



**EUROPEAN UNION**

**THE EUROPEAN PARLIAMENT**

**THE COUNCIL**

**Brussels, 13 September 2017  
(OR. en)**

**2016/0281 (COD)**

**PE-CONS 43/17**

**DEVGEN 157  
ACP 74  
RELEX 599  
ECOFIN 614  
CADREFIN 82  
ASIM 83  
MAMA 122  
COEST 166  
COAFR 196  
CODEC 1194**

**LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the European Fund for Sustainable Development (EFSD), the EFSD Guarantee and the EFSD Guarantee Fund

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**REGULATION (EU) 2017/...**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of ...

**establishing the European Fund for Sustainable Development (EFSD),  
the EFSD Guarantee and the EFSD Guarantee Fund**

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 209(1) and 212(2) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure<sup>1</sup>,

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<sup>1</sup> Position of the European Parliament of 6 July 2017 (not yet published in the Official Journal) and decision of the Council of ...

Whereas:

- (1) The Union's External Investment Plan (EIP) provides for the creation of the European Fund for Sustainable Development (EFSD) as its first pillar, alongside technical assistance as its second pillar and improving the investment climate and overall policy environment in partner countries as its third pillar.
- (2) The EFSD aims to support investments primarily in Africa and the Union's Neighbourhood as a means to contribute to the achievement of the Sustainable Development Goals of the United Nations (UN) 2030 Agenda for Sustainable Development (the '2030 Agenda'), in particular poverty eradication, as well as the commitments under the recently revised European Neighbourhood Policy. By supporting such investments, the EFSD aims to address specific socio-economic root causes of migration, including irregular migration, and to contribute to the sustainable reintegration of migrants returning to their countries of origin and to the strengthening of transit and host communities. The EFSD, as part of the EIP, should also contribute to the implementation of the Paris Agreement on Climate Change (Paris Agreement).
- (3) Investments under the EFSD should complement and strengthen efforts carried out in the context of the Union's migration policy with third countries, including, where appropriate, the implementation of the New Partnership Framework with third countries under the European Migration Agenda.

- (4) The EFSD should be guided by the objectives of the Union's external action as set out in Article 21 of the Treaty on European Union (TEU) and of Union policy in the field of development cooperation as set out in Article 208 of the Treaty on the Functioning of the European Union (TFEU). The EFSD should also allow investors and private companies, in particular micro, small and medium-sized enterprises, to contribute more effectively to sustainable development in partner countries in line with the Union's development policy and European Neighbourhood Policy. The EFSD should maximise additionality, address market failures and sub-optimal investment situations, deliver innovative products and crowd in private sector funds. EFSD operations should be clearly distinct from, and complementary to, other support, including the European Investment Bank's (EIB) external lending mandate operations and Economic Resilience Initiative, and the Investment Facility established under the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its member States, of the other part, signed in Cotonou on 23 June 2000<sup>1</sup> (ACP-EU Partnership Agreement) (ACP Investment Facility). EFSD operations should also be complementary to the existing activities of other eligible financial institutions.

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<sup>1</sup> OJ L 317, 15.12.2000, p. 3.

- (5) The EFSD should contribute to the implementation of the 2030 Agenda, which recognises international migration as a multi-dimensional reality of major relevance for the development of countries of origin, transit and destination, requiring coherent and comprehensive responses, while underlining the potential for migrants to contribute to inclusive growth and sustainable development. Investments supported by the EFSD should contribute towards addressing migratory pressures stemming from poverty, conflict, instability, underdevelopment, inequality, human rights violations, demographic growth, and the lack of employment and economic opportunities, as well as from climate change.
- (6) The EFSD should be in line with the Union commitment under the Addis Ababa Action Agenda on Financing for Development and the internationally agreed development effectiveness principles, as set out by the Fourth High-Level Forum on Aid Effectiveness in Busan in 2011 ('Busan Partnership for Effective Development Cooperation'), and reaffirmed at the Second High-Level Meeting of the Global Partnership for Effective Development Cooperation in Nairobi in 2016.
- (7) The purpose of the EFSD is in line with the Union Global Strategy for Foreign and Security Policy, which embeds challenges such as migration and resilience in the overall foreign policy of the Union, ensuring that Union external policy is fully coherent with the objectives of development policy and ensuring synergies with the Union's development policy and European Neighbourhood Policy. Its purpose is also in line with the Charter of Fundamental Rights of the European Union and international human rights law, which ensures a human rights-based approach while addressing forced displacement and irregular migration.

- (8) The EFSD should foster decent job creation, economic opportunities and entrepreneurship, and green and inclusive growth with a particular focus on gender equality and the empowerment of women and young people in line with the Union's Framework for Gender Equality and Women's Empowerment: Transforming the Lives of Girls and Women through EU External Relations 2016-2020, while strengthening the rule of law, good governance, human rights and equitable access to, and use of, natural resources.
- (9) Involvement of the private sector in the Union's cooperation with partner countries through the EFSD should yield measurable and additional development impact without distorting the market and should be cost-effective based on mutual accountability and risk and cost sharing. Such involvement should build on a commitment to internationally agreed guidelines and principles, including the Principles for Responsible Investment and the UN Guiding Principles on Business and Human Rights and the Organisation for Economic Cooperation and Development's (OECD) Guidelines for Multinational Enterprises.
- (10) In order to fulfil the political commitments of the Union on climate action, renewable energy and resource efficiency, a minimum share of 28 % of the financing under the EFSD Guarantee should be devoted to investments relevant for those sectors.
- (11) Actions under this Regulation should be designed in such a way as to fulfil the criteria for Official Development Assistance (ODA) established by the Development Assistance Committee of the OECD (OECD-DAC), taking into account the specificities of private sector development, to reflect the needs of countries identified as experiencing fragility or conflict, Least Developed Countries (LDCs) and heavily indebted poor countries, and to provide appropriate support to investments in the southern and eastern neighbourhoods.

- (12) In the context of the EIP's second pillar, the Commission should step up assistance in order to help partner countries attract investment by better preparing and promoting projects, developing a higher number of bankable projects and making them known to the international investor community. A project web-portal, in the form of a publicly accessible and user-friendly database, should be established to provide relevant information for each project.
- (13) In the context of the EIP's third pillar and the Union's existing political relations with partner countries, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy (High Representative) should maintain policy dialogues aimed at developing legal frameworks, policies and institutions that promote economic stability, sustainable investment and inclusive growth. Those policy dialogues should cover, inter alia, the fight against corruption, organised crime and illicit financial flows, good governance, the inclusion of local markets, the boosting of entrepreneurship and local business environments, and the respect for human rights and the rule of law, as well as gender-responsive policies.
- (14) The EFSD should be composed of regional investment platforms, which should be established on the basis of the working methods, procedures and structures of the existing external blending facilities of the Union and which should combine their blending operations and the EFSD Guarantee. The EFSD Guarantee should support financing and investment operations in partner countries in Africa and the European Neighbourhood.

- (15) In the light of the findings of the Court of Auditors regarding the use of blending in the Union's external action, it is essential that blending be used where its added value can clearly be demonstrated.
- (16) A strategic board of the EFSD should be created to support the Commission in setting strategic guidance and overall investment goals, as well as in ensuring an appropriate and diversified geographical and thematic coverage for investment windows. The strategic board should support overall coordination, complementarity and coherence between the regional investment platforms, between the three pillars of the EIP, between the EIP and the Union's other efforts on migration and on the implementation of the 2030 Agenda, as well as with the relevant Union external financing instruments and trust funds, and with the external lending mandate operations managed by the EIB, including the EIB's Economic Resilience Initiative and the ACP Investment Facility, without prejudice to the EIB's internal governance rules.
- (17) The strategic board should be composed of representatives of the Commission and of the High Representative, of all Member States and of the EIB. The European Parliament should have observer status. Contributors, eligible counterparts, partner countries, relevant regional organisations and other stakeholders may be given observer status, where appropriate. The strategic board should adopt its rules of procedure. The rules of procedure should lay down the framework for the involvement of observers, having regard to their respective statuses and roles.



- (18) The Commission and the EIB should conclude an agreement specifying the conditions of their cooperation in the management of the EFSD Guarantee and should present that agreement to the strategic board.
- (19) Each regional investment platform should have an operational board, which should draw on the experience of the operational boards of the existing blending facilities. The regional operational boards should provide support to the Commission in the implementation of this Regulation. They should support the Commission in defining and monitoring regional and sectoral investment goals and regional, sectoral and thematic investment windows, formulating opinions on the blending operations and discussing the use of the EFSD Guarantee in line with the investment windows to be set up.
- (20) It should be ensured that an appropriate level of information is provided to the European Parliament and to the Council with regard to the strategic orientation of the use of the EFSD Guarantee through the establishment of investment windows.
- (21) The EFSD should operate as a ‘one-stop-shop’, receiving financing proposals from financial institutions and public or private investors and delivering a wide range of financial support to eligible investments. The EFSD Guarantee should be backed by the EFSD Guarantee Fund.
- (22) The EFSD should deploy innovative instruments to support investments and involve the private sector, in particular micro, small and medium-sized enterprises. It should also allow European investors and private companies, including micro, small and medium-sized enterprises, to participate more effectively in efforts to achieve sustainable development in partner countries. Bottlenecks and obstacles to investments need to be addressed in this respect.

- (23) The EFSD Guarantee should give priority to funding projects which have a high impact on job creation and whose cost-benefit ratio enhances the sustainability of investment. When supporting operations with the EFSD Guarantee, an in-depth ex ante assessment of environmental, financial and social aspects should be carried out. The EFSD Guarantee should not be used to replace government responsibility for providing essential public services.
- (24) European Union delegations in partner countries should include information about EFSD funding opportunities in their communications targeted at civil society and the general public and contribute to the coherence between the three pillars of the EIP.
- (25) The EFSD Guarantee should be granted to eligible counterparts for financing and investment operations or guarantee instruments for an initial investment period up to 31 December 2020.
- (26) In order to provide for flexibility, increase the attractiveness for the private sector and maximise the impact of the investments, it is appropriate to provide for a derogation from the rules related to the methods of implementation of the Union budget, laid down in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>1</sup>, by which the eligible counterparts which are bodies governed by private law could also be bodies which are not entrusted with the implementation of a public-private partnership and could also be bodies governed by the private law of a partner country.

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<sup>1</sup> 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).

- (27) The Commission should conclude EFSD guarantee agreements with the eligible counterparts setting out the specific provisions under which the EFSD Guarantee is granted to them. Those guarantee agreements should provide the legal basis for adequate risk sharing, thus providing incentives for the eligible counterparts to provide financing, as well as the mechanisms and procedures for potential calls on the EFSD Guarantee.
- (28) The Union should make available a guarantee of EUR 1 500 000 000 to establish the EFSD Guarantee. Member States and other contributors should be invited to contribute further to support the EFSD Guarantee Fund in the form of cash in the case of Member States and other contributors, or guarantees in the case of Member States, in order to increase the liquidity cushion and thus allow an increase of the total volume of the EFSD Guarantee. Member States, public financial institutions and other contributors should be invited to provide additional funding to the EFSD Guarantee Fund under conditions that should be established in an agreement to be concluded between the Commission on behalf of the Union and the contributor in question.
- (29) The EFSD Guarantee Fund should be established as a liquidity cushion in the event of a call on the EFSD Guarantee. To reach a level that adequately reflects Union financial liabilities in relation to the EFSD Guarantee, the Union should make available EUR 750 000 000.

- (30) In order to increase the impact of the EFSD Guarantee in view of the needs in the regions concerned, Member States and European Free Trade Association (EFTA) countries should have the possibility of providing contributions in the form of a guarantee or cash.
- (31) As the funds of the European Development Fund (EDF) are to be used for the purposes of the EFSD Guarantee Fund, a minimum of EUR 400 000 000 of EFSD Guarantee coverage should be allocated for investments in partner countries eligible under the 11<sup>th</sup> EDF<sup>1</sup> throughout the implementation period of the EFSD Guarantee. The EFSD Guarantee should only become available when a contribution of EUR 400 000 000 of 11<sup>th</sup> EDF funds to the EFSD Guarantee Fund has been confirmed.
- (32) As the funds of the European Neighbourhood Instrument, established by Regulation (EU) No 232/2014 of the European Parliament and of the Council<sup>2</sup>, are to be used for the purposes of the EFSD Guarantee Fund, a minimum of EUR 100 000 000 of EFSD Guarantee coverage should be allocated for investments in the partner countries in the eastern and southern neighbourhoods throughout the implementation period of the EFSD Guarantee.

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<sup>1</sup> Internal Agreement between the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the financing of European Union aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Treaty on the Functioning of the European Union applies (OJ L 210, 6.8.2013, p. 1).

<sup>2</sup> Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (OJ L 77, 15.3.2014, p. 27).

- (33) The Commission should report annually to the European Parliament and to the Council on the financing and investment operations covered by the EFSD Guarantee, with a view to ensuring full accountability to Union citizens and scrutiny and control by the European Parliament and by the Council. The report should be made public in order to allow relevant stakeholders, including civil society, to express their views. The Commission should also report annually to the European Parliament and to the Council on the management of the EFSD Guarantee Fund in order to ensure accountability and transparency. The Commission should also inform the ACP-EU Council of Ministers and the ACP-EU Joint Parliamentary Assembly of the use of EDF funds.
- (34) In order to ensure the monitoring and accountability of the EFSD and of the EIP, it should be possible for the European Parliament or for the Council to organise hearings as part of a dialogue with the Commission, the High Representative, the EIB and other eligible financial institutions, as well as the private sector and civil society organisations.
- (35) In order to take into account lessons learned and allow for further evolution of the EFSD, the functioning of the EFSD and the use of the EFSD Guarantee Fund should be evaluated by the Commission and external evaluators and subject to an annual consultation process with relevant stakeholders, including civil society organisations. The application of this Regulation should be evaluated independently in order to assess the level of conformity of the implementation with the legal basis, and to establish the applicability and practicability of this Regulation in the achievement of its objectives.

- (36) 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 financing and investment operations covered by this Regulation, the European Anti-Fraud Office (OLAF) is entitled to carry out investigations in accordance with Council Regulations (EC, Euratom) No 2988/95<sup>1</sup> and (Euratom, EC) No 2185/96<sup>2</sup> and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>3</sup>.
- (37) Financing and investment operations supported by the EFSD should adhere to the Union policy on non-cooperative jurisdictions for tax purposes, and updates thereto, as laid down in relevant legal acts of the Union and Council conclusions, in particular the Council Conclusions of 8 November 2016 and the Annex thereto,

HAVE ADOPTED THIS REGULATION:

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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).

# CHAPTER I

## INTRODUCTORY PROVISIONS

### *Article 1*

#### *Subject matter*

1. This Regulation establishes the European Fund for Sustainable Development (EFSD), the EFSD Guarantee and the EFSD Guarantee Fund.
2. For the purposes of paragraph 1 of this Article, this Regulation provides for the Commission, on behalf of the Union, to conclude EFSD guarantee agreements with the eligible counterparts as defined in Article 11.

### *Article 2*

#### *Definitions*

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

- (1) ‘regional investment platforms’ means blending facilities in line with point (e) of Article 4(1) of Regulation (EU) No 236/2014 of the European Parliament and of the Council<sup>1</sup> and with Article 40 of Council Regulation (EU) 2015/323<sup>2</sup> for the contribution from the 11<sup>th</sup> EDF combined with the granting of the EFSD Guarantee as set out in Article 7;

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<sup>1</sup> Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union’s instruments for financing external action (OJ L 77, 15.3.2014, p. 95).

<sup>2</sup> Council Regulation (EU) 2015/323 of 2 March 2015 on the financial regulation applicable to the 11<sup>th</sup> European Development Fund (OJ L 58, 3.3.2015, p. 17).

- (2) ‘investment window’ means a targeted area for support by the EFSD Guarantee to portfolios of investments in specific regions, countries or sectors and implemented via the regional investment platforms;
- (3) ‘contributor’ means a Member State, an international financial institution or a public institution of a Member State, a public agency or other entities contributing in cash grants or in guarantees to the EFSD Guarantee Fund;
- (4) ‘partner country’ means a country that is a signatory to the ACP-EU Partnership Agreement, a country that is listed in Annex I to Regulation (EU) No 232/2014, or a country that is eligible for geographic cooperation under Regulation (EU) No 233/2014 of the European Parliament and of the Council<sup>1</sup>;
- (5) ‘additionality’ means the principle ensuring that the EFSD Guarantee support contributes to sustainable development by operations which could not have been carried out without the EFSD Guarantee, or which achieve positive results above and beyond what could have been achieved without it. Additionality also means crowding in private sector funding and addressing market failures or sub-optimal investment situations as well as improving the quality, sustainability, impact or scale of an investment. The principle also ensures that EFSD Guarantee operations do not replace the support of a Member State, private funding or another Union or international financial intervention, and avoid crowding out other public or private investments. Projects supported by the EFSD Guarantee typically have a higher risk profile than the portfolio of investments supported by the eligible counterparts under their normal investment policies without the EFSD Guarantee.

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<sup>1</sup> Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020 (OJ L 77, 15.3.2014, p. 44).



## CHAPTER II

# EUROPEAN FUND FOR SUSTAINABLE DEVELOPMENT

### *Article 3*

#### *Purpose*

1. The purpose of the EFSD as an integrated financial package, supplying financing capacity in the form of grants, guarantees and other financial instruments to eligible counterparts, shall be to support investments and increased access to financing, primarily in Africa and the European Neighbourhood, in order to foster sustainable and inclusive economic and social development and promote the socio-economic resilience of partner countries, including, where appropriate, in the context of the European Neighbourhood Policy and the New Partnership Framework with third countries under the European Agenda on Migration, with a particular focus on sustainable and inclusive growth, on the creation of decent jobs, on gender equality and the empowerment of women and young people, and on socio-economic sectors and micro, small and medium-sized enterprises, while maximising additionality, delivering innovative products and crowding in private sector funds.

2. The EFSD shall be guided by the objectives of the Union's external action as set out in Article 21 TEU and of Union policy in the field of development cooperation as set out in Article 208 TFEU and the internationally agreed development effectiveness principles. The EFSD shall contribute to the achievement of the Sustainable Development Goals of the 2030 Agenda, in particular poverty eradication, and, where appropriate, to the implementation of the European Neighbourhood Policy, thus addressing specific socio-economic root causes of migration and fostering sustainable reintegration of migrants returning to their countries of origin, and strengthening transit and host communities.
3. The EFSD shall contribute to the implementation of the Paris Agreement by also targeting investments to sectors that advance climate change mitigation and adaptation.
4. The EFSD shall be consistent with the objectives set out in the external financing instruments established by Regulations (EU) No 232/2014, (EU) No 233/2014 and (EU) 2015/323 and with the priorities contained in national or regional programmes and strategy papers, where available.

*Article 4*  
*Structure of the EFSD*

1. The EFSD shall be composed of regional investment platforms established on the basis of the working methods, procedures and structures of the existing external blending facilities of the Union, which shall combine their blending operations and EFSD Guarantee operations.
2. The management of the EFSD shall be ensured by the Commission. The Commission shall work in close cooperation with the EIB, supported by other eligible counterparts, as regards the operational management of the EFSD Guarantee. To that end, a technical assessment group on the EFSD Guarantee shall be established.

*Article 5*  
*Strategic board of the EFSD*

1. In the management of the EFSD the Commission shall be advised by a strategic board.
2. The strategic board shall advise the Commission on the strategic orientation and priorities of EFSD Guarantee investments and contribute to their alignment with the guiding principles and objectives of the Union's external action, development policy and European Neighbourhood Policy, as well as with the purpose of the EFSD as set out in Article 3. It shall also support the Commission in setting overall investment goals as regards the use of the EFSD Guarantee and monitor an appropriate and diversified geographical and thematic coverage for investment windows, while giving special attention to countries identified as experiencing fragility or conflict, LDCs and heavily indebted poor countries.

3. The strategic board shall also support overall coordination, complementarity and coherence between the regional investment platforms, between the three pillars of the EIP, between the EIP and the Union's other efforts on migration and on the implementation of the 2030 Agenda, as well as with the relevant Union external financing instruments and trust funds, and with the external lending mandate operations managed by the EIB, including the EIB's Economic Resilience Initiative, and the ACP Investment Facility, without prejudice to the EIB's internal governance rules.
4. The strategic board shall be composed of representatives of the Commission and of the High Representative, of all Member States and of the EIB. The European Parliament shall have observer status. Contributors, eligible counterparts, partner countries, relevant regional organisations and other stakeholders may be given observer status, where appropriate. The strategic board shall be consulted prior to the inclusion of any new observer. The strategic board shall be co-chaired by the Commission and the High Representative.
5. The strategic board shall meet at least twice a year and, when possible, adopt opinions by consensus. Additional meetings may be organised at any time by the chair or at the request of one third of its members. Where consensus cannot be reached, the voting rights as agreed during the first meeting of the strategic board and laid down in its rules of procedure shall apply. Those voting rights shall take due account of the source of financing. The rules of procedure shall set out the framework regarding the role of observers. The minutes and agendas of the meetings of the strategic board shall, following their adoption, be made public.

6. The Commission shall report annually to the strategic board about the progress made in respect of the implementation of the EFSD. The strategic board shall regularly organise a consultation of relevant stakeholders on the strategic orientation and implementation of the EFSD.
7. During the implementation period of the EFSD, the strategic board shall, as soon as possible, adopt and publish guidelines setting out how conformity of EFSD operations with the objectives and eligibility criteria set out in Article 9 is to be ensured.
8. In its strategic guidance, the strategic board shall take due account of relevant European Parliament resolutions and Council decisions and conclusions.

### *Article 6*

#### *Regional operational boards*

Each regional investment platform shall have an operational board. Regional operational boards shall support the Commission at the implementation level in defining regional and sectoral investment goals and regional, sectoral and thematic investment windows and shall formulate opinions on blending operations and on the use of the EFSD Guarantee.

# **CHAPTER III**

## **EFSD GUARANTEE**

### **AND EFSD GUARANTEE FUND**

#### *Article 7*

##### *The EFSD Guarantee*

1. The Union shall, after careful consideration of the viability of a project, provide an irrevocable and unconditional guarantee on first demand to the eligible counterpart for the financing and investment operations covered by this Regulation.
2. The EFSD Guarantee shall support financing and investment operations in partner countries in Africa and the European Neighbourhood.
3. The EFSD Guarantee shall be granted as a guarantee on first demand in respect of the instruments referred to in Article 10 and in compliance with the eligibility criteria set out in Article 9.

#### *Article 8*

##### *Requirements for the use of the EFSD Guarantee*

1. The granting of the EFSD Guarantee shall be subject to the conclusion of the respective EFSD guarantee agreement between the Commission on behalf of the Union and the eligible counterpart.

2. The investment period during which the EFSD guarantee agreements for supporting financing and investment operations can be concluded with the eligible counterparts shall last until 31 December 2020.
3. The maximum period allowed for eligible counterparts to conclude agreements with co-financing private sector partners, financial intermediaries or final beneficiaries shall be four years after the conclusion of the relevant EFSD guarantee agreement.

#### *Article 9*

##### *Eligibility criteria for the use of the EFSD Guarantee*

1. The financing and investment operations eligible for support through the EFSD Guarantee in accordance with the purpose of the EFSD set out in Article 3 shall be consistent and aligned with Union policies, in particular the Union's development policy and European Neighbourhood Policy, as well as with the partner countries' strategies and policies. Such operations shall take into account other Union and international support to ensure complementarity with other initiatives and shall support the following objectives:
  - (a) contributing to sustainable development in its economic, social and environmental dimensions, and to the implementation of the 2030 Agenda and, where appropriate, the European Neighbourhood Policy, with a particular focus on the eradication of poverty, the creation of decent jobs, economic opportunities, skills and entrepreneurship, promoting in particular gender equality and the empowerment of women and young people, while pursuing and strengthening the rule of law, good governance and human rights;

- (b) contributing to the implementation of the Union's migration policy, including, where appropriate, the New Partnership Framework with third countries under the European Agenda on Migration;
- (c) contributing, by promoting sustainable development, to addressing specific root causes of migration, including irregular migration, as well as fostering the resilience of transit and host communities, and contributing to the sustainable reintegration of migrants returning to their countries of origin, with due regard to the strengthening of the rule of law, good governance and human rights;
- (d) strengthening socio-economic sectors and areas and related public and private infrastructure, including renewable and sustainable energy, water and waste management, transport, information and communications technologies, as well as environment, sustainable use of natural resources, sustainable agriculture and blue growth, social infrastructure, health, and human capital, in order to improve the socio-economic environment;
- (e) providing finance and support to private and cooperative sector development, with a particular focus on local companies and micro, small and medium-sized enterprises, while addressing market failures, limiting market distortions and encouraging the contribution of European companies to the EFSD objectives;
- (f) addressing bottlenecks to private investments by providing financial instruments, which may be denominated in the local currency of the partner country concerned, including first loss guarantees to portfolios, guarantees to private sector projects such as loan guarantees for small and medium-sized enterprises, and guarantees for specific risks for infrastructure projects and other risk capital;



- (g) leveraging private sector financing, with a particular focus on micro, small and medium-sized enterprises, by addressing bottlenecks and obstacles to investment;
- (h) contributing to climate action and environmental protection and management, thus producing climate co-benefits, allocating at least 28 % of the financing to investments that contribute to climate action, renewable energy and resource efficiency.

2. The EFSD Guarantee shall support financing and investment operations which address market failures or sub-optimal investment situations and which:

- (a) provide additionality;
- (b) ensure complementarity with other initiatives, making sure that EFSD Guarantee operations are clearly distinct, in particular from the external lending mandate operations managed by the EIB;
- (c) ensure alignment of interest by providing adequate risk sharing by the respective eligible counterpart and other prospective partners;
- (d) are economically and financially viable, with due regard to the possible support from, and co-financing by, private and public partners to the project, while taking into account the specific operating environment and capacities of countries identified as experiencing fragility or conflict, LDCs and heavily indebted poor countries where more concessional terms can be given;

- (e) are technically viable and are sustainable from an environmental and social point of view;
  - (f) maximise, where possible, the mobilisation of private sector capital;
  - (g) respect the development effectiveness principles as set out in the Busan Partnership for Effective Development Cooperation and reaffirmed in Nairobi in 2016, including ownership, alignment, focus on results, transparency and mutual accountability, as well as the objective of untying aid;
  - (h) are designed so as to fulfil the criteria for ODA established by the OECD-DAC, taking into account the specificities of private sector development; and
  - (i) are implemented with full respect for internationally agreed guidelines, principles and conventions, including the Principles for Responsible Investment, UN Guiding Principles on Business and Human Rights, OECD Guidelines for Multinational Enterprises, the UN Food and Agriculture Organization’s Principles for Responsible Investment in Agriculture and Food Systems, and International Labour Organization conventions, as well as international human rights law.
3. Financing and investment operations may combine, on a case-by-case basis, financing from different Union instruments to the extent that it is needed for the success of the investment project backed by the EFSD and as long as this does not lead to reduced financing for other developmental objectives.

4. Taking due account of the advice provided by the strategic board, the Commission shall, after consulting the operational boards and informing the European Parliament and the Council, set up investment windows for specific regions, specific partner countries, or both, for specific sectors, or for specific projects, specific categories of final beneficiaries, or both to be funded by instruments referred to in Article 10 to be covered by the EFSD Guarantee up to a fixed amount. The information provided by the Commission to the European Parliament and to the Council shall specify how the investment windows are aligned with the requirements set out in Article 3 and this Article and their detailed funding priorities. The EIB should provide a written opinion on banking related matters to accompany each proposal for investment windows. All requests for financial support within investment windows shall be made to the Commission.

The choice of investment windows shall be duly justified by an analysis of the market failure or sub-optimal investment situations. Such analysis shall be carried out by the Commission in cooperation with potentially eligible counterparts and stakeholders.

Within the Africa Investment Platform, a significant share of the EFSD Guarantee shall be allocated to fragile and conflict-affected countries, landlocked countries and LDCs.

5. The Commission shall assess the operations supported by the EFSD Guarantee against the eligibility criteria set out in paragraphs 1 and 2, where possible drawing on the existing result measurement systems of eligible counterparts. The Commission shall publish the result of its assessment for each investment window on an annual basis.

*Article 10*

*Eligible instruments for the EFSD Guarantee*

1. The EFSD Guarantee shall be used to cover the risks for the following instruments:
  - (a) loans, including local currency loans;
  - (b) guarantees;
  - (c) counter-guarantees;
  - (d) capital market instruments;
  - (e) any other form of funding or credit enhancement, insurance, and equity or quasi-equity participations.
  
2. Eligible counterparts may provide the instruments listed in paragraph 1 under an investment window or individual project administered by an eligible counterpart. They may be provided for the benefit of partner countries, including countries experiencing fragility or conflict or countries facing challenges in reconstruction and post-conflict recovery, for the benefit of those partner countries' institutions, including their public national and private local banks and financial institutions, as well as for the benefit of private sector entities of those partner countries. In countries experiencing fragility or conflict, and other countries, where justified, support may be provided to public sector investments that have relevant effects on private sector development.

*Article 11*

*Eligibility and selection of counterparts*

1. The eligible counterparts for the purposes of the EFSD Guarantee shall be:
  - (a) the EIB and the European Investment Fund;
  - (b) public law bodies;
  - (c) international organisations and their agencies;
  - (d) bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
  - (e) bodies governed by the private law of a Member State that provide adequate financial guarantees, by way of derogation from point (vii) of point (c) of Article 58(1) of Regulation (EU, Euratom) No 966/2012;
  - (f) bodies governed by the private law of a partner country that provide adequate financial guarantees, by way of derogation from point (vii) of point (c) of Article 58(1) of Regulation (EU, Euratom) No 966/2012.

2. Eligible counterparts shall comply with the rules and conditions provided for in Article 60 of Regulation (EU, Euratom) No 966/2012. In the case of bodies governed by the private law of a Member State or a partner country, preference shall be given to those bodies that disclose information related to environment, social and corporate governance criteria.

The EFSD Guarantee shall be implemented whenever possible under the lead of a European eligible counterpart in line with the criteria set out in this Regulation. The Commission shall ensure an effective, efficient and fair use of available resources among eligible counterparts, while promoting cooperation between them.

The Commission shall ensure fair treatment for all eligible counterparts and shall ensure that conflicts of interest are avoided throughout the implementation period of the EFSD. In order to ensure complementarity, the Commission may request any relevant information from eligible counterparts about their non-EFSD operations.

3. The Commission shall select the eligible counterparts pursuant to Article 61 of Regulation (EU, Euratom) No 966/2012.
4. The European Parliament or the Council may invite eligible counterparts to an exchange of views concerning financing and investment operations covered by this Regulation.

*Article 12*

*Coverage and terms of the EFSD Guarantee*

1. Without prejudice to paragraph 2, the EFSD Guarantee shall not, at any time, exceed EUR 1 500 000 000.
2. Member States and EFTA countries may contribute to the EFSD Guarantee Fund in the form of guarantees or cash. Subject to the opinion of the strategic board and approval by the Commission, other contributors may contribute in the form of cash.

The Commission shall inform the European Parliament and the Council without delay of the contributions confirmed.

The amount of the EFSD Guarantee exceeding the amount indicated in paragraph 1 shall be granted on behalf of the Union.

Aggregate net payments from the general budget of the Union under the EFSD Guarantee shall not exceed EUR 1 500 000 000. Without prejudice to paragraph 4, payments for guarantee calls shall be made, where necessary, by the contributing Member States or other contributors on *pari passu* basis with the Union.

A contribution agreement shall be concluded between the Commission, on behalf of the Union, and the contributor, and shall contain, in particular, provisions concerning the payment conditions.

3. The EFSD Guarantee shall only become available when a contribution in cash of EUR 400 000 000 from the 11th EDF to the general budget of the Union has been confirmed.
4. The contributions made by the Member States in the form of a guarantee may only be called for payments of guarantee calls after the funding from the general budget of the Union increased by any other cash contributions has been used on payments of guarantee calls.

At the request of the Member States in the strategic board, their contributions may be earmarked for the initiation of projects in specific regions, countries, sectors or existing investment windows.

Any contribution may be used to cover guarantee calls regardless of earmarking.

5. At least EUR 400 000 000 of EFSD Guarantee coverage shall be allocated for investments in the partner countries eligible under the 11<sup>th</sup> EDF throughout the implementation period of the EFSD Guarantee, in line with the objectives of the ACP-EU Partnership Agreement.
6. At least EUR 100 000 000 of EFSD Guarantee coverage shall be allocated for investments in the partner countries in the eastern and southern neighbourhoods, in accordance with Regulation (EU) No 232/2014.



*Article 13*

*Implementation of EFSD guarantee agreements*

1. The Commission, on behalf of the Union, shall conclude EFSD guarantee agreements with the eligible counterparts selected pursuant to Article 11 and paragraph 4 of this Article on the granting of the EFSD Guarantee, which shall be unconditional, irrevocable, at first demand, and in favour of the selected eligible counterpart.
2. One or more EFSD guarantee agreements shall be concluded for each investment window between the Commission and the eligible counterpart or eligible counterparts selected. In order to address specific needs, the EFSD Guarantee may be granted for individual financing or investment operations. Agreements may be concluded with a consortium of two or more eligible counterparts.

All EFSD guarantee agreements shall, upon request, be made available to the European Parliament and to the Council, taking into account the protection of confidential and commercially sensitive information.

3. EFSD guarantee agreements shall contain, in particular, provisions concerning the following:
  - (a) detailed rules on the provision of the EFSD Guarantee, including its arrangements on the coverage and its defined coverage of portfolios and of projects of specific types of instruments, as well as a risk analysis of projects and project portfolios, including at sectoral, regional and national levels;

- (b) the objectives and purpose of this Regulation, a needs assessment and an indication of the expected results, taking into account the promotion of corporate social responsibility and responsible business conduct, including, in particular, by respect for the internationally agreed guidelines, principles and legal instruments referred to in point (i) of Article 9(2);
- (c) the remuneration of the guarantee, which is to reflect the risk level, and the possibility for the remuneration to be partly subsidised in order to give more concessional terms in duly justified cases, in particular in the countries referred to in point (d) of Article 9(2);
- (d) requirements for the use of the EFSD Guarantee, including payment conditions, such as specific time frames, interest to be paid on due amounts, expenses and recovery costs and possibly necessary liquidity arrangements;
- (e) claims procedures, including, but not limited to, triggering events and waiting periods, and procedures regarding the recovery of claims;
- (f) the monitoring, reporting and evaluation obligations pursuant to Articles 16 and 17;
- (g) clear and accessible complaints procedures for third parties that could be affected by the implementation of projects supported by the EFSD Guarantee.

4. The Commission, when concluding EFSD guarantee agreements with eligible counterparts, shall take due account of:
  - (a) the advice and guidance of the strategic and regional operational boards, in accordance with Articles 5 and 6;
  - (b) the objectives of the investment window;
  - (c) the experience and operational, financial and risk management capacity of the eligible counterpart;
  - (d) the amount of own resources, as well as private sector co-financing, that the eligible counterpart is ready to mobilise for the investment window.
5. The eligible counterpart shall approve financing and investment operations following its own rules and procedures and in compliance with the terms of the EFSD guarantee agreement.
6. The EFSD Guarantee may cover:
  - (a) for debt instruments, the principal and all interests and amounts due to the selected eligible counterpart, but not received by it in accordance with the terms of the financing operations after an event of default has occurred;
  - (b) for equity investments, the amounts invested and their associated financing costs;

- (c) for other financing and investment operations referred to in Article 9(2), the amounts used and their associated funding costs;
  - (d) all relevant expenses and recovery costs related to an event of default, unless deducted from recovery proceeds.
7. EFSD guarantee agreements shall lay down detailed rules on the cover, requirements, eligibility, eligible counterparts, and procedures.

*Article 14*

*The EFSD Guarantee Fund*

1. The EFSD Guarantee Fund shall constitute a liquidity cushion from which the eligible counterparts shall be paid in the event of a call on the EFSD Guarantee pursuant to the relevant EFSD guarantee agreement.
2. The EFSD Guarantee Fund shall be endowed by:
  - (a) contributions from the general budget of the Union and other sources;
  - (b) voluntary contributions from Member States and other contributors;
  - (c) returns on invested resources of EFSD Guarantee Fund;
  - (d) amounts recovered from defaulting debtors in accordance with the recovery provisions laid down in EFSD guarantee agreements;
  - (e) revenues and any other payments received by the Union in accordance with EFSD guarantee agreements.

3. Revenues of the EFSD Guarantee Fund as provided for in points (c) and (e) of paragraph 2 of this Article shall constitute internal assigned revenue in accordance with Article 21(4) of Regulation (EU, Euratom) No 966/2012.
4. The resources of the EFSD Guarantee Fund referred to in paragraph 2 shall be directly managed by the Commission and invested in accordance with the principle of sound financial management following appropriate prudential rules. By 30 June 2019, the Commission shall submit to the European Parliament and to the Council an independent external evaluation of the advantages and disadvantages of entrusting the financial management of the assets of the Guarantee Fund for external actions, as established by the Council Regulation (EC, Euratom) No 480/2009<sup>1</sup>, and of the EFSD to the Commission, to the EIB, or to a combination of the two, taking into account the relevant technical and institutional criteria used in comparing asset management services, including the technical infrastructure, comparison of costs for the services given, institutional set-up, reporting, performance, accountability and expertise of each institution and the other asset management mandates for the general budget of the Union. The evaluation shall be accompanied, where appropriate, by a legislative proposal.
5. Endowments to the EFSD Guarantee Fund shall be used to reach an appropriate level of provisioning to cover the total EFSD Guarantee obligations. The provisioning rate shall be at 50 % of the total EFSD Guarantee obligations covered by the general budget of the Union.

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<sup>1</sup> Council Regulation (EC, Euratom) No 480/2009 of 25 May 2009 establishing a Guarantee Fund for external actions (OJ L 145, 10.6.2009, p. 10).

6. Following an assessment of the adequacy of the level of the EFSD Guarantee Fund in accordance with the report provided for under Article 16(3), the following payments shall be made:
  - (a) without prejudice to paragraph 8 of this Article, any surplus shall be paid to the general budget of the Union;
  - (b) any replenishment of the EFSD Guarantee Fund shall be paid in annual tranches over a maximum period of three years starting from year n+1.
  
7. From 1 January 2021, if, as a result of calls on the EFSD Guarantee, the level of resources in the Guarantee Fund falls below 50 % of the provisioning rate referred to in paragraph 5, the Commission shall submit a report on:
  - (a) the cause of the shortfall, with detailed explanations; and
  - (b) where deemed necessary, any exceptional measures that may be required to replenish the EFSD Guarantee Fund.
  
8. After a call on the EFSD Guarantee, endowments to the EFSD Guarantee Fund provided for in points (c), (d) and (e) of paragraph 2 of this Article exceeding the resources necessary to reach the provisioning rate at the level referred to in paragraph 5 of this Article or any surplus provided for in point (a) of paragraph 6 of this Article shall first be used within the limits of the maximum period provided for in Article 8(3) to restore the EFSD Guarantee up to its initial amount.

*Article 15*  
*Funding of the EFSD Guarantee Fund*  
*from the general budget of the Union*

A contribution of EUR 350 000 000 shall be provided by the general budget of the Union.

**CHAPTER IV**  
**REPORTING, ACCOUNTING AND EVALUATION**

*Article 16*  
*Reporting and accounting*

1. The Commission shall submit an annual report to the European Parliament and to the Council on the financing and investment operations covered by the EFSD Guarantee. That report shall be made public. It shall include the following elements:
  - (a) an assessment of the results contributing to the purpose and objectives of the EFSD as set out in Article 3 and Article 9(1) and (2), respectively;
  - (b) an assessment of the financing and investment operations in operation and covered by the EFSD Guarantee at sector, country and regional levels and their compliance with this Regulation, including the risk measures and their impact on the financial and economic stability of the partners;

- (c) an assessment, on the basis of indicators in line with Article 9(5), of the additionality and added value, the mobilisation of private sector resources, the estimated and actual outputs and the outcomes and impact of the financing and investment operations covered by the EFSD Guarantee on an aggregated basis, including the impact on decent job creation, the eradication of poverty and on the way in which the root causes of migration, including irregular migration, are addressed; that assessment shall include a gender analysis of the operations covered based on evidence and data broken down by gender, where possible;
- (d) an assessment of the compliance with the requirements concerning the use of the EFSD Guarantee and of the achievement of key performance indicators established for each proposal submitted;
- (e) an assessment of the leverage effect achieved by the operations covered by the EFSD Guarantee;
- (f) the financial amount transferred to beneficiaries and an assessment of financing and investment operations by each eligible counterpart on an aggregated basis;
- (g) an assessment of the additionality and added value of financing and investment operations of the eligible counterparts, and of the aggregate risk associated with those operations;
- (h) detailed information on calls on the EFSD Guarantee, losses, returns, amounts recovered and any other payments received, as well as overall risk exposure;



- (i) the financial reports on financing and investment operations of the eligible counterparts covered by this Regulation, audited by an independent external auditor;
- (j) an assessment of the synergies and complementarity between operations covered by the EFSD Guarantee and the second and third pillars of the EIP based on relevant existing reports, with particular regard to progress made on good governance, including in the fight against corruption and illicit financial flows, respect for human rights, the rule of law and gender-responsive policies, as well as the boosting of entrepreneurship, the local business environment and local financial markets;
- (k) an assessment of the compliance of EFSD Guarantee operations with the internationally agreed development effectiveness principles;
- (l) an assessment of the remuneration of the guarantees and of the implementation of Article 22.

2. For the purposes of the Commission's accounting, its reporting of the risks covered by the EFSD Guarantee and its management of the EFSD Guarantee Fund, the eligible counterparts with which an EFSD guarantee agreement has been concluded shall provide the Commission and the Court of Auditors annually with the financial reports on financing and investment operations covered by this Regulation, audited by an independent external auditor, containing, inter alia, information on:

- (a) the risk assessment of financing and investment operations of the eligible counterparts, including information on Union liabilities measured in compliance with the accounting rules of the Union set by the accounting officer of the Commission based on the internationally accepted accounting standards for the public sector;

- (b) the outstanding financial obligation for the Union arising from the EFSD Guarantee provided to the eligible counterparts and their financing and investment operations, broken down by individual operations.

The eligible counterparts shall, upon request, provide the Commission with any additional information necessary to fulfil the Commission's obligations in relation to this Regulation.

3. 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 EFSD Guarantee Fund. In addition, it shall, by 31 May of each year, submit to the European Parliament, to the Council and to the Court of Auditors a report on the management of the EFSD Guarantee Fund in the previous calendar year, including an assessment of the adequacy of the provisioning and the level of the EFSD Guarantee Fund and of the need for its replenishment.

The report referred to in the first subparagraph shall contain the presentation of the financial position of the EFSD 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 EFSD Guarantee Fund at the end of the previous calendar year.

*Article 17*

*Evaluation and review*

1. By 31 December 2019, the Commission shall evaluate the initial functioning of the EFSD, its management and its effective contribution to the purpose and objectives of this Regulation. The Commission shall submit its evaluation report to the European Parliament and to the Council, containing an independent external evaluation of the application of this Regulation, and accompanied by a reasoned proposal to amend this Regulation, as appropriate, in particular with a view to extending the initial investment period referred to in Article 8(2). That evaluation report shall be accompanied by an opinion of the Court of Auditors.
2. By 31 December 2019 and every three years thereafter, the Commission shall evaluate the use and the functioning of the EFSD Guarantee Fund. The Commission shall submit its evaluation report to the European Parliament and to the Council. That evaluation report shall be accompanied by an opinion of the Court of Auditors.

## CHAPTER V

### GENERAL PROVISIONS

#### *Article 18*

##### *Transparency, communication, and public disclosure of information*

1. In accordance with their transparency policies and Union rules on data protection and on access to documents and information, the eligible counterparts shall proactively and systematically make publicly available on their websites information relating to all financing and investment operations covered by the EFSD Guarantee under this Regulation, relating in particular to the manner in which those operations contribute to the achievement of the objectives and requirements of this Regulation. Where possible, such information shall be broken down at project level. Such information shall always take into account the protection of confidential and commercially sensitive information.
  
2. The Commission shall publish on its web-portal information on financing and investment operations and the essential elements of all EFSD guarantee agreements, including information on the legal identity of eligible counterparts, expected development benefits and complaints procedures in accordance with point (g) of Article 13(3), taking into account the protection of confidential and commercially sensitive information.

3. Eligible counterparts shall publicise Union support in all information which they publish on financing and investment operations covered by the EFSD Guarantee in accordance with this Regulation.
4. European Union delegations shall include information about funding opportunities provided by the EFSD in their communication targeted at civil society and the general public.

#### *Article 19*

##### *Grievance and redress mechanism*

In view of possible grievances of third parties in partner countries, including communities and individuals affected by projects supported by the EFSD Guarantee, the Commission and European Union delegations shall publish on their websites direct references to the complaints mechanisms of the relevant counterparts that have concluded agreements with the Commission. The Commission shall also provide the possibility of directly receiving complaints related to the treatment of grievances by eligible counterparts. The Commission shall take that information into account in view of future cooperation with those counterparts.

*Article 20*

*Auditing by the Court of Auditors*

1. The external audit of the activities undertaken in accordance with this Regulation shall be carried out by the Court of Auditors in accordance with Article 287 of the TFEU and those activities are thus subject to the discharge procedure in accordance with Article 319 TFEU.
2. For the purpose of paragraph 1 of this Article, the 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 auditing tasks.

*Article 21*

*Anti-fraud measures*

1. The Commission or the eligible counterparts shall immediately notify OLAF when, at any stage of the preparation, implementation or closure of financing and investment operations covered by this Regulation, it has or they have grounds for suspecting fraud, corruption, money laundering or any other illegal activity that may affect the financial interests of the Union. The Commission or the eligible counterparts shall provide OLAF with all necessary information to enable it to carry out a full and thorough investigation.

2. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulations (EU, Euratom) No 883/2013, (Euratom, EC) No 2185/96 and (EC, Euratom) No 2988/95 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 financing and investment operations covered by this Regulation. OLAF may transmit any information obtained in the course of its investigations to the competent authorities of the Member States concerned.

Where such illegal activities are proven, the eligible counterparts shall undertake recovery efforts with respect to their financing and investment operations covered by this Regulation that are concerned by such activities, and shall also provide the relevant authorities with all information needed for investigation and possible prosecution.

## *Article 22*

### *Excluded activities and non-cooperative jurisdictions*

1. In their financing and investment operations, the eligible counterparts shall comply with applicable Union law and agreed international and Union standards and, therefore, shall not support projects under this Regulation that contribute to money laundering, terrorism financing, tax avoidance, tax fraud and tax evasion.

In addition, the eligible counterparts shall not enter into new or renewed operations with entities incorporated or established in jurisdictions listed under the relevant Union policy on non-cooperative jurisdictions, or that are identified as high risk third countries pursuant to Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council<sup>1</sup>, or that do not effectively comply with Union or internationally agreed tax standards on transparency and exchange of information. The eligible counterparts may derogate from this principle only if the project is physically implemented in one of those jurisdictions, and does not present any indication that the relevant operation falls under any of the categories listed in the first subparagraph of this paragraph.

When concluding agreements with financial intermediaries, the eligible counterparts shall transpose the requirements referred to in this Article into the relevant agreements and shall request the financial intermediaries to report on their observance.

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<sup>1</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 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 141, 5.6.2015, p. 73).



2. In its financing and investment operations, the eligible counterpart 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 Regulation (EU) 2015/847 of the European Parliament and of the Council<sup>1</sup> and Directive (EU) 2015/849. The eligible counterparts shall make both direct funding and funding via intermediaries under this Regulation contingent upon the disclosure of beneficial ownership information in accordance with Directive (EU) 2015/849 and publish country-by-country reporting data in accordance with Article 89(1) of Directive 2013/36/EU of the European Parliament and of the Council<sup>2</sup>.

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<sup>1</sup> Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

<sup>2</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

## CHAPTER VI

### FINAL PROVISIONS

#### *Article 23*

#### *Entry into force*

This Regulation shall enter into force on the 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 ...,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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