Regulation (EU) 2017/1601 of the European Parliament and of the Council of 26 September 2017 establishing the European Fund for Sustainable Development (EFSD), the EFSD Guarantee and the EFSD Guarantee Fund

REGULATION (EU) 2017/1601 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 September 2017

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[(1)],

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 socioeconomic 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

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2017/1601 of the European Parliament and of the Council. (See end of Document for details)*

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[(2)] (ACP-EU Partnership Agreement) (ACP Investment Facility). EFSD operations should also be complementary to the existing activities of other eligible financial institutions.

(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.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2017/1601 of the European Parliament and of the Council. (See end of Document for details)*

(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[(3)], 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.

(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.