

EUROPEAN LONG-TERM INVESTMENT FUNDS (ELTIFs)

Reference documents: Regulation 2015/751 on European Long-Term Investment Funds of 29 April 2015 (OJEU L 123/98 19.5.2015)

Links: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0760&from=EN>

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. While the proposal targets investment funds and the Green Paper is wider in scope, it is surprising, despite the discussions undertaken during the UCITS VI consultation, that the Commission did not wait for an analysis of the results of the Green Paper consultation before publishing this proposal.

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 depository

- **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.

ESMA Consultation paper 31/07/2015 : answer sent on 14 October 2015

Draft RTS (regulatory technical standard) to determine:

- 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
- Definitions and calculation methodologies of costs
- Specification of the facilities available to retail investors

Previous steps:

- 26/6/2013: Publication of the EC proposal
- 13/11/2013: EP draft report
- 20/11/2013: deadline to table EP amendments
- 10/03/2014: ECON vote
- 20/03/2014 and 24/4/2014: 1st and 2nd compromise from Greek Presidency
- 17/04/2014: partial vote in plenary
- 23/05/2014 : 3rd compromise
- 4/6/2014 : 4th compromise
- 20/6/2014 : Council General Approach adopted by COREPER
- 12/10/2014 and 5/11/2014 : Trilogues
- 26/11/2014 : Agreement in Trilogue.
- 5/12/2014: Final text sent to the COREPER for final approval by EP and Council
- 10/12/2014: formal approval by COREPER
- 15/12/2014: Presentation of the final text to ECON
- 10/03/2015: Final adoption by the EP in plenary
- 20/4/2015: Formal adoption by Council
- 19/5/2015: Publication in the OJEU.
- 14/10/2015: Answer to the consultation paper on draft RTS published on 31/07/2015
- **9/12/2015 : Implementation date of the regulation**

- 08/06/2016: The European Securities and Markets Authority (ESMA) published draft Regulatory Technical Standards (RTS)

Next step:

-European Authorities have to accept or modify these Regulatory Technical Standards

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