

**CONSIDERATIONS REGARDING THE MEASUREMENT OF
SOCIAL IMPACT VS THE INSTITUTION OF SOCIAL
ENTREPRENEURSHIP AND CONFLICT OF INTEREST
ACCORDING TO REGULATION (EU) 2019-819**

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Abstract

The article addresses the institution of social entrepreneurship from the perspective of Regulation (EU) no. 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds, reaffirmed by the importance of the need to supplement Regulation (EU) no. 346/2013 of the European Parliament and of the Council on conflicts of interest, measuring the social impact and informing the investors in the field of European social entrepreneurship funds. The measures are aimed at protecting the interests of the eligible social entrepreneurship fund or its investors. These measures should include informing the senior management or other competent internal body about the eligible social entrepreneurship fund and making the decisions or taking the necessary actions to act in the interest of the eligible social entrepreneurship fund or its investors. The importance of ensuring the legal certainty of the rights, as well as the obligations of the managers of the entrepreneurship funds and their active role in the management of the companies in which they invest the eligible social entrepreneurship funds are those that we will address in the thematic article in the following.

Keywords: *Social Entrepreneurship, Eligible, Active, Conflict of Interest*

JEL classification: *D70, D80, D81*

1. Introduction

Administrators of eligible social entrepreneurship funds should take the necessary additional measures to protect these interests, and these

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measures should include informing the senior management or other competent internal body about the eligible social entrepreneurship fund and taking the necessary decisions or actions, to act in the interest of the eligible social entrepreneurship fund or its investors. Thus, it is the responsibility of the administrators of the eligible social entrepreneurship funds to adopt procedures and measures to ensure that the persons involved in such commercial activities carry out the respective activities in the best interest of the eligible social entrepreneurship funds and of the investors in these funds. In order to prevent conflicts of interest and to ensure the exercise of the voting rights of the respective administrators both for the benefit of the eligible social entrepreneurship fund in question and of its investors, it is necessary to specify the detailed requirements from the perspective of exercising the voting rights and of conflict of interest.

2. General notions

The administrators of the eligible social entrepreneurship funds can be active in the management of the companies in which they invest the eligible social entrepreneurship funds. In order to prevent conflicts of interest and to ensure that the voting rights of the respective administrators are exercised both for the benefit of the eligible social entrepreneurship fund concerned and of its investors, it is necessary to specify the detailed requirements regarding the exercise of those respective voting rights. To ensure a sufficient level of investor protection, eligible social entrepreneurship fund managers should develop appropriate and effective strategies for this purpose and provide, on request, a summary of those strategies and the actions they have taken.

On the other hand, it was considered necessary that in order to ensure the effectiveness of information on conflicts of interest, the information provided should be updated regularly, given the inherent risks of using a website as a tool for publishing conflicts of interest, it is necessary to establish criteria for the publication of this information.

Thus, in order to ensure a coherent approach to the procedures used by eligible social entrepreneurship fund managers to measure the positive social impact of the eligible portfolio companies, specific elements should be included in these procedures. The resources used by eligible portfolio companies, as well as the products and services provided by the respective companies, are key indicators of the positive social impact, which should therefore be an integral part of these procedures. Therefore, in order to distinguish between social enterprises and enterprises that only incidentally

achieve social objectives, an assessment of the results generated by the eligible portfolio companies should also be included in these procedures.

At the same time, it was considered that it should be ensured that the pre-contractual information provided to the investors contains sufficient details regarding the eligible social entrepreneurship fund. Therefore, the description of the investment strategy and the objectives of the eligible social entrepreneurship fund should contain descriptions of the social sectors, geographical areas and legal forms of the eligible portfolio companies in which the eligible social entrepreneurship fund intends to invest, as well as information regarding the distribution of profits of the respective companies.

Thus, investors should be provided with the necessary information to evaluate the basic methodologies used by the administrator of the eligible social entrepreneurship fund to measure the social impact.

As a consequence, pre-contractual information should specify whether the administrator of the eligible social entrepreneurship fund was based on internal methodologies or used generally accepted methodologies. The pre-contractual information should also contain a description of the main characteristics of the methodologies, including the examination criteria, the relevant indicators and an explanation of how the manager of the eligible social entrepreneurship fund ensures compliance with the respective methodologies.

Investors should be able to verify whether the manager of the eligible social entrepreneurship fund is in compliance with the investment policy when selecting ineligible assets. Therefore, pre-contractual information should include information on the types of ineligible assets in which the eligible social entrepreneurship fund invests, the investment techniques, the relevant restrictions, as well as the sector of activity and the geographical area in which these investments are made.

In other ideas for the sake of transparency, investors should be provided with the information they need to evaluate the nature and extent of business support services and other support activities offered by the eligible social entrepreneurship fund manager or organized by it to third parties. Pre-contractual information on business support services and other support activities should therefore describe the types of services and activities they provide.

Thus in order to allow the administrators of the eligible social entrepreneurship funds to adapt to the new requirements, the date of

application of the Regulation was considered to be postponed by six months, the following being adopted:

2.1 Types of conflicts of interest

For the purposes of Article 9 (2) of Regulation (EU) no. 346/2013, the types of conflicts of interest correspond to the situations in which an administrator of an eligible social entrepreneurship fund, a person who actually performs the activity of the respective administrator, an employee or another person who, directly or indirectly, controls or is controlled by the respective administrator, another eligible social entrepreneurship fund or a collective investment body, including a collective investment body in securities (UCITS), managed by the same administrator or by the investor in them,

(a) could make a financial gain or avoid a financial loss to the detriment of the eligible social entrepreneurship fund or its investors;

(b) has an interest in the result of a service or activity provided to the eligible social entrepreneurship fund or its investors that differs from the interest of the eligible social entrepreneurship fund or its investors;

(c) has an interest in the result of a transaction carried out on behalf of the eligible social entrepreneurship fund or its investors which differs from the interest of the eligible social entrepreneurship fund or its investors;

(d) is financially or otherwise stimulated to:

i. the interest of an investor, investor group or other collective investment body, including a UCITS, to the detriment of the interest of the eligible social entrepreneurship fund or its investors;

ii. the interest of an investor in the eligible social entrepreneurship fund to the detriment of another investor or group of investors in that fund;

(e) carry out the same activities for the eligible social entrepreneurship fund, for another collective investment body, including a UCITS, or for an investor;

(f) pay or be paid a fee or commission or grant or be granted any non-pecuniary benefits other than those provided for in Article 24 (1) of the Delegated Regulation (EU) no. 231/2013 of the Commission (2);

(g) influence and have a personal interest in influencing the development of an eligible portfolio company to the disadvantage of the

eligible social entrepreneurship fund or of its investors or to the detriment of the achievement of the eligible social entrepreneurship fund objectives.

- i. The administrator of an eligible social entrepreneurship fund establishes, implements and maintains a conflict of interest policy in written form, appropriate to the size and organizational structure of the respective administrator, taking into account the nature, size and complexity of his activity.
- ii. The conflict of interest policy specifies, in accordance with Article 1, the circumstances that may give rise to a conflict of interest and indicates the measures to be taken and the procedures to be followed continuously.

2.2. Procedures and measures for the prevention, management and monitoring of The measures to be taken include at least the following actions:

(a) prohibiting the exchange of information between the persons or entities referred to in Article 1, if such exchange of information could lead to a conflict of interest or could facilitate it;

(b) the separation of supervision of the persons or entities referred to in Article 1 whose interests may conflict;

(c) the elimination of the link or correlation between the remuneration of the persons or entities referred to in Article 1 which mainly carry out a particular activity and the remuneration of the persons or entities principally involved in another activity or the profits generated by them, if they can conflicts of interest arose in connection with these activities;

(d) preventing the exercise by the persons or entities referred to in Article 1 of inadequate influence on the administration of the eligible social entrepreneurship fund;

(e) preventing or controlling the involvement of the persons or entities referred to in Article 1 in any activity that could lead to a conflict of interest.

If the measures and procedures provided for in the conflict of interest policy are not sufficient to prevent, with reasonable certainty, the risks of damaging the interests of the eligible social entrepreneurship fund or its investors, the administrators of the eligible social entrepreneurship fund will take the following measures:

(a) promptly inform the senior management or other competent internal body or the senior management or other competent internal body of

the eligible social entrepreneurship fund about the risk of damaging the interests of that fund or of the investors thereof;

(b) take any decision or take any action to ensure that it acts in the interest of the eligible social entrepreneurship fund or its investors.

2.3. Methods of exercising voting rights to prevent conflicts of interest

The administrators of the eligible social entrepreneurship funds elaborate in writing appropriate and effective strategies to determine when and how the voting rights held in the portfolio of the eligible social entrepreneurship fund are exercised both for the benefit of the eligible social entrepreneurship fund in question and for the investors it.

2.3.1 The strategies shall establish the measures to be taken and the procedures to be followed and shall include at least the following actions:

(a) monitoring of relevant actions at company level;

(b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the eligible social entrepreneurship fund;

(c) preventing and managing any conflicts of interest arising as a result of exercising their voting rights.

On request, the administrators of the eligible social entrepreneurship funds shall provide investors with a synthetic description of the strategies referred to in paragraphs 1 and 2, as well as the details of the actions undertaken under the respective strategies.

The administrators of the eligible social entrepreneurship funds provide the information mentioned in Regulation (EU) no. 346/2013 on a durable medium, as referred to in Article 2 (1) (m) of Directive 2009/65 / EC of the European Parliament and of the Council (3), and keep this information up to date.

The administrators of the eligible social entrepreneurship funds can provide the mentioned information through a web site, without personally addressing the respective information to the investor, provided that all the conditions below are fulfilled:

(a) investors have been informed of the address of the website and the section on the site where the information can be accessed;

(b) the investors have agreed to provide such information through a website;

(c) the information is permanently accessible on the website for the period of time that investors reasonably need to have access to.

2.3.2. Procedures for measuring the positive social impact

The administrators of the eligible social entrepreneurship funds ensure that the procedures mentioned in Regulation (EU) no. 346/2013 include at least the following:

(a) an assessment of the resources used by the eligible portfolio companies;

(b) an assessment of the products and services made available by the eligible portfolio companies;

(c) an assessment of the results that may be attributed to the activities of the eligible portfolio companies.

For the purpose of point (c) of the first subparagraph, the results that would be obtained in any case and the results that could be attributed to third parties cannot be attributed to the activities carried out by the eligible portfolio companies.

The evidence supporting the assessments referred to in paragraph 1 shall be audited in accordance with Article 13 (3) of Regulation (EU) no. 346/2013.

The information referred to in Article 14 (1) (c) (i) of Regulation (EU) no. 346/2013 include at least the following:

(a) the social sector or social sectors in which the eligible portfolio companies operate;

(b) the geographical area in which the eligible portfolio companies operate;

(c) the legal forms of the eligible portfolio companies;

(d) a detailed description of the distribution of profits made by the eligible portfolio companies.

2.4. Procedures for measuring social impact

The information referred to in Article 14 (1) (c) (ii) and (iii) of Regulation (EU) no. 346/2013 shall include at least information on the investment profile of the other eligible social entrepreneurship fund and the information provided by the eligible social entrepreneurship fund in accordance with paragraph 1 of this article.

The information referred to in Article 14 (1) (c) (iv) of Regulation (EU) no. 346/2013 include information at least about the types of assets in which the eligible social entrepreneurship fund invests.

The information referred to in Article 14 (1) (c) (v) of Regulation (EU) no. 346/2013 indicates at least whether the techniques include equity instruments, quasi-equity instruments, secured or unsecured debt instruments, secured or unsecured loans or any other type of participation in the eligible portfolio companies.

The information referred to in Article 14 (1) (c) (vi) of Regulation (EU) no. 346/2013 indicates at least whether the investment strategy of the eligible social entrepreneurship fund includes any restriction regarding sectors, activities, geographical areas, percentages or investment limits or any other restrictions.

2.5. The impact of regulation

The information referred to in Article 14 (1) (d) of Regulation (EU) no. 346/2013 specifies the specific products and services that must be provided by the eligible portfolio companies in which the eligible social entrepreneurship funds invest.

Where the information referred to in Article 14 (1) (d) of Regulation (EU) no. 346/2013 contain information on the forecasts regarding the positive social impacts, they describe the assumptions based on which the respective forecasts are calculated.

Where the information referred to in Article 14 (1) (d) of Regulation (EU) no. 346/2013 contain information on past performance in terms of positive social impact, these include a copy of the most recent annual report or a summary of the relevant information contained in the annual report referred to in Article 13 (2) of Regulation (EU) No . 346/2013.

The information referred to in Article 14 (1) (e) of Regulation (EU) no. 346/2013 include at least the following:

- (a) a statement specifying whether the social impacts are measured on the basis of internal methodologies or other generally accepted methodologies;
- (b) a description of the main features of the methodologies, including the examination criteria and relevant indicators used to measure social impact.

2.6. Description of non-eligible assets

The information referred to in Article 14 (1) (f) of Regulation (EU) no. 346/2013 include at least a description of all of the following:

- (a) investment techniques and applicable investment restrictions;
- (b) the sector or sectors of activity of ineligible portfolio companies;
- (c) the geographical area in which the ineligible portfolio companies operate;
- (d) criteria to be used when selecting asset types.

Information about support services

The information referred to in Article 14 (1) (l) of Regulation (EU) no. 346/2013 include at least:

- (a) a description of the types of business support services and other support activities;
- (b) information indicating whether business support services and other support activities are provided by third parties.

The Regulation shall enter into force on the twentieth day following its publication in the Official Journal of the European Union. It is applicable from 11 December 2019. The Regulation is binding in its entirety and directly applicable in all Member States.

Article 5 Law no. 287/2009 of July 17, 2009 on the Civil Code, Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures and, in particular, the general guidelines of these policies.

The fundamental law is defined by article 20

(1) The constitutional provisions regarding the rights and freedoms of the citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, the pacts and other treaties to which Romania is a party.

(2) If there are inconsistencies between the covenants and treaties regarding the fundamental human rights, to which Romania is a party, and the internal laws, the international regulations shall have priority, unless the Constitution or internal laws contain more favorable provisions.

According to the Civil Code in article 1 entitled Sources of civil law, it is submitted that:

(1) The law, customs and general principles of law are sources of civil law.

(2) *In cases not provided by law, users shall apply, and in their absence, the legal provisions regarding similar situations, and when there are no such provisions, the general principles of law.*

(3) *In matters regulated by law, users shall apply only insofar as the law expressly refers to them.*

(4) *Only customs in accordance with public order and good morals are recognized as sources of law.*

(5) *The interested party must prove the existence and content of the users. Uses published in collections prepared by the entities or bodies authorized in the field are presumed to exist, until proven otherwise.*

(6) *For the purposes of the present code, the user means the custom (custom) and the professional uses.*

The Group of Experts of the European Commission on Social Entrepreneurship (GECES, 2014)(2) features a subgroup focusing on social impact measurement. This subgroup produced a report (approved in June 2014) that refers to social impact as ‘the reflection of social outcomes as measurement, both long-term and short-term, adjusted for the effects achieved by others (alternative attribution), for effects that would have happened anyway (deadweight), for negative consequences (displacement) and for effects declining over time (drop off)’ (GECES, 2014).

Accounting and measuring for social enterprises relies on three main approaches (Manetti, 2014; Nicholls, 2009; Mook et al., 2003; Palmer and Vinten, 1998; SIAA, 2014).

- Positivist: accounting builds a picture of the real world by adopting rational and objective value measurements (Whittington, 1986; Watts and Zimmerman, 1979).

- Critical: accounting is grounded in the principles of democracy and accountability and plays a role between (and within) organisations and society (Lehman, 1992). In this perspective, organisations are accountable to a wide range of stakeholders affected by their activities (Gray et al., 1996).

- Interpretive: accounting serves as a symbolic mediator between various social groups and a tool for dialogue between companies and their stakeholders to stimulate social change (Ryan et al., 1992; Gray, 2002)

The existing debate regarding social impact measurement revolves around two main approaches. The ‘one-size-fits-all’ approach considers indiscriminately applying a defined set of indicators (including economic and social indicators) to all social enterprises regardless of their size, sector, country, governance mechanisms, etc. (Pearce, 1993; Arvidson et al., 2013).

The second approach, which has garnered greater consensus, considers adopting different metrics to capture the differences among social enterprises. It entails identifying the most appropriate social impact measurement tools for each specific case (Emerson, 2003; Nicholls, 2009).

Table 1. Synopsis of the case studies

Stakeholder	Information need	Methodology	Case study
Public investor	Understand and select the more efficient allocation of public funds	Analysis cost-benefit	Positivist
Private investor	Evaluate the return on investment	Rating	Critical
Community	Understand the satisfaction level of the beneficiaries of the social enterprise's activities	SAA	Interpretive

Source: https://www.oecd.org/social/PB-SIM-Web_FINAL.pdf

A. This case investigated the efficiency through a comprehensive cost-benefit analysis. The analysis also included the guaranteed cost savings for the public sector, stemming from disadvantaged workers' decreased use of healthcare and social services. It demonstrated that C do indeed represent an efficient solution for work integration, with a net benefit from employing vulnerable people. To measure the social efficiency of both their funding and their portfolio, public investors rely on financial and extra-financial criteria. The methodology measures a project's performance and provides tools to evaluate it in real time. It cannot, however, measure the money saved by society due to the enterprise's activities.

Social accounting is important to B in that it enables it to provide documentation on its impact and value to both its stakeholders and the local community. The social reporting process has been embedded in its operational and strategic processes for over few years, and the social accounts have become a key part of the management information and annual reporting cycle. The information contained in the accounts helps B both improve and prove what it does. Its mission, values and objectives are central to its purpose as a social enterprise. Social reporting allows B to articulate them clearly and regularly to its stakeholders.

The work of practitioners and academics has led to an emerging set of overarching principles on social impact measurement.

Figure 1: Practical challenges include ensuring that

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| <ul style="list-style-type: none">- social impact requirements are not overly burdensome for social enterprises;-social enterprises have adequate resources and capacities to measure impact, and measuring is proportionate;-the needs of both the stakeholders and the social enterprise are aligned. |
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Source: https://www.oecd.org/social/PB-SIM-Web_FINAL.pdf

3. Conclusions

It is necessary to emphasize that the Member States, under the principle of loyal cooperation enshrined in Article 4 (3) of the TEU, must take any general or special measures to ensure the fulfillment of the obligations deriving from Union law and to refrain from any measure that could jeopardize the achievement of the Union's objectives, including by completing and regulating the Regulations in the sense of clarifying any usages that by applying have ignored or deepened the reaction between the rights and obligations of entities, by observing the fundamental principle such as and conflict of interests. From the perspective of the administrators of the eligible social entrepreneurship funds, one of the roles of the European institutions, as well as of any other public and private institutions and international organizations, is to monitor the application and understanding of some regulations taking into account methods so as to provide such guidance, as well as ensuring a culture of social impact the measurement has its root gradually in the management of social enterprises.

4. References

- [art. 4, 5, art. 613 alin. (2), art. 662 alin. (2), art. 1268 alin. (2), art. 1272, 1958 alin. (1), art. 2010 alin. (2), art. 2069 alin. (1) NCC]
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- http://data.europa.eu/eli/treaty/tfeu_2012/oj

- <http://data.europa.eu/eli/reg/2013/346/oj>
- Some authors (Ebrahim and Rangan, 2010) use the term ‘societal impact’ instead of ‘social impact’, assuming that an organisation produces several types of impact (economic, political, social and cultural)
- The European Social Entrepreneurship Fund passport, created by Regulation (EU) No. 346/2013 of the European Parliament and of the Council of 17 April 2013, is a new legislation creating a label for funds investing in social-sector organisations, such as social enterprises. European Union-based funds meeting the criteria set by the European regulation can receive and bear the EUSEF label. The explicit focus of eligible funds will need to be the production of a measureable and positive social impact.
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