Commission Implementing Regulation (EU) 2019/263 of 14 February 2019 amending Implementing Regulation (EU) No 964/2014 as regards standard terms and conditions for financial instruments for the Co-Investment Facility and for the Urban Development Fund

COMMISSION IMPLEMENTING REGULATION (EU) 2019/263

of 14 February 2019

amending Implementing Regulation (EU) No 964/2014 as regards standard terms and conditions for financial instruments for the Co-Investment Facility and for the Urban Development Fund

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[(1)], and in particular the second subparagraph of Article 38(3) thereof,

Whereas:

(1) Annexes I, V and VI to Commission Implementing Regulation (EU) No 964/2014[(2)] set out the annotated table of content of a funding agreement between a managing authority and a financial intermediary, the terms and conditions for the Co-Investment Facility and the Urban Development Fund respectively.

(2) Article 40 of Regulation (EU) No 1303/2013 clarifies the management verifications and audit arrangements in case of financial instruments implemented by the EIB and other international financial institutions in which a Member State is a shareholder. These arrangements should be reflected in Annex I as part of the funding agreement between a managing authority and the EIB or other international financial institutions in which a Member State is a shareholder.

(3) Article 43a of Regulation (EU) No 1303/2013, as inserted by Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[(3)] clarifies the rules governing financial instruments with regard to differentiated treatment of investors operating under the market economy principle in case of profit and risk sharing. The terminology used in Annexes I, V and VI to Implementing Regulation (EU) No 964/2014 should be aligned with that in Article 43a of Regulation (EU) No 1303/2013.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Coordination Committee for the ESI Funds.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/263. (See end of Document for details)*

(5) In order to ensure legal certainty and to limit discrepancies between the amended provisions of Regulation (EU) No 1303/2013, which apply from 2 August 2018 or earlier in accordance with Article 282 of Regulation (EU, Euratom) 2018/1046 and the provisions of this Regulation to a minimum, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.

(6) Implementing Regulation (EU) No 964/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I, V and VI to Implementing Regulation (EU) No 964/2014 are amended in accordance with the Annex to this Regulation.

Article 2

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 Brussels, 14 February 2019.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

Annexes I, V and VI to Implementing Regulation (EU) No 964/2014 are amended as follows:

1. In Annex I, the annotated table of content of a funding agreement between a managing authority and a financial intermediary is amended as follows:

   (a) In point 11 a new paragraph is introduced:

   > Provisions on management verifications and audit arrangements in line with paragraphs 1 and 2 of Article 40 of Regulation (EU) No 1303/2013 in cases where the bodies implementing the financial instruments are the EIB or other international financial institutions in which a Member State is a shareholder.;

   (b) In point 17, the third paragraph is replaced by the following:

   > Provisions regarding the re-use of resources attributable to the support of the ESI Funds until the end of the eligibility period in compliance with Article 44 of Regulation (EU) No 1303/2013 and, where applicable, provisions regarding differentiated treatment as referred to in Article 43a.;

2. In Annex V, the terms and conditions for the Co-Investment Facility are amended as follows:

   (a) in the section 'Fund Contribution to financial instrument: amount and rate (product details)', the fourth paragraph is replaced by the following:

   > Differentiated treatment of investors operating under the market economy principle, aimed solely at asymmetric profit-sharing, shall be set in line with Article 43a of Regulation (EU) No 1303/2013 and Article 21(13)(b) of Regulation (EU) No 651/2014.;

   (b) in the section 'Eligible Financial Intermediary and Co-investors', the third paragraph is replaced by the following:

   > The managing authority and fund of funds shall comply with Union law when selecting financial intermediaries. The selection of financial intermediaries shall be open, transparent, proportionate and non-discriminatory, avoiding conflict of interests. The selection of the financial intermediaries shall establish appropriate risk-sharing arrangements in the case of differentiated treatment and determine possible carried interest.;

3. In Annex VI, the terms and conditions for the Urban Development Fund are amended as follows:

   (a) in the section 'State aid implication', the fifth paragraph is replaced by the following:

   > Differentiated treatment (asymmetric conditions on risk-sharing arrangements) for the fund of funds, financial intermediary contribution and co-investors contributions at fund level and project level in form of loans, if any, shall be set in accordance with Article 43a of Regulation (EU) No 1303/2013, points (b) and (c) of Article 16(8) of Regulation (EU) No 651/2014, as further specified under the pricing policy.;