

OPINION OF THE EUROPEAN CENTRAL BANK

of 12 September 2016

on a proposal for a Regulation amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds

(CON/2016/44)

Introduction and legal basis

On 3 August 2016 the European Central Bank (ECB) received a request from the Council for an opinion on a proposal¹ for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 345/2013 on European venture capital funds² and Regulation (EU) No 346/2013 on European social entrepreneurship funds³ (hereinafter the ‘proposed Regulation’).

The ECB’s competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union as the proposed Regulation contains provisions affecting the tasks of the European System of Central Banks to implement monetary policy and contribute to the smooth conduct of policies pursued by the competent authorities relating to the stability of the financial system, as referred to in the first indent of Article 127(2) and Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. General observations

The ECB supports the aims of the proposed regulation, which is a key part of the Capital Markets Union (‘CMU’) Action Plan⁴ and a complement to other pillars of the Investment Plan for Europe⁵. By helping to diversify funding sources and unlock capital, the proposed Regulation should make it easier for investors, fund managers and portfolio undertakings qualifying for such investments to benefit from European

¹ COM(2016) 461 final.

² Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013. p. 1).

³ Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013. p. 18).

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Action Plan on Building a Capital Markets Union (COM(2015) 468 final).

⁵ Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank: An Investment Plan for Europe (COM(2014) 903 final).

venture capital (hereinafter 'EuVECA') funds and European social entrepreneurship (hereinafter 'EuSEF') funds, thus assisting the completion of the CMU.

2. Specific observations

2.1. *Registration of EuVECA and EuSEF funds and their managers*

The ECB notes that the proposed Regulation lays down the conditions to be met by managers authorised under Directive 2011/61/EU of the European Parliament and of the Council⁶ when registering EuVECA and EuSEF funds. These conditions include the provision of information on the identity of the persons effectively managing these funds, the funds themselves and the units or shares of such funds.

As the ECB has previously stated in connection with the CMU⁷, the standardisation of statistical information, namely by means of unique identifiers for institutions, products and transactions, is a key priority in order to achieve a workable and high-quality data infrastructure. In particular, the ECB strongly supports the use of internationally agreed standards, such as the International Securities Identification Number (ISIN) and the global Legal Entity Identifier (LEI), as unique identifiers to meet reporting requirements on the securities markets⁸. In the case of EuVECA and EuSEF funds, the ECB considers that the information to be provided by managers when registering such funds should, as a mandatory requirement, include the global LEI for identifying the funds and their authorised managers⁹. The ISIN should also be included in order to identify the units of, or shares in, the funds to be marketed. This will improve the reliability of such statistical information and thus allow for the effective implementation of monetary policy. EuVECA and EuSEF funds are part of the reporting population for statistics on the assets and liabilities of investment funds, as established in Regulation (EU) No 1073/2013 of the European Central Bank (ECB/2013/38)¹⁰, and their shares or units are part of the centralised securities database, in line with Guideline ECB/2012/21 of the European Central Bank¹¹. These data are used by the ECB to define the monetary policy of the Union, including the monitoring and analysis of non-standard measures.

⁶ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

⁷ See 'Building a Capital Markets Union – Eurosystem contribution to the European Commission's Green Paper'; available at: https://www.ecb.europa.eu/pub/pdf/other/150521_eurosystem_contribution_to_green_paper_-_building_a_cmuen.pdf

⁸ See the sixth subparagraph of paragraph 2.4 of Opinion CON/2014/49. All ECB opinions are published on the ECB's website at www.ecb.europa.eu. There are also other internationally agreed standards in development, namely a unique product identifier and a unique trade identifier, which should be considered for use in the markets as further unique identifiers. .

⁹ Managers of qualifying venture capital funds are defined in point (c) of Article 3 of Regulation (EU) No 345/2013 as 'legal persons the regular business of which is managing at least one qualifying venture capital fund'. Managers of qualifying social entrepreneurship funds are similarly defined in point (c) of Article 3 of Regulation (EU) No 346/2013.

¹⁰ Regulation (EU) No 1073/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of investment funds (ECB/2013/38) (OJ L 297, 7.11.2013, p. 73).

¹¹ Guideline ECB/2012/21 of 26 September 2012 on the data quality management framework for the Centralised Securities Database (OJ L 307, 7.11.2012, p. 89).

Furthermore, the ECB's proposed mandatory requirement to report the global LEI and the ISIN should apply to all financial markets and not just specific market segments. Such an application will ensure that a minimum set of standardised information covering the main features of all institutions, products and transactions on the financial markets is available to all stakeholders.

The ECB is accordingly of the view that, where appropriate and to the extent possible, other legislative changes underpinning the CMU should also establish the mandatory reporting of unique identifiers. This would pave the way for the establishment of automatic data procedures facilitating the distribution of standardised information to all stakeholders on the capital markets. The ECB has previously expressed the view that when securities are offered to the public or admitted to trading on regulated financial markets, the key information in the prospectus summary should be made available in a machine-readable way and should include unique identifiers in respect of the issuer, the offeror, any guarantor and the securities themselves¹². Units issued by collective investment undertakings, other than the closed-end type, were expressly excluded from the scope of the Commission's proposed prospectus regulation¹³ and hence not covered by the ECB's call for mandatory reporting of unique identifiers in that connection¹⁴. Therefore, to partly close that gap, the proposed Regulation should also include the mandatory reporting of unique identifiers, as part of the proposed amendments to the information requirements for managers when registering their EuvVECA and EuSEF funds.

2.2. *ESMA central databases of managers of EuVECA and EuSEF funds*

The ECB notes that the proposed Regulation requires the European Securities and Markets Authority (ESMA) to establish central, publicly accessible databases: (a) identifying all managers of qualifying venture capital funds using the designation 'EuVECA', the funds for which they use such designation and the countries in which these funds are marketed; and (b) identifying all managers of qualifying social entrepreneurship funds using the designation 'EuSEF', the funds for which they use such designation and the countries in which these funds are marketed.

In line with the above observations, the ECB proposes that these databases to be established by ESMA should include the LEI of each fund and its manager and the ISIN for the units or shares of the fund.

3. **Technical observations and drafting proposals**

Where the ECB recommends that the proposed Regulation is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text.

¹² See paragraphs 2.2 and 2.3 of Opinion CON/2016/15.

¹³ See Article 1(2)(a) of the proposed Regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading (COM(2015) 583 final).

¹⁴ See paragraphs 2.2 and 2.3 of Opinion CON/2016/15.

The technical working document is annexed to this Opinion and is available in English on the ECB's website.

Done at Frankfurt am Main, 12 September 2016.

The President of the ECB

Mario DRAGHI

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ¹
<p style="text-align: center;">Amendment 1</p> <p style="text-align: center;">Recital 6</p>	
<p>‘(6) In order to ensure that competent authorities know about every new use of the “EuVECA” and “EuSEF” labels, managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU should register each qualifying venture capital fund or qualifying social entrepreneurship fund they intend to manage and market. This should ensure that those managers may maintain their business models by being able to manage collective investment undertakings established in other Member States while further widening the range of products they offer.’</p>	<p>‘(6) In order to ensure that competent authorities know about every new use of the “EuVECA” and “EuSEF” labels, managers of collective investment undertakings authorised under Article 6 of Directive 2011/61/EU should register each qualifying venture capital fund or qualifying social entrepreneurship fund they intend to manage and market. This should ensure that those managers may maintain their business models by being able to manage collective investment undertakings established in other Member States while further widening the range of products they offer. Furthermore, in order to permit the automatic distribution of standardised information on such funds to all stakeholders on the capital markets, managers of such funds should be required to use the global Legal Entity Identifier (LEI) as the unique identifier to identify themselves and the qualifying funds they intend to manage as well as the International Securities Identification Number (ISIN) for identifying the units or shares of such funds.’</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>See paragraph 2.1 of the Opinion.</i></p>	
<p style="text-align: center;">Amendment 2</p> <p style="text-align: center;">Recital 12</p>	
<p>‘(12) Since this Regulation opens up the use of the “EuVECA” and “EuSEF” labels to managers of</p>	<p>‘(12) Since this Regulation opens up the use of the “EuVECA” and “EuSEF” labels to managers of</p>

¹ Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

Text proposed by the Commission	Amendments proposed by the ECB ¹
collective investment undertakings authorised under Article 6 of Directive 2011/61/EU, the central database, maintained by ESMA in accordance with Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013, should also include information concerning the qualifying venture capital funds and qualifying social entrepreneurship funds that are managed and marketed by those managers.'	collective investment undertakings authorised under Article 6 of Directive 2011/61/EU, the central database, maintained by ESMA in accordance with Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013, should also include information concerning the qualifying venture capital funds and qualifying social entrepreneurship funds that are managed and marketed by those managers. Such information should include the LEI identifying each manager and each qualifying fund as well as the ISIN for its units or shares.'
<p style="text-align: center;"><u>Explanation</u></p> <p>See paragraph 2.1 of the Opinion.</p>	
Proposed amendments to Regulation (EU) No 345/2013	
<p style="text-align: center;">Amendment 3</p> <p style="text-align: center;">Article 14(1)(a)</p>	
'(a) The identity of the persons who effectively conduct the business of managing qualifying venture capital funds;'	'(a) The identity of the persons who effectively conduct the business of managing qualifying venture capital funds, including the Legal Entity Identifier (LEI) of each of these persons; '
<p style="text-align: center;"><u>Explanation</u></p> <p>See paragraph 2.1 of the Opinion.</p>	
<p style="text-align: center;">Amendment 4</p> <p style="text-align: center;">Article 14(1)(b)</p>	
'(b) The identity of the qualifying venture capital funds, the units or shares of which are to be marketed and their investment strategies.'	'(b) The identity of the qualifying venture capital funds, the units or shares of which are to be marketed, including for each of these funds its LEI and for its units or shares the International Securities Identification Number (ISIN), and their investment strategies of these funds.'
<p style="text-align: center;"><u>Explanation</u></p> <p>See paragraph 2.1 of the Opinion.</p>	

Text proposed by the Commission	Amendments proposed by the ECB ¹
<p style="text-align: center;">Amendment 5</p> <p style="text-align: center;">Article 14a(2)</p>	
<p>‘2. The application for registration referred to in paragraph 1 shall be made to the competent authority of the qualifying venture capital fund and shall include the following:</p> <p>(a) the fund rules or instruments of incorporation of the qualifying venture capital fund;</p> <p>(b) the information on the identity of the depositary;</p> <p>...’</p>	<p>‘2. The application for registration referred to in paragraph 1 shall be made to the competent authority of the qualifying venture capital fund and shall include the following:</p> <p>(a) the fund rules or instruments of incorporation of the qualifying venture capital fund;</p> <p>(b) the information on the identity of the depositary, including its LEI;</p> <p>...’</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>See paragraph 2.1 of the Opinion.</i></p>	
<p style="text-align: center;">Amendment 6</p> <p style="text-align: center;">Article 17</p>	
<p>‘Article 17</p> <p>ESMA shall maintain a central database, publicly accessible on the internet, listing all managers of qualifying venture capital fund using the designation “EuVECA” and the qualifying venture capital funds for which they use it, as well as the countries in which those funds are marketed.’</p>	<p>‘Article 17</p> <p>ESMA shall maintain a central database, publicly accessible on the internet, listing all managers of qualifying venture capital fund using the designation “EuVECA” and the qualifying venture capital funds for which they use it, as well as the countries in which those funds are marketed. The database shall include the LEI identifying each manager and each fund as well the ISIN for its units or shares.’</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>See paragraph 2.2 of the Opinion.</i></p>	
<p style="text-align: center;">Proposed amendments to Regulation (EU) No 346/2013</p>	
<p style="text-align: center;">Amendment 7</p> <p style="text-align: center;">Article 15(1)(a)</p>	
<p>‘(a) the identity of the persons who effectively</p>	<p>‘(a) the identity of the persons who effectively</p>

Text proposed by the Commission	Amendments proposed by the ECB ¹
conduct the business of managing qualifying social entrepreneurship funds;'	conduct the business of managing qualifying social entrepreneurship funds, including the LEI of each of these persons; '
<p align="center"><u>Explanation</u></p> <p><i>See paragraph 2.1 of the Opinion.</i></p>	
<p align="center">Amendment 8</p> <p align="center">Article 15(1)(b)</p>	
'(b) The identity of the qualifying social entrepreneurship funds, the units or shares of which are to be marketed and their investment strategies.'	'(b) The identity of the qualifying social entrepreneurship funds, the units or shares of which are to be marketed, including for each of these funds its LEI and for its units or shares the ISIN , and their investment strategies of these funds. '
<p align="center"><u>Explanation</u></p> <p><i>See paragraph 2.1 of the Opinion.</i></p>	
<p align="center">Amendment 9</p> <p align="center">Article 18</p>	
<p>'Article 18</p> <p>ESMA shall maintain a central database, publicly accessible on the internet, listing all managers of qualifying social entrepreneurship fund using the designation "EuSEF" and the qualifying social entrepreneurship funds for which they use it, as well as the countries in which those funds are marketed.'</p>	<p>'Article 18</p> <p>ESMA shall maintain a central database, publicly accessible on the internet, listing all managers of qualifying social entrepreneurship funds using the designation "EuSEF" and the qualifying social entrepreneurship funds for which they use it, as well as the countries in which those funds are marketed. The database shall include the LEI identifying each manager and each fund as well as the ISIN for its units or shares.'</p>
<p align="center"><u>Explanation</u></p> <p><i>See paragraph 2.2 of the Opinion.</i></p>	