

# Questions and Answers

**Application of the EuSEF and EuVECA Regulations**



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## 1 Background

1. The Regulation No 345/2013 on European Venture Capital Funds (EuVECA) and the Regulation 346/2013 on European Social Entrepreneurship Funds (EuSEF) became applicable on 22 July 2013. These Regulations provide for a common EU framework for the managers of EuVECA and EuSEF that are registered with the competent authorities, so that they can benefit from the EU passport in order to manage and market funds in the Union with the specific EuSEF and EuVECA labels.
2. ESMA is required to play an active role in building a common supervisory culture by promoting common supervisory approaches and practices. In this regard, the Authority develops Q&As as and when appropriate to elaborate on the provisions of certain EU legislation or ESMA guidelines.

## 2 Purpose

3. The purpose of this document is to promote common supervisory approaches and practices in the application of the EuSEF and EuVECA Regulations. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of these Regulations.
4. The content of this document is aimed at competent authorities under EuSEF and EuVECA Regulations to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. However, the answers are also intended to help EuSEF and EuVECA managers by providing clarity as to the content of the rules of the Regulations, rather than creating an extra layer of requirements.

## 3 Status

5. The Q&A mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation.<sup>1</sup>
6. Therefore, due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if they are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties.
7. ESMA will review these questions and answers on a regular basis to identify if, in a certain area, there is a need to convert some of the material into ESMA guidelines. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

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<sup>1</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC Regulation, 15.12.2010, L331/84.

## 4 Questions and answers

8. This document is intended to be continually edited and updated as and when new questions are received. The date each question was last amended is included after each question for ease of reference.
9. Questions on the practical application of the EuVECA and EuSEF Regulations may be sent to the following email address: [euvecaeusef@esma.europa.eu](mailto:euvecaeusef@esma.europa.eu)

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**Question 1: Management of EuSEF and EuVECA by AIFMs**

Date last updated: 11 November 2014

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**Question 1a:** Can EuSEF and EuVECA managers that subsequently exceed the threshold of Article 3(2)(b) of the AIFMD set up new EuSEF and EuVECA funds once the threshold is exceeded?

**Answer 1a:** Yes.

In accordance with Article 2(2) of the Regulations, EuSEF and EuVECA managers that subsequently exceed the threshold in Article 3(2)(b) of the AIFMD have to seek authorisation in accordance with the AIFMD and comply with the AIFMD requirements. These managers can continue using the EuSEF and EuVECA denomination in relation to the marketing of qualifying funds under the conditions set out in subparagraphs (a) and (b) of Article 2(2) of the Regulations. The Regulations, therefore, do not prohibit the managers in this situation from setting up and marketing new funds under the EuSEF and EuVECA denominations.

**Question 1b:** Can AIFMs above the threshold of Article 3(2)(b) of the AIFMD manage and market EuSEF and EuVECA?

**Answer 1b:** Yes.

While the Regulation limits the benefit of the ‘light touch’ passporting regime to sub-threshold managers, the use of the EuVECA and EuSEF designation is not exclusive to these managers. In accordance with Article 2(2) of the Regulations, EuSEF and EuVECA managers that subsequently exceed the threshold in Article 3(2)(b) of the AIFMD, and therefore have to seek authorisation in accordance with the AIFMD, are entitled to market and manage EuSEF and EuVECA in accordance with the Regulations. Therefore, Article 2(1) of the Regulations cannot be interpreted as excluding AIFMs authorised in accordance with the AIFMD from using the designation EuVECA or EuSEF in relation to qualifying funds, as long as they ensure compliance with Articles 3 and 5 and points (c) and (i) of Article 13(1) of the EuVECA and EuSEF Regulations.

It should be taken into account that, to the extent AIFMs above the threshold are required to be authorised under the AIFMD and comply with the rules of the AIFMD, there are no prudential concerns in allowing these AIFMs to set up and market EuVECA and EuSEF to professional investors. From a regulatory and supervisory perspective, an authorisation under the AIFMD is more stringent than a registration under the EuVECA and EuSEF Regulation. Therefore, being authorised under the AIFMD should not trigger the process in Article 21(1)(c) of the EuVECA Regulation and 22(1)(c) of the EuSEF Regulation. In particular, it should be noted that the EU Commission is already reviewing the lack of success of EuSEF sub-threshold registrations.

**Question 1c:** Which provisions should apply to AIFMs above the threshold of Article 3(2)(b) of the AIFMD that manage and market EuSEF and EuVECA?

**Answer 1c:** In accordance with Article 2(2) of the EuVECA and EuSEF Regulations, where the total assets under management of managers of qualifying social entrepreneurship funds/qualifying venture capital funds registered in accordance with Article 15/Article 14 respectively subsequently exceed the threshold referred to in point (b) of Article 3(2) of Directive 2011/61/EU, and where those managers are therefore subject to authorisation in accordance with Article 6 of that Directive, they have to comply with the requirements of the AIFMD and the following provisions:

- Articles 3 (definitions), 5 (rules on non-qualifying assets, leverage and borrowing) and points (c) and (i) of Article 13 (information to investors) of the EuVECA Regulation; and
- Articles 3 (definitions), 5 (rules on non-qualifying assets, leverage and borrowing), 10 (measurement of social impact), 13(2) and points (d), (e) and (f) of Article 14(1) (information to investors) of the EuSEF Regulation.

The same provisions of each Regulation, in addition to the AIFMD, should therefore apply to AIFMs above the threshold of Article 3(2)(b) of the AIFMD that manage and market EuSEF and EuVECA (i.e. to those AIFMs who have continuously been above the threshold of Article 3(2)(b) rather than subsequently exceeding that threshold).

It should be clarified what approach should be followed regarding the type of investors these AIFMs can target: that of the AIFMD (i.e. MiFID professional investors plus those set out in national rules) or that of the EuVECA and EuSEF Regulations (i.e. MiFID professional investors; those aware of the risks that invest a minimum amount of €100,000; and executives, directors or employees of the fund). Taking into account that the EuVECA and EuSEF Regulations are *lex specialis*, in the absence of a clear rule the provisions of these Regulations should prevail over those of the AIFMD. As a consequence, AIFMs above the threshold of Article 3(2)(b) of the AIFMD can market EuSEF and EuVECA to investors as defined in Article 6 of the EuSEF and EuVECA Regulations.

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## **Question 2: Registration of EuSEF and EuVECA managers**

Date last updated: 26 March 2014

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**Question 2:** Should EuSEF and EuVECA managers register with their national competent authorities twice i.e. once under the AIFMD and once under the EuSEF and EuVECA Regulations?

**Answer 2:** EuSEF and EuVECA managers have to register with the competent authority of their home Member State twice, once in accordance with the AIFMD, and once in accordance with the EuSEF and EuVECA Regulations.

However, taking into account that the purpose of the EuSEF and EuVECA Regulations is to create a light regime that facilitates the cross-border activity of these managers, the double registration could take place simultaneously. National competent authorities are invited to simplify this process in order to avoid unnecessary repetition in the registration process.

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### Question 3: Management and marketing of AIFs by EuSEF and EuVECA managers

Date last updated: 26 March 2014

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**Question 3:** Can EuSEF and EuVECA managers manage and market AIFs?

**Answer 3:** Yes. EuSEF and EuVECA managers can manage and market AIFs, since this is not prohibited by the Regulations. However, these managers will not benefit from the passport set out in Chapter III of EuVECA Regulation and of EuSEF Regulation regarding those AIFs which are not EuSEF or EuVECA.

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### Question 4: Use of EuSEF and EuVECA designations

Date last updated: 31 May 2016

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**Question 4:** Are EuSEF and EuVECA funds allowed to use the designations “EuSEF” or “EuVECA”, respectively, even if they are only marketed in their home Member State?

**Answer 4:** Yes. The conditions for the use of the designations “EuSEF” and “EuVECA” are linked to the compliance of their managers with qualitative requirements (cf. chapter II of the respective Regulations), and not subject to any requirement to market the respective fund in more than one Member State.

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**\*\*\*NEW\*\*\*** **Question 5: Investment in another qualifying venture capital fund/qualifying social entrepreneurship fund**

Date last updated: 10 March 2023

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**\*\*\*NEW\*\*\*** **Question 5:**

(1) According to Article 3(b) and (e)(iv) of Regulation (EU) No 345/2013 (“EuVECA Regulation”), can a EuVECA fund invest in another qualifying venture capital fund (“Fund”) which has not been registered as EuVECA as long as that Fund materially complies with the criteria of the definition of qualifying venture capital funds?

(2) According to Article 3(b) and (e)(iii) of Regulation (EU) No 346/2013 (“EuSEF Regulation”), can a EuSEF fund invest in another qualifying social entrepreneurship fund (“Fund”) which has not been registered as EuSEF as long as that Fund materially complies with the criteria of the definition of qualifying social entrepreneurship fund?

***Answer 5: Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation<sup>2</sup>***

Yes to (1) and (2) provided that those qualifying venture capital (respectively social entrepreneurship) funds have not themselves invested more than 10% of their aggregate capital contributions and uncalled committed capital in other qualifying venture capital (respectively social entrepreneurship) funds as per Article 3(e)(iv) of Regulation (EU) 345/2013 (respectively Article 3(e)(iii) of the Regulation (EU) 346/2013).

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<sup>2</sup> The answers provided by the European Commission clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.