment platforms or funds and regional and local public entities.*
- 5. Fees charged by the EIB for EIAH services under paragraph 3 shall be used for covering costs of the EIAH operations and for providing the services referred to in that paragraph. Fees charged to SMEs shall be capped at one third of the cost of the technical assistance provided to them. EIAH services provided to public project promoters in addition to those already available under Union programmes shall be free of charge.*

6. *In order to achieve the objective referred to in paragraph 2, the EIAH shall seek to use the expertise of the EIB, the Commission, national promotional banks or institutions and the managing authorities of the European Structural and Investment Funds.*
7. *In order to ensure broad coverage for services provided by EIAH across the whole Union, EIAH shall cooperate where possible with similar service providers at Union, regional, national or sub-national level. Cooperation between the EIAH and a national promotional bank or institution, or an equivalent institution or managing authority, including those acting as a national advisor, may take the form of a contractual partnership.*
8. *The Union shall contribute up to a maximum of EUR 20 000 000 per annum towards covering the costs of EIAH operations until 31 December 2020 for the services provided by the EIAH under paragraph 3 which are in addition to those already available under other Union programmes, insofar as those costs are not covered by the remaining amount from fees referred to in paragraph 5.*

9. *By 1 September 2016, and annually thereafter, the EIB shall submit a report to the European Parliament, to the Council and to the Commission with regard to the services provided by the EIAH under paragraph 3 and the execution of its budget. That report shall include information on the fees received and their use.*

CHAPTER V

European investment project portal

Article 15

European investment project *portal*

1. The Commission, *with the support of* the EIB, **■** shall *create* a transparent *European Investment Project Portal (EIPP) gathering* current and future investment projects in the Union. *It shall constitute a publicly accessible and user-friendly project database, providing relevant information for each project.*
2. *The Investment Projects Portal shall primarily be for visibility to investors and for information purposes. The inclusion of projects in the EIPP shall be without prejudice to the final projects selected for support under this Regulation or any other instrument of the Union or for public funding.*
3. Member States *may contribute to its establishment and management.*
4. *A non-refundable fee may be charged to private project promoters for processing project applications for admission to the portal. The fee revenue gathered shall constitute external assigned revenue for the EIPP in accordance with Article 21(4) of Regulation (EU, Euratom) No 966/2012.*

CHAPTER VI

Reporting, accountability and evaluation

Article 16

Reporting and accounting

1. The EIB, in cooperation with the EIF *where* appropriate, shall *submit a biannual* report to the Commission on EIB financing and investment operations *carried out pursuant to* this Regulation. The report shall include an assessment of compliance with the requirements on the use of the EU guarantee and *with* the key performance indicators established pursuant to Article 4(1)(f)(iv). The report shall also include statistical, financial and accounting data on each EIB financing and investment operation and on an aggregated basis.
2. The EIB, in cooperation with the EIF *where* appropriate, shall *submit an annual* report to the European Parliament and to the Council on EIB financing and investment operations *carried out pursuant to **this Regulation***. The report shall be made public and *shall* include:
 - (a) an assessment of EIB financing and investment operations at operation, sector, country and regional levels and their compliance with this Regulation, *in particular with the additionality principle*, together with an assessment of the allocation of EIB financing and investment operations between the objectives *set out* in Article 9(2);

- (b) an assessment of the added value, the mobilisation of private sector resources, the estimated and actual outputs *and the* outcomes and impact of EIB financing and investment operations *on* an aggregated basis, ***including the impact on employment creation***;
- (c) ***an assessment of the extent to which operations covered by the EU guarantee under this Regulation contribute to the achievement of the objectives set in Article 9(2) including an assessment of the level of EFSI investments in the areas of research, development and innovation and transport (including TEN-T and urban mobility), telecommunications, energy infrastructure and energy efficiency***;
- (d) ***an assessment of the compliance with the requirements concerning the use of the EU guarantee and the key performance indicators established pursuant to Article 4(1)(g)***;
- (e) ***an assessment of the leverage effect achieved by EFSI-supported projects***;
- (f) ***a description of the projects where the support of the European Structural and Investment Funds is combined with the support of the EFSI, and the total amount of the contributions from each source***;

- (g) ■ the financial **amount** transferred to beneficiaries **and an assessment** of EIB financing and investment operations on an aggregated basis;
 - (h) an assessment of the **added value** of EIB financing and investment operations, **and of the aggregate risk associated with these operations**;
 - (i) detailed information on calls on the EU guarantee, **losses, returns, amounts recovered and any other payments received**;
 - (j) the financial **reports on EIB financial operations under EFSI audited by an independent external auditor**.
3. For the purposes of the Commission's accounting, *its* reporting of the risks covered by the EU guarantee and *its* management of the guarantee fund, the EIB, in cooperation with the EIF as appropriate, shall provide the Commission **and the European Court of Auditors annually with:**
- (a) the **risk assessment of the EIB** and **of the EIF** and grading information concerning EIB financing and investment operations **carried out pursuant to this Regulation**;

- (b) the outstanding financial obligation for the EU concerning the *guarantee* provided towards EIB financing and investment operations *carried out pursuant to this Regulation*, broken down by individual operations;
 - (c) the total profits or losses deriving from the EIB financing and investment operations within the portfolios provided by the EFSI Agreement pursuant to Article 4(1)(e).
4. The EIB – *where appropriate in cooperation with the EIF* - shall, *upon request*, provide to the Commission any additional information necessary to fulfil the Commission's obligations in relation to this Regulation.
5. The EIB and, where appropriate, the EIF shall provide the information referred to in paragraphs 1 to 4 at their own expense.

6. *By 31 March of each year, the Commission shall submit to the European Parliament, to the Council and to the Court of Auditors in the context of the financial statements of the Commission the required information on the situation of the guarantee fund. In addition, it shall, by 31 May of each year, send to the European Parliament, to the Council and to the Court of Auditors an annual report on the management of the guarantee fund in the previous calendar year, including an assessment of the adequacy of the target amount and the level of the guarantee fund and of the need for its replenishment. The annual report shall contain the presentation of the financial position of the guarantee fund at the end of the previous calendar year, the financial flows during the previous calendar year as well as the significant transactions and any relevant information on the financial accounts. The report shall also include information about the financial management, the performance and the risk of the guarantee fund at the end of the previous calendar year.*

Article 17
Accountability

1. At the request of the European Parliament *or of the Council, the Chairperson of the Steering Board and* the Managing Director shall *report on the performance of the EFSI to the requesting institution, including by participating* in a hearing before the European Parliament **█** .
2. The *Chairperson of the Steering Board and the* Managing Director shall reply orally or in writing to questions addressed to the EFSI by the European Parliament *or the Council*, in any event within five weeks of receipt of a question.
3. At the request of the European Parliament *or of the Council*, the Commission shall *submit a report* **█** on the application of this Regulation.
4. *At the request of the European Parliament, the President of the EIB shall participate in a hearing of the European Parliament that concerns EIB financing and investment operations under this Regulation. The President of the EIB shall, within five weeks of receipt, reply orally or in writing to questions addressed to the EIB by the European Parliament or the Council concerning EIB financing and investment operations under this Regulation.*

5. ***An agreement shall be concluded between the European Parliament and the EIB on the detailed arrangements for the exchange of information between the European Parliament and the EIB under this Regulation, including on the selection procedure for the Managing Director and the deputy Managing Director.***

Article 18

Evaluation and Review

1. ***By ...*:***
- (a) the EIB shall evaluate the functioning of the EFSI. The EIB shall submit its evaluation to the European Parliament, the Council and the Commission;
- (b) **█** the Commission shall evaluate the use of the EU guarantee and the functioning of the guarantee fund **█**. The Commission shall submit its evaluation to the European Parliament and the Council. ***That evaluation shall be accompanied by an opinion of the Court of Auditors.***
2. By 30 June 2018 and every three years thereafter:
- (a) the EIB shall publish a comprehensive report on the functioning of the EFSI. ***That report shall include an evaluation of the impact of the EFSI on the investments in the Union, employment creation and access to financing for mid-cap companies and SMEs;***

* ***OJ please insert the date: 18 months after the entry into force of this Regulation.***

(b) *the* Commission shall publish a comprehensive report on the use of the EU guarantee and the functioning of the guarantee fund.

3. The EIB, in cooperation with the EIF as appropriate, shall contribute to and provide the necessary information for the Commission evaluation and report under paragraphs 1 and 2 respectively.
4. The EIB and *the* EIF shall, on a regular basis, provide the European Parliament, the Council and the Commission with all their independent evaluation reports which assess the *impact and* practical results achieved by the specific activities of the EIB and the EIF under this Regulation.
5. **By ...***, the Commission shall submit **█** to the European Parliament and the Council **a report containing an independent evaluation of the** application of this Regulation **█**.

If this report:

* *OJ please insert the date: 3 years after the entry into force of this Regulation.*

- (a) concludes that the EFSI is achieving its objectives and that maintaining a scheme for supporting investment is warranted, the Commission shall where appropriate submit a legislative proposal amending this Regulation with a view to setting the new investment period, ensuring continuation of investment and an appropriate financing;*
- (b) concludes that the EFSI is not achieving its objectives and that maintaining a scheme for supporting investment is warranted, the Commission shall where appropriate submit a legislative proposal amending this Regulation with a view to addressing the flaws identified, setting the new investment period, ensuring continuation of investment and an appropriate financing;*
- (c) concludes that the EFSI is not achieving its objectives and that maintaining a scheme for supporting investment is not warranted, the Commission shall where appropriate submit a legislative proposal for ensuring a smooth termination of the EFSI, while preserving the guarantee of the EU for the operations already approved under this Regulation.*

The above mentioned report containing an independent evaluation shall be submitted without delay by the Commission in the event that the approved projects would absorb fully before the review date the amount of EU guarantee available.

CHAPTER VII
General provisions

Article 19

Transparency and public disclosure of information

In accordance with its transparency policies *and general Union principles* on access to documents and information, the EIB shall make publicly available on its website information relating to all EIB financing and investment operations *carried out pursuant to this Regulation, including on the role of financial intermediaries*, and to the manner in which they contribute to the general objectives referred to in Article 9(2).

Article 20

Auditing by the Court of Auditors

- 1. The external audit of the activities undertaken in accordance with this Regulation is carried out by the European Court of Auditors in accordance with Article 287 TFEU.*
- 2. For this purpose, the European Court of Auditors shall, at its request and in accordance with Article 287(3) TFEU, be granted access to any document or information necessary to carry out its task.*

Article 21

Anti-fraud measures

1. The EIB shall notify OLAF promptly and provide it with the necessary information when, at any stage of the preparation, implementation or closure of operations subject to the EU guarantee, it has grounds *for suspecting* fraud, corruption, money laundering or *any* other illegal activity that may affect the financial interests of the Union.

2. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹, Council Regulation (Euratom, EC) No 2185/96² and Council Regulation (EC, Euratom) No 2988/95³ in order to protect the financial interests of the Union, with a view to establishing whether there has been fraud, corruption, money laundering or any other illegal activity affecting the financial interests of the Union in connection with any operations *supported under this Regulation*. OLAF may transmit *any information obtained in the course of investigations* to the competent authorities of the Member States concerned ■ .

¹ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

² Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

³ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

Where such illegal activities are proven, the EIB shall undertake recovery efforts with respect to its operations supported by the EU guarantee.

3. Financing agreements signed in relation to operations supported under this Regulation shall include clauses allowing exclusion from EIB financing and investment operations and, if necessary, appropriate recovery measures in cases of fraud, corruption or other illegal activity in accordance with the EFSI Agreement, EIB policies and applicable regulatory requirements. The decision whether to apply an exclusion from the EIB financing and investment operation shall be taken in accordance with the relevant financing or investment agreement.

Article 22

Excluded activities and non-cooperative jurisdictions

1. In its financing and investment operations *carried out pursuant to **this Regulation***, the EIB, *the EIF and all financial intermediaries* shall not support any activities carried out for illegal purposes, including money laundering, *terrorist* financing, *organised crime*, tax fraud and tax evasion, corruption, *and* fraud affecting the financial interests of the Union. In particular the EIB shall not participate in any financing or investment operation through a vehicle located in a non-cooperative jurisdiction, in *accordance* with its policy towards weakly regulated or non-cooperative jurisdictions based on policies of the Union, the Organisation for Economic Cooperation and Development or the Financial Action Task Force.

2. In its financing and investment operations *carried out pursuant to this Regulation*, the EIB shall apply the principles and standards set out in Union law on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing *and in particular in Directive (EU) 2015/.. of the European Parliament and of the Council¹ and Regulation (EU) 2015/... of the European Parliament and of the Council². In particular, the EIB shall make both direct funding or funding via intermediaries under this Regulation contingent upon the disclosure of beneficial ownership information in accordance with Directive (EU) 2015/... (the EU Anti-Money Laundering Directive).*

Article 23

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.

¹ Directive (EU) 2015/.. of the European Parliament and of the Council of ... on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L ..., ..., p. ...).

² Regulation (EU) 2015/... of the European Parliament and of the Council of ... on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L ..., ..., p. ...).

2. The power to adopt delegated acts referred to in Article 7(10) and 7(11) shall be conferred on the Commission for a period of three years from the entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the three-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.

■ The delegation of power referred to in Article 7(10) and (11) 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.

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

4. A delegated act adopted pursuant to **Article 7(10)** shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of **one month** 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 **one month** at the initiative of the European Parliament or of the Council.

5. ***The delegated act that first establishes the scoreboard and is adopted pursuant to Article 7(11) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three weeks 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 weeks at the initiative of the European Parliament or of the Council.***

As regards any further delegated act adopted pursuant to Article 7(11), paragraph 4 shall apply mutatis mutandis.




CHAPTER VIII

Transitional and final provisions

Article 24

Transitional provision

1. ***The EIB and the EIF may submit financing and investment operations approved by them during the period from 1 January 2015 until the EFSI agreement has been concluded and the first appointments of all the members of the Investment Committee and the Managing Director following the date of entry into force of this Regulation, to the Commission***  .

2. The Commission shall assess those operations and, where *such financing and investment operations* comply with the *eligibility criteria* set **■** in Article 6 and *the objectives set in Article 9(2) and the annex on the investment guidelines*, decide that the EU guarantee coverage extends to them.

Article 25

Entry into force

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

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

Done at Strasbourg,

For the European Parliament

The President

For the Council

The President

Annex I

Amendments to Regulation (EU) No 1291/2013 and Regulation (EU) No 1316/2013

(1) Regulation (EU) No 1291/2013 is hereby amended as follows:

(a) In Article 6, paragraphs 1, 2 and 3 are replaced by the following:

'1. The financial envelope for the implementation of Horizon 2020 is set at EUR 74 828,3 million in current prices, of which a maximum of EUR 72 445,3 million shall be allocated to activities under Title XIX TFEU.

The annual appropriations shall be authorised by the European Parliament and by the Council within the limits of the multiannual financial framework.

2. The amount for activities under Title XIX TFEU shall be distributed among the priorities set out in Article 5(2) of this Regulation as follows:

(a) Excellent science, EUR 24 232,1 million in current prices;

(b) Industrial leadership, EUR 16 466,5 million in current prices;

(c) Societal challenges, EUR 28 629,6 million in current prices.

The maximum overall amount for the Union financial contribution from Horizon 2020 to the specific objectives set out in Article 5(3) and to the non-nuclear direct actions of the JRC shall be as follows:

- (i) Spreading excellence and widening participation, EUR 816,5 million in current prices;*
- (ii) Science with and for society, EUR 444,9 million in current prices;*
- (iii) Non-nuclear direct actions of the JRC, EUR 1 855,7 million in current prices.*

The indicative breakdown for the priorities and specific objectives set out in Article 5(2) and (3) is set out in Annex II.

- 3. The EIT shall be financed through a maximum contribution from Horizon 2020 of EUR 2 383 million in current prices as set out in Annex II."*

(b) *Annex II is replaced by the following text:*

'Annex II

Breakdown of the budget

The indicative breakdown for Horizon 2020 is as follows, subject to the annual budgetary procedure:

	<i>EUR million in current prices</i>
<i>I Excellent science, of which:</i>	<i>24 232,1</i>
<i>1. European Research Council (ERC)</i>	<i>13 094,8</i>
<i>2. Future and Emerging Technologies (FET)</i>	<i>2 585,4</i>
<i>3. Marie Skłodowska-Curie actions</i>	<i>6 162,3</i>
<i>4. Research infrastructures</i>	<i>2 389,6</i>
<i>II Industrial leadership, of which:</i>	<i>16 466,5</i>
<i>1. Leadership in enabling and industrial technologies (*), (****)</i>	<i>13 035</i>
<i>2. Access to risk finance (**)</i>	<i>2 842,3</i>
<i>3. Innovation in SMEs (***)</i>	<i>589,2</i>

<i>III Societal challenges, of which (****)</i>	28 629,6
<i>1. Health, demographic change and well-being</i>	7 256,7
<i>2. Food security, sustainable agriculture and forestry, marine, maritime and inland water research, and the bioeconomy</i>	3 707,7
<i>3. Secure, clean and efficient energy</i>	5 688,1
<i>4. Smart, green and integrated transport</i>	6 149,4
<i>5. Climate action, environment, resource efficiency and raw materials</i>	2 956,5
<i>6. Europe in a changing world – Inclusive, innovative and reflective societies</i>	1 258,5
<i>7. Secure societies – Protecting freedom and security of Europe and its citizens</i>	1 612,7
<i>IV Spreading excellence and widening participation</i>	816,5
<i>V Science with and for society</i>	444,9
<i>VI Non-nuclear direct actions of the Joint Research Centre (JRC)</i>	1 855,7
<i>VII The European Institute of Innovation and Technology (EIT)</i>	2 383
TOTAL	74 828,3

() Including EUR 7 423 million for Information and Communication Technologies (ICT) of which EUR 1 549 million for photonics and micro-and nanoelectronics, EUR 3 741 million for nanotechnologies, advanced materials and advanced manufacturing and processing, EUR 501 million for biotechnology and EUR 1 403 million for space. As a result, EUR 5 792 million will be available to support Key Enabling Technologies.*

*(**) Around EUR 994 million of this amount may go towards the implementation of Strategic Energy Technology Plan (SET Plan) projects. Around one third of this may go to SMEs.*

*(***) Within the target of allocating a minimum of 20 % of the total combined budgets for the specific objective 'Leadership in enabling and industrial technologies' and the priority 'Societal challenges' for SMEs, a minimum of 5 % of those combined budgets will be initially allocated to the dedicated SME instrument. A minimum of 7 % of the total budgets of the specific objective 'Leadership in enabling and industrial technologies' and the priority 'Societal challenges' will be allocated to the dedicated SME instrument averaged over the duration of Horizon 2020.*

*(****) The Fast Track to Innovation (FTI) pilot actions will be funded from the specific objective 'Leadership in enabling and industrial technologies' and from the relevant specific objectives of the priority 'Societal challenges'. A sufficient number of projects will be launched in order to allow a full evaluation of the FTI pilot.'*

(2) Regulation (EU) No 1316/2013 is amended as follows:

(a) In Article 5, paragraph 1 is replaced by the following:

'1. The financial envelope for the implementation of the CEF for the period 2014 to 2020 is set at EUR 30 442 259 000 () in current prices. That amount shall be distributed as follows:*

(a) transport sector: EUR 24 050 582 000, of which EUR 11 305 500 000 shall be transferred from the Cohesion Fund to be spent in line with this Regulation exclusively in Member States eligible for funding from the Cohesion Fund;

(b) telecommunications sector: EUR 1 041 602 000;

(c) energy sector: EUR 5 350 075 000.

These amounts are without prejudice to the application of the flexibility mechanism provided for under Council Regulation (EU, Euratom) No 1311/2013().*

() Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-20 (OJ L 347, 20.12.2013, p. 884).'*

(b) In Article 14, paragraph 2 is replaced by the following:

'2. The overall contribution from the Union budget to the financial instruments shall not exceed 8,4% of the overall financial envelope of the CEF as referred to in Article 5(1).'

(c) In Article 21, paragraph 4 is replaced by the following:

'4. The Commission shall be empowered to adopt delegated acts in accordance with Article 26 to raise the ceiling set out in Article 14(2) up to 10%, provided the following conditions are met:

(i) the evaluation of the pilot phase of the Project Bond Initiative carried out in 2015 is positive; and

(ii) the take-up of financial instruments exceeds 6,5% in terms of project contractual commitments.'

ANNEX II

EFSI INVESTMENT GUIDELINES

1. Scope

The purpose of the Investment Guidelines shall be to serve together with the Regulation to which it is annexed as a basis for the Investment Committee to decide in a transparent and independent manner on the use of the EU guarantee for EIB operations that are eligible under EFSI in conformity with the objectives and any other relevant requirements laid down in the EFSI Regulation (hereinafter referred to as the "Regulation" or the "EU Guarantee").

The Investment Guidelines are based on the principles established by the Regulation with regard to general objectives, eligibility criteria, eligible instruments and definition of additionality. They complement the Regulation by i) giving further guidance on eligibility, ii) providing a risk framework for operations, iii) defining sector and geographic diversification thresholds, and iv) defining criteria to assess the contribution to the EFSI objectives to facilitate prioritisation.

These Guidelines only apply to the debt and equity instruments referred to in Article 10(2)(a) of this Regulation and are thus not applicable to the EFSI operations referred to in Article 10(2)(b).

2. Eligible Counterparts, Project Types and Instruments

(a) The eligible counterparts to benefit from the EU guarantee shall include:

- Corporates of all sizes, including utilities, SPVs or project companies,*
- SMEs (below 250 employees) or Midcaps (below 3000 employees),*
- NPBs or financial institutions for intermediation,*
- Equity / debt funds and any other form of collective investment vehicles,*
- Dedicated investment platforms,*
- Public sector entities (territorial or not, but excluding direct Member State risk) and public sector type entities.*

(b) The EU guarantee shall be granted to support financing of new operations, directly or indirectly. In the infrastructure field, greenfield investments (asset creation) should be encouraged. Brownfield investments (extension and modernisation of existing assets) can also be supported. As a rule, the EU guarantee shall not be granted for supporting refinancing operations (such as replacing existing loan agreements or other forms of financial support for projects which have already partially or fully materialised), except in exceptional and well justified circumstances where it is demonstrated that such a transaction will enable a new investment of an amount at least equivalent that would fulfil EFSI general criteria and objectives.

(c) The EU guarantee shall support a wide range of products to allow the EFSI to adapt to market needs while encouraging private investment in the projects, without crowding out private market finance. In this context, it is expected that the EIB would provide finance under EFSI with a view to reach an overall initial target of at least EUR 315 000 000 000 of public or private investment, including financing mobilised through the EIF under EFSI operations referred to in Article 10(2)(b) and National Promotional Banks. The eligible products will include inter alia¹ loans, guarantees / counter-guarantees, mezzanine and subordinated finance, capital market instruments including credit enhancement, and equity or quasi-equity participations, including through national promotional banks or institutions, investment platforms or funds. In this context, in order to allow a broad range of investors to invest in EFSI projects, the EIB should be allowed to structure appropriate portfolios.

(d) National Promotional banks and investment platforms shall be eligible for coverage by the EIB guarantee under the counter guarantee of the EU guarantee in accordance with Article 10(2)(c). The decision to grant that guarantee shall strive to mobilise investments at both the national and regional level and to exploit the complementary expertise, the specific comparative advantages and scope of such entities for the benefit of the initiative.

¹ This is a non-exclusive indication of products that may be offered via EFSI.

3. *Additionality*

The EU guarantee shall be granted in support of operations that meet the additionality criterion as defined in Article 5 of this Regulation.

The following general principles shall also apply:

(a) In order to avoid duplication of existing financial instruments, the EU guarantee may complement, be combined with, or strengthen or enhance existing Union programmes or other sources of Union funds or joint instruments;

(b) Over the course of the EFSI Investment Period, investment supported by EFSI shall in principle not crowd out the use of other Union financial instruments;

(c) attention shall be paid to the complementarity of new infrastructure and innovation window products focusing on SMEs and small midcaps with the existing EU financial instruments and EFSI financial instruments under the SME window so that the highest level of efficient use of financial resources is achieved. Nonetheless, a cumulative use of instruments shall be possible in particular in cases where the usual support is not sufficient to kick-start investments.

4. *Added value: contribution to EFSI objectives*

Projects benefitting from the EU guarantee shall respect the eligibility criteria and objectives set out in Articles 6 and 9(2) of this Regulation.

5. *Scoreboard*

The scoreboard referred to in Article 7 shall be used by the Investment Committee with a view to ensuring an independent and transparent assessment of the possible use of the EU guarantee.

6. Investment Windows

(a) The debt and equity instruments referred to in Article 10(2)(a) will be provided under an Infrastructure and Innovation Window (IIW), which will consist of a Debt Sub-window and an Equity Type Sub-window. Allocation of operations¹ to one of the two Sub-windows will be based on EIB's system of Loan Grading and EIB's standard risk assessment and subject to guidance provided by the Steering Board.

(b) Infrastructure and Innovation Window - Debt Sub-window

- For debt type operations, the EIB will carry out its standard risk assessment, involving the computation of the Probability of Default and Recovery Rate. Based on these parameters, EIB will quantify the risk for each operation. Such computation shall be performed without taking into account the EU Guarantee, to reflect the overall risk of the transaction.

¹ The term 'operation' applies to both direct investment in a project (debt or equity) or an 'operation' (projects, programmes or facilities) with a financial or other intermediary but not, for the avoidance of doubt, to the underlying projects supported by such an intermediated operation.

- *Each debt type operation will receive a risk classification (the Transaction Loan Grading) as per EIB's system of Loan Gradings as amended from time to time. Information on loan grading will be included in the project documentation for the Investment Committee Transactions with a higher risk profile than projects supported by normal EIB operations are referred to as Special Activities as defined in Article 16 of the EIB Statute and by the credit risk policy guidelines of the EIB. Operations supported by the EU guarantee will typically have a higher risk profile than normal EIB operations and hence fall under the Special Activities. Transactions with a better loan grading can be included into the EFSI Portfolio provided that a high added value is clearly demonstrated and their inclusion is consistent with the additionality requirement.*

- *Projects will have to be economically and technically viable and the EIB's financing will have to be structured in line with sound banking principles and comply with the high level risk management principles set by the EIB in its internal guidelines as amended from time to time. All relevant information will be made available to the members of the Steering Board and of the Investment Committee.*

- *Debt type products will be priced in line with EIB's loan pricing methodology as amended from time to time.*

(c) Infrastructure and Innovation Window - Equity Type Sub-window

- For equity type operations, the EU guarantee can be used to support direct investments in individual companies or projects (Equity Type Direct Investments) or financing for funds or analogous portfolio risks (Equity Type Portfolio), provided that EIB invests on a pari-passu basis for its own risk as well. The determination that an operation bears equity type risks (or not), irrespective of its legal form and nomenclature, will be based on EIB's standard assessment.

- EIB's equity type operations shall be carried out in accordance with the Bank's internal rules and procedures, as amended from time to time or established. All relevant information for the assessment of the operation will be made available to the members of the Steering Board and of the Investment Committee.

- Equity type investments will be priced in line with the market, absent which market testing or benchmarking will be used.

7. Exposure limits per risk category

(a) The exposure limits for Special Activities categories decreases with increasing risk-level, as expressed in the Transaction Loan Grading. The limit is thus generally higher for debt-type risk than for equity-type risk.

(b) Reflecting the availability of credit enhancement provided by the EU Guarantee, the limits under EFSI will be set by the EIB higher than the equivalent limit under the EIB's own risk business. The members of the Steering Board and the Investment Committee will receive a detailed overview of the EFSI risk limits. The Steering Board will supervise regularly the development of the risk profile of the EFSI portfolio and adopt appropriate measures if deemed necessary.

(c) Transactions for higher amounts than the specific EFSI limits can be included into the EFSI Portfolio on an exceptional basis, with the agreement of the Steering Board, provided that additionality and added value is clearly demonstrated and their inclusion is unlikely to jeopardise the overall portfolio risk-level target at the end of the initial Investment Period.

8. *Sectoral and geographical diversification*

The EFSI is demand driven but aims to support eligible projects across the Union as well as Cross-Border Projects, as defined in this Regulation, without any sectoral or geographical pre-allocation. However, best efforts shall be made to ensure that at the end of the initial Investment Period a wide range of sectors and regions will be covered and excessive sectoral/geographical concentration should be avoided.

(a) Sectoral Concentration

In order to manage sector diversification and concentration of the EFSI portfolio, the Steering Board shall set indicative concentration limits in respect of the volume of operations supported by the EU guarantee at the end of the initial Investment Period. The indicative concentration limits shall be made public.

The Steering Board may decide to modify these indicative limits, after consultation of the Investment Committee. In that case, the Steering Board shall explain its decision to the European Parliament and to the Council in writing.

(b) Geographical Concentration

EFSI-supported operations shall not be concentrated in any specific territory at the end of the initial investment period. To this end the Steering Board shall adopt indicative geographical diversification and concentration guidelines. The Steering Board may decide to modify these indicative limits, after consultation of the Investment Committee. The Steering Board shall explain its decisions related to the indicative limits to the European Parliament and Council in writing. The EFSI should aim to cover all Member States.

ANNEX B

DECLARATIONS TO BE MADE

1. Joint declaration from the European parliament, the Council and the Commission on the breakdown for Horizon 2020.

The institutions agree that the following budget lines will not contribute to the funding of EFSI: "Strengthening frontier research in the European Research Council, Marie Skłodowska-Curie actions" and "Spreading Excellence and Widening Participation". The remaining amount stemming from the additional use of the margin as compared to the Commission's proposal will be re-instated to the other H2020 budget lines in proportion to the reductions proposed by the Commission. The indicative breakdown is presented in Annex II to the EFSI Regulation

2. Declaration of the Commission on the draft budget 2016

The Commission will analyse the potential impact of the contributions to EFSI of the different budget lines of H2020 on the effective implementation of the respective programmes and will, if appropriate, propose an amending letter to Draft Budget 2016 to adjust the breakdown of the H2020 budget lines.

3. Declaration by the Commission on the Commission's assessment of one-off contributions within the context of the EFSI initiative for the purpose of implementing the stability and growth pact

Without prejudice to the prerogatives of the Council in the implementation of the SGP, one-off contributions by Member States, either by the State or by National Promotional Banks classified in the general government sector or acting on behalf of the State, into EFSI,

thematic or multi-country investment platforms established for the implementation of the Investment Plan, should in principle qualify as one-off measures, in the meaning of Article 5 of Regulation (EC) 1466/97 and Article 3 of Regulation (EC) 1467/97.