

EUROPEAN LONG-TERM INVESTMENT FUNDS (ELTIFs)

Reference documents:

- Regulation (EU) 2015/760 on European Long-Term Investment Funds of 29 April 2015

Link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0760>

- **Delegated** Regulation (EU) 2018/480 of 4 December 2017

Lien : <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32018R0480>

Introduction

On 26 June 2013 the European Commission adopted a proposal for a full harmonisation regulation that would create a new financing vehicle, the ELTIF, for professional/institutional investors (insurance companies, pension funds etc.) that wish to place their capital in long-term infrastructure companies and projects in exchange for regular returns and for retail investors wishing to save for their retirement.

Context

The measure was initially discussed by the various stakeholders during the UCITS VI consultation launched by the Commission on 26 July 2012. It was also announced by the Commission in its Green Paper on the Long-Term Financing Of The European Economy, open for consultation until 25 June 2015.

Content of the EC proposal

- **Link with the AIFMD** (like the EuVECA and EuSEF regulations): an ELTIF fund is an AIF domiciled in the EU and managed by an authorised manager in the terms of the AIFM Directive. Unlike this Directive, the ELTIF regulation sets product rules applicable to AIFs that correspond to the characteristics of ELTIFs.

→ All the rules of the AIFM Directive apply to ELTIF managers, including the need to appoint a depositary

- **European passport** for management and products (in the terms of the AIFM Directive) /No system for marketing in other countries (unlike the AIFMD)

- **Eligible assets:** at least 70% of the capital (aggregate capital contributions and uncalled committed capital) of the ELTIF must consist of:

- equity or quasi-equity instruments issued by a qualifying portfolio undertaking, debt instruments issued by qualifying portfolio undertaking and/or loans granted to a qualifying portfolio undertaking by the ELTIF
- shares or units in EuVECAs or in EuSEFs or in other ELTIF, provided that those funds have not themselves invested more than 10% of their capital in ELTIFs
- Direct holdings of individual real assets requiring up-front capital expenditure of at least 10M EUR at the time of the expenditure / acquisition (e.g. infrastructure, property, ship, aircraft, rolling stock etc.)

→ UCITS-eligible assets under the terms of UCITS IV (money market instruments, transferable securities admitted for trading on a regulated market or MTF, sovereign securities), which must not represent more than 30% of the ELTIF's capital

→ ELTIFs are prohibited from short selling of assets, exposure to commodities, securities lending/borrowing agreements, repurchase agreement and using financial derivative instruments (except to hedge the duration and exchange risks)

- A qualifying portfolio undertaking:

- Is not a collective investment undertaking
- Is not admitted to trading on a regulated market, MTF or OTF
- Has its head office in the EU or in a third country that is not on the FATF blacklist
- Is not a financial undertaking, except a company dedicated to financing infrastructure projects or acquiring/developing/building real assets

- Ratios for the composition of an ELTIF portfolio (diversification ratios):

- Investing at least 70% of the capital committed in eligible assets. Period of 5 years from authorisation for compliance with the 70% ratio.
- Investing no more than 10% in assets issued by any single qualifying portfolio undertaking (a)
- Investing no more than 10% in an individual real asset (b)
- Investing no more than 10% in units or shares of any single ELTIF, EuVECA or EuSEF
- Investing no more than 5% in UCITS-eligible assets where those assets have been issued by any single body
- The aggregate value of units or shares of ELTIFs, EuVECA and EuSEFs in an ELTIF portfolio shall not exceed 20% of the value of its capital
- The aggregate risk exposure to a counterparty of the ELTIF stemming from over the counter (OTC) derivative transaction or a reverse repurchase agreement shall not exceed 5% of its capital
- As an exception, an ELTIF may raise the 10% limit in (a) and (b) above to 20% if the cumulative value of the assets held by the ELTIF in qualifying portfolio undertakings and in individual real assets exceeding the 10% ratio does not exceed 40% of the capital committed (value of its capital)

- Limits on concentration: for the ELTIFs, EuVECA and EuSEFs in which an ELTIF invests, an ELTIF may not hold (acquire) more than 25% of the capital of a single ELTIF, EuVECA or EuSEF. No limit on concentration for other eligible assets.

- Leverage (borrowing of cash): an ELTIF may borrow cash up to 30% of its capital as long as this borrowing serves to finance the acquisition of a participation in eligible assets, is contracted in the same currency as the assets to be acquired and it does not hinder the realisation of any assets held in the portfolio of the ELTIF or does not encumber the assets held in the portfolio of the ELTIF.

- Marketing to retail investors (additional requirements): the fund rules must contain a principle of equal treatment for all investors, the ELTIF may not be structured as a *partnership* and retail investors may during the subscription period and at least two weeks after the subscription, cancel their subscription and have the money returned without penalty.

- ELTIF = Fund closed to repurchases: redemption, trading and issuance of ELTIF shares or units and distribution of income

- Investors must not have a right of redemption before the end of the fund's life. The life of the ELTIF must be specified in its rules or instruments of incorporation and must cover to the life-cycle of each of its individual assets and its long-term investment objectives; redemption shall always be possible in cash. Redemptions in kind subject to conditions

- Subscription (issuance of new shares or units) is possible during the fund's life cycle, but no subscriptions below the net asset value can be accepted without a prior offering at that price to existing investors (preference right)
- ELTIF shares or units may be admitted to trading on regulated markets and transferred freely to third parties
- Rules on the distribution of income generated by the ELTIF's assets, obliging the fund to indicate its distribution policy in its rules

- **Transparency obligations (in accordance with the Prospectus Directive and the PRIIPS KID):** prior publication of a key information document and a prospectus.

KEY DAYES

Level 1 text:

- 26 June 2013: Publication of the Commission proposal
- 26 November 2014 : Agreement in trilogue
- 19 May 2015: Publication in the Official Journal of the EU of the Level 1 of the Regulation of 29 April 2015
- 09 June 2015: The Regulation entered into force
- **09 December 2015 : Implementation date of the Regulation**

Level 2 measures:

- 08 June 2016: ESMA advice on Level 2 measures
- 04 December 2017: Adoption by the Commission of Delegated Acts
- 23 March 2018: Publication by the Commission in the Official Journal of the UE of Delegated Acts which specifies a number of points that are applicable to ELTIFs:
 - the criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes
 - the circumstances in which the life of the ELTIF is sufficient in length
 - the assessment of the market for potential buyers
 - the criteria for the valuation of the assets to be divested
 - the specification of the facilities available to retail investors
- 12 April 2018: the Delegated Regulation became applicable

Transitional provisions were provided which to allow existing ELTIFs authorised under the ELTIF Regulation before 12 April 2018 to comply with the Delegation Regulation from 1 May 2019 only.

- 28 March 2019: ESMA consults on draft ELTIF costs disclosure RTS (Regulatory Technical Standards). Article 25(3) of the ELTIF Regulation provides for ESMA to develop draft RTS to determine the costs disclosure requirements applicable to ELTIF managers. The consultation closed on 29 June 2019.

https://www.esma.europa.eu/sites/default/files/library/esma-34-46-89_-_cpcost_on_eltif_rts_3.pdf

- 10 December 2019: ESMA publishes report on responses to its consultation on ELTIF

https://www.esma.europa.eu/sites/default/files/library/esma34-46-91_final_report_on_rts_under_article_25_of_the_eltif_regulation_0.pdf

The final report provides an overview of the feedback ESMA received to its consultation and sets out the next steps that ESMA will take to achieve its mandate. However, the final report does not contain final draft RTS on the basis that these depend to a large extent on the cost section of the key information documents for packaged retail and insurance-based investment products (PRIIPs), which is currently being revised in the context of the review of Delegated Regulation 2017/653 of the PRIIPs Regulation.

ESMA will assess the most appropriate way to finalise the draft RTS once the review of Delegated Regulation 2017/653 has been completed.

- 16 September 2020: the European Commission has published an impact assessment related to the review of ELTIF Regulation. The deadline for response was 14 October 2020

<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12570-Long-Term-Investment-Funds-Review-of-EU-rules>

- 19 October 2020: the European Commission has launched a consultation on the review of ELTIF Regulation. The deadline for response is 19 January 2021.

<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12570-Long-Term-Investment-Funds-Review-of-EU-rules/public-consultation>

The Commission is intended to improve the effectiveness of the regime for ELTIFs and their managers.

In this consultation, the Commission wants to gather views on the following areas:

- scope of the ELTIF authorisation and process;
- ELTIF investment universe, eligible assets and qualifying portfolio undertakings;
- borrowing of cash and leverage; and
- rules on portfolio composition and diversification.

- 3 February 2021: ESMA has sent a letter to the European Commission highlighting the areas of the ELTIF's regulation where improvement could be made.

https://www.esma.europa.eu/sites/default/files/library/esma34-46-99_esma_response_on_eltif_review.pdf

The letter proposes the following changes to the ELTIF regime:

- Eligible assets and investments;
- Authorisation process;
- Portfolio composition and diversification;
- Redemptions; and
- Prospectus and cost disclosure.

- 25 November 2021: The Commission has published a proposal for the review of the ELTIF regulation.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2021:722:FIN&qid=1536654936443&from=EN>

This initiative's main objective is to help the ELTIF market reach sufficient scale. The proposal is designed to make ELTIFs more appealing to managers and investors.

The changes proposed are notably in the area of :

- Eligible assets and investments
- The portfolio composition and diversification rules
- An optional liquidity mechanism

- 24 May 2022: The Council adopted its position to improve the ELTIFs regulation to facilitate long-term investment in the real economy

<https://www.consilium.europa.eu/en/press/press-releases/2022/05/24/european-long-term-investment-funds-council-adopts-its-position/>

In its position, the Council underlined three priorities:

- **Channel more financing to SMEs and long-term projects**, including by removing existing constraints on the portfolio composition of ELTIFs, especially for those distributed solely to professional investors;
- **Enhance the role of retail investors by making ELTIFs more attractive to them, and by lifting the barriers to entry** which did not take into account the profile and objectives of each investor;
- **Maintain high investor protection standards** and provide retail investors with all the relevant information so that they can take informed decisions.

- **Next steps:** The Council will now enter negotiations with the European Parliament