

EFAMA'S RESPONSE TO THE EUROPEAN COMMISSION'S PUBLIC CONSULTATION ON THE REVIEW OF THE EUROPEAN LONG-TERM INVESTMENT FUNDS (ELTIF) REGULATORY FRAMEWORK



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EXECUTIVE SUMMARY

EFAMA firmly supports the Commission's proposed amend of the ELTIF Regulation, in line with its recently revamped "new" CMU Action Plan, as per its September 2020 Communication. Designed as a "hybrid" solution between the EU AIFMD regime for alternative investment managers and the retail vocation of the UCITS one, complete with an EU passport to facilitate its distribution within the Single Market, launches of ELTIFs by professional investment managers have been very few since the effective application of the Regulation's in December 2015. In this respect, the take-up of the ELTIF regime within the investor community has fallen short of its intended purpose.

Against the backdrop of a more prolonged low interest rate environment, likely to penalise returns in both public debt and equity markets, coupled with the need to promote a greater equity and investment culture among ordinary European savers, EFAMA believes that the ELTIF regime – where appropriately adapted – may helpfully deliver on some of the Capital Markets Union (CMU) objectives.

Deep changes are however necessary to transform the current regime in view of making ELTIFs an EU product of choice, promoting more participation in less-liquid, real asset markets, allowing both institutions and individuals to invest a part of their wealth over the long-term and diversify their exposure away from public markets. In this regard, we advocate a recalibration of the Regulation's asset eligibility requirements, minimum investment amounts, accompanied by adequate tax incentives, *inter alia*.

More specifically, beginning with the present "supply-side" constraints for the ELTIF product, the following changes would be welcome:

- Turn the ELTIF into an "evergreen" structure alongside the existing closed-end one by removing current limitations to its life and by introducing appropriate redemption terms, complete with adequate liquidity management tools;
- Broaden the scope of the current eligible asset provision to include other types of funds, besides ELTIFs, EuVECAs and EuSEFs, as well as non-listed financial start-up companies;
- Consider lowering the current €10 million threshold for investments in "real assets", thereby broadening choices for managers to consider smaller investment projects;
- Redefine the notion of "qualifying portfolio undertakings" to include financial undertakings, as for instance, technologically-enabled services offered by a host of start-up companies, in line with the commission Fintech Action Plan);
- Raise the current maximum €500 million market capitalisation threshold defining "qualifying portfolio undertakings" to at least €2 billion; and
- Allow ELTIF managers to co-invest, or invest indirectly, in any of the ELTIF's underlying projects, thereby realising important synergies both in terms of fundraising and improving the terms for the underlying investment to the advantage of the entire ELTIF.

In relation to the "supply-side" constraints, the following amendments would be equally desirable:

- Amend the retail distribution-specific provisions of the Regulation in light of clear evidence on current Member State product distribution and marketing provisions, understood to hinder the distribution by advisers of the ELTIF product;

- Ensure an adequate alignment of the ELTIF’s retail distribution provisions with the resulting target market definitions stemming from the review of MiFID II/MiFIR and PRIIPs;
- Remove the present quantitative limits (i.e. €500.000, 10% of the investable portfolio and a minimum of €10.000) and allow investments into ELTIFs (either directly or through an insurance/pension wrapper) as from €1.000.

Lastly, from a taxation perspective, the following amendments should be considered:

- Guarantee an ELTIF structure’s tax-neutrality; and
- Introduce minor amendments on the requirements with respect to the definition of “qualifying portfolio undertaking”.

1. INTRODUCTORY QUESTIONS

Question 1. Please specify to what extent you agree with the statements below?

| | 1 (fully disagree) | 2 (somewhat disagree) | 3 (neutral) | 4 (somewhat agree) | 5 (fully agree) | Don't know - No opinion - Not applicable |
|--|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|--|
| The ELTIF framework has been successful in achieving its objective of raising and channelling capital towards European long-term investments in the real economy | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The scope of the ELTIF authorisation is appropriate | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The costs of launching and operating an ELTIF, and the regulatory and administrative burdens are appropriate | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The (existing) ELTIF regime is relevant to the needs and challenges in EU asset management | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The existing ELTIF regime is consistent with the CMU objectives | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The ELTIF regime has brought added value to investors in and the financing of long-term projects | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The ELTIF investor protection framework is appropriate | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Please note: By eliciting answers through the compilation of the above table, EFAMA notes that the questions raised can be interpreted in several ways, leading to different possible answers. For instance, in terms of the existing regime’s consistency with the CMU objectives, we believe its original rationale is consistent with these (leading us to consider “fully agree” as an answer). Yet, when considering the existing regime’s many practical limitations, we choose to answer “fully disagree”. Important will therefore be for the Commission’s proposal to remove such limitations in view of realising the regime’s full potential.

Question 1.1 Please explain your position on your responses to question 1, providing key arguments to support your answers:

Our responses to the table above anticipate EFAMA’s general view on where legislative action is mostly needed. We must however recognise that the Commission’s choice to invite stakeholders’ views through the means of a multiple choice table is not optimal. In compiling our response, we have found that the individual questions may lend themselves to more than one interpretation, resulting in very different, at times opposite, answers. For instance, the question relating to the relevance of the ELTIF regime to the needs and challenges of the asset management industry lends itself to the same ambiguities described in our note above. The reader does not know if the question is referred to the existing regime (like we assume), or to the ELTIF regime in general (including an amended one in a near future). Adopting the former reading, we conclude that the current one is unfit to meet the challenges of our industry (despite its potential), hence we respond “fully disagree”.

Question 2. Please indicate the areas and provisions in the ELTIF regime where policy action would be most needed to improve the functioning of the ELTIF regulatory framework? Please rate as follows:

| | No policy action needed | Policy action could be considered | Policy action desirable | Policy action needed | Policy action very strongly needed | Don't know - No opinion - Not applicable |
|--|--------------------------|-------------------------------------|--------------------------|-------------------------------------|-------------------------------------|--|
| General principles and definitions used in the ELTIF Regulation | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Market capitalisation threshold defining an SME equity or debt issuer | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Authorisation requirements | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Operational conditions | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Passportability of ELTIFs | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Rules pertaining to eligible investments | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Clarification and/or practical guidance on the eligibility requirements, notably in relation to investments in real assets | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Rules pertaining to the prohibition to undertake certain activities | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rules concerning the qualifying portfolio undertakings | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Conflict of interests related rules, including the ban on co-investment | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Portfolio composition and diversification rules and their application | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Concentration limits | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

| | No policy action needed | Policy action could be considered | Policy action desirable | Policy action needed | Policy action very strongly needed | Don't know - No opinion - Not applicable |
|--|-------------------------------------|-----------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--|
| Rules and limitations related to the borrowing of cash | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Redemption related rules and life-cycle of ELTIFs | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Rules concerning the disposal of ELTIF assets | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Transparency requirements | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Prospectus-related provisions | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Cost disclosure related rules | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Rules pertaining to the facilities available to investors for making subscriptions | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Requirements concerning the marketing and distribution of ELTIFs to investors | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Specific provisions concerning the depository of an ELTIF marketed to retail investors | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Provisions and rules pertaining to the marketing of ELTIFs to retail investors | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Provisions integrating the EU Taxonomy for sustainable activities into the ELTIF framework | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Inconsistent or duplicative application of the ELTIF related requirements by Member States | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Issues arising from the supervisory practices within Member States | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Cross-border marketing related challenges | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Excessive reliance on distribution networks to market ELTIFs | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Excessive costs of setting up and operating ELTIFs | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Competition from existing national fund structures | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Taxation related issues | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Other aspects | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Please note: By eliciting answers through the compilation of the above table, EFAMA notes that the questions raised can be interpreted in several ways, leading to different possible answers. We have compiled the table considering the Regulation's present *status quo* and scarce product take-up since the regime's introduction.

Please specify what are the other aspects of the ELTIF regime where policy action would be most needed to improve the functioning of the ELTIF regulatory framework:

Question 2.1 Please explain your position on your answer to question 2, providing your arguments, and where appropriate, concrete examples and data to support your answers:

In relation to the regime's overall purpose and general principles, these remain sound and can actually become more relevant for securing access (especially retail) to longer-dated asset classes, while offering new sources for funding European investment projects.

EFAMA will consider all of the individual aspects in the above table separately and in greater depth under the relevant questions of this full questionnaire. We care nonetheless to respond to question 2.1 in relation to the following aspects where we believe policy action is mostly needed:

- In terms of the ELTIF's maturity (life), apart from maintaining its original closed-end structure and maturity, we strongly recommend turning the product into an "evergreen", open-end structure by allowing investors more frequent redemption intervals and by no longer limiting the life of the fund to its longest-dated assets. Such flexibility will allow the future ELTIF regime to reach a new investment audience in an increasingly retail market;
- With regard to eligible investments, Article 9 of the Regulation defines two categories of assets eligible for ELTIFs, eligible investment assets (see below) and UCITS-eligible assets defined under Article 50(1) of the UCITS Directive. The latter can constitute a proportion of up to 30% of the ELTIF's portfolio, which in our view would be too low. The current 70% proportion invested in non-listed assets would in other terms be too high compared to certain types of domestic AIFs invested in private equity or real estate. We invite the Commission to consider lowering this latter threshold to at least up to 50%, so as to allow for greater diversification, improve the ELTIF's liquidity and allow it to gather more assets especially from a retail investor base. The resulting higher inflows into ELTIFs will in turn attract more funds to be invested into unlisted assets, expected to drive the ELTIF's returns over the long-term;
- Concerning the definition of "real assets" under Article 2(6) of the existing Regulation, our position is for the Commission to not be excessively prescriptive, recognising that the definition of eligible investments should remain broad. The same consideration we make in relation to those aimed at promoting an "economic or social benefit", knowing that there is an almost unlimited variety of investment options that can promote such goal, avoiding any obligation for future ELTIF portfolio managers to have to comply with a closed and thus restrictive list of investment options set by the EU Legislator. Among these, we naturally include investments that aim to deliver an ESG/sustainable investment outcome, provided the amended framework does not at this stage reference the narrow definitions under Article 2(17) of the SFDR (see *infra*);
- Another constraint for eligible assets concerns the current restrictions on (direct or indirect) holdings of "real assets", limited to a value of at least €10 million. In this regard, we firstly note that this threshold is a limiting factor, precluding smaller value projects that could be of value for the ELTIF's portfolio;

- Considering the market capitalisation thresholds under Article 11 of the Regulation, critical will be for the Commission to amend the current maximum €500 million threshold to define those listed (non-financial) undertakings as eligible “qualifying portfolio undertakings”. In this regard, we believe such amount should be elevated to at least €2 billion to include more companies, also in light of the average capitalisation for companies included in Europe’s main “small cap” indices;
- As to investments in other collective investment schemes, we strongly recommend extending the opportunity for ELTIFs to invest in other schemes, besides other ELTIFs, EUSEFs and EUVECAs as the Regulation presently allows. This would allow ELTIF investors to readily access a more diversified pool of expertise, while also facilitating liquidity management and a speedier capital accumulation for the fund;
- The concentration limits under Article 13(2) deserve to be reviewed by firstly raising the current 10% thresholds under letters a), b) and c) to 20% of the ELTIF’s initial capital, while also allowing these to be breached during the fund’s capital accumulation phase of at least two years;
- To facilitate the interest of a retail investment audience in the revised ELTIF product regime, we recommend to amend the current Article 13 of the Regulation by introducing only a minimum investment amount – we believe one starting from €1.000, either individually or combined as part of an insurance or pension wrapper. We believe that, despite the Commission’s intentions to increase the popularity of the product, the ELTIF will otherwise remain a niche market solution available only to high net worth individuals and to institutional investors; and lastly
- While recognising the Commission’s limited scope to influence the effective tax treatment of the ELTIF, the following two tax-related amendments are nevertheless crucial for the future success of the ELTIF product envelope: (i) the ELTIF structure’s tax-neutrality; and (ii) targeted amendments with respect to the definition of “qualifying portfolio undertaking” under Article 11(1) letter c) point (ii), thus removing a significant obstacle to the fruition of the ELTIF passport.

Question 3. Please rate the following characteristics of the ELTIF framework based on how positive or negative their impact is, as follows:

| | Significant negative impact | Negative impact | No impact | Positive impact | Significant positive impact | Don't know - No opinion - Not applicable |
|---|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|-----------------------------|--|
| Broad scope of eligible assets under the ELTIF regime | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Long-term and illiquid nature of the investments of an ELTIF | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Operational conditions | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Transparency requirements | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Availability of ELTIFs to retail investors | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Requirements and safeguards for marketing of ELTIFs to retail investors | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Validity of an authorisation as an ELTIF for all Member States | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

| | Significant negative impact | Negative impact | No impact | Positive impact | Significant positive impact | Don't know - No opinion - Not applicable |
|---------------|-------------------------------------|--------------------------|--------------------------|--------------------------|-----------------------------|--|
| Other aspects | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Please note: By eliciting answers through the compilation of the above table, EFAMA notes that the questions raised can be interpreted in several ways, leading to different possible answers. One notable ambiguity concerns how one can interpret the first question related to the “broad scope” of the eligible assets regime. We respond considering the current state of the ELTIF regime as being broad already, yet believe it should be broader by removing some of the investment constraints in terms of their eligibility (as we argue in the answers below). Consequently, we respond that the current rules have a “negative impact”, recommending these be recalibrated accordingly. Alternatively, one could have answered otherwise by merely recognising the “positive impact” of the already existing broad requirements, especially if compared to other types of regulated fund structures, like UCITS for instance. In sum, one could arrive at opposite conclusions depending on whether one considers the regime’s amended potential *versus* the current *status quo*.

Please specify what are the other aspects of the ELTIF you refer to in your answer to question 3:

Taxation remains a critical aspect to make the amended ELTIF regime a success. Given the long-term nature of ELTIF investments, a pan-EU harmonized tax incentive, such as a zero or a reduced tax on distributions and capital gains, would be a significant driver in the success of ELTIFs. In certain EU Member States, local competing structures (notably AIFs) already offer similar tax rebates. Unless a revised ELTIF structure can qualify for the same preferential tax treatment on par with local AIFs, it will be very difficult for the ELTIF to compete.

Besides tax incentives, we also understand that the principle of tax neutrality of the fund (for distributions and capital gains) may be lost when ELTIFs invest in real assets across borders, including within the EU. A solution to this, at least within the EU, is to be found (especially as regards withholding tax procedures). Such simplifications from a tax perspective would make the ELTIF more attractive to investors. Please refer to our more detailed answer to Question 40 further below.

Question 3.1 Please explain your position on your answer to question 3, providing your arguments, and where appropriate, concrete examples and data to support your answers:

EFAMA will consider all of the individual aspects in the above table separately and in greater depth under the relevant questions of this full questionnaire.

2. SCOPE OF THE ELTIF AUTHORISATION AND PROCESS

Question 4. Is the scope of the ELTIF authorisation and operating conditions appropriate? Please explain your answer.

Overall, we believe that authorisation and operating conditions could be improved. The multiplicity of local obligations relating to the ELTIF Regulation imposed at a national level imply burdensome operational conditions and resulting unforeseeable costs. Moreover, the uncertainties tied to the nature of eligible investment assets is a complicating factor at the inception and authorisation of a fund. Please refer to our responses below for further details.

Question 5. Should the ELTIF framework be amended to enhance the use of the ELTIF passport?

- Yes
- No
- Other
- Don't know / no opinion / not relevant

Question 5.1 Please explain how you think the ELTIF framework should be amended to enhance the use of the ELTIF passport.

Please explain your suggestions, including benefits and disadvantages as well as potential costs thereof, where possible:

Please refer to the more detailed answers in the questions below.

3. INVESTMENT UNIVERSE, ELIGIBLE ASSETS AND QUALIFYING PORTFOLIO UNDERTAKINGS

Question 6. Should any of the following investments be eligible under the revised ELTIF framework? Please rate as follows:

| | Investments should be strongly discouraged | Investments should be discouraged | No impact | Investments should be encouraged | Investments should be strongly encouraged | Don't know -No opinion -Not applicable |
|---|--|-----------------------------------|--------------------------|-------------------------------------|---|--|
| Investments in innovative technologies | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Investments in green, sustainable and/or climate related projects | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Investments in projects that classify as sustainable under the EU taxonomy for sustainable activities | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Post-COVID 19 recovery related projects | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

| | Investments should be strongly discouraged | Investments should be discouraged | No impact | Investments should be encouraged | Investments should be strongly encouraged | Don't know -No opinion -Not applicable |
|---|--|-----------------------------------|--------------------------|-------------------------------------|---|--|
| Any financial assets with long-term maturities | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Investments in digital assets and infrastructure | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Investments in social infrastructure and social cohesion | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Investments in energy infrastructure and energy efficiency | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Any real estate assets, including commercial and residential real estate without a perceived economic or social benefit under the Union's energy, regional and cohesion policies | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The scope of the investment universe of ELTIFs and eligible assets as currently set out in the ELTIF Regulation be further expanded to other areas and asset classes | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The scope of the investment universe of ELTIFs and eligible assets as currently set out in the ELTIF Regulation be more restricted or limited to a narrower set of assets/investments | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other types of assets and investment targets, and/or other regulatory approaches should be pursued | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Please specify what are the other types of assets and investment targets, and/or other regulatory approaches should be pursued you refer to in your reply to question 6:

We believe the revised ELTIF regime must remain flexible in terms of asset/investment eligibility. According to the experience of most managers with an interest in the ELTIF structure, the present strict eligibility requirements under the current regulation have considerably held back the launch of these funds. We therefore fundamentally agree with the Commission's intent to broaden the structure's eligibility requirements considerably to the assets/investments in the table above. We believe these all deserve to be included *pari passu* as components of an ELTIF's portfolio (hence our response, "investments should be encouraged"), leaving the ultimate portfolio composition to the manager. Such composition will be based on the type of offering the manager is targeting for its clients' expected returns and is consistent with its expertise and capabilities. Opening up the ELTIF structure to new assets/investments should thus be "strongly encouraged". On the contrary, any attempt to further narrow or limit the current investment scope for ELTIFs (as per the second-last question in the table) should be strongly resisted, as it will perpetuate the non-viability of this structure.

In terms of “other types of assets and investment targets”, worth including is certainly also a clear reference to the eligibility of securitisations, alongside direct holdings of real assets. In this regard, we note that recital (17) of the current Regulation appears to exclude securitised assets altogether. Such outcome deprives ELTIF managers of additional investment opportunities and is also at odds with the Commission’s September 2020 Communication on a “new” CMU Action Plan, where the intent is to scale-up the EU market for securitisation (Action 6) via a review of the relevant framework. Consequently, the Commission should consider amending recital (17) to remove the exclusion of securitised assets from the eligible investment universe, while clearly expanding it to the latter via the insertion of an appropriate letter “f)” at the end of the current Article 10 of the Regulation related to eligible investment assets. The opportunity for ELTIFs to also directly invest in credit should be allowed.

Question 6.1 Please explain your position on your responses to question 6, including the benefits and disadvantages as well as potential costs thereof, where possible.

In particular, please indicate if you consider that any changes in the ELTIF regime are necessary, and if so which ones, and why? Should you be of the opinion that investments in certain eligible assets be strongly encouraged, please provide further details on the possible definitions and scope of such different assets (e.g. references to existing or new legal definitions, examples, etc.):

Please refer to our answer to question 9 further below.

Question 7. Should some of the definitions related to the investment universe of ELTIFs and eligible assets used in the ELTIF Regulation, such as “long-term”, “capital”, “social benefit”, “debt”, “sustainable”, “energy, regional and cohesion policies” and “speculative investments” be revised to enhance the clarity and certainty around the application of the ELTIF regime? If so, how should those definitions be amended and why?

In line with our answer to the question above, ensuring the broadest scope possible for the future of the ELTIF structure will be critical to the product’s success. In relation to the ELTIF Regulation’s subject matter and scope under Article 1(2), the text posits that eligible investments should be “long-term” and “in line with the Union objective of smart, sustainable and inclusive growth”. The second qualification is not clear. Similarly, the definition of a “real asset” under Article 2(6) states that these are assets which give rise to “economic or social benefit” and examples are cited to this effect. Nevertheless, the same definition also states that commercial property or housing are only eligible where these contribute to the Union objective of “smart, sustainable and inclusive growth”. Instead, according to our view, the amended scope for ELTIFs would be better expressed by:

1. **Being Inclusive:** Simply state that the investments should be “long-term and give rise to any investment, economic or social benefit”. By definition, any long-term investment that provides an investment return is likely to give rise to economic or social benefits in any event;
2. **Not refer to restrictions:** The qualifications to commercial or social property and all references to “smart, sustainable and inclusive growth” or similar should be deleted. Especially post-Covid, there will be many different circumstances in each EU Member State where long-term investments in commercial property and housing will give rise to an economic or social benefit. We would hence discourage the Commission and the EU Legislator to attempt identifying all investment targets in this respect, as it is simply not possible;
3. **References to ESG/sustainable investments:** Although a reference to “sustainable investments” under Article 2(17) of Regulation 2019/2088 on sustainability-related disclosures for the financial services sector (SFDR) exists, there should not be any express requirement in relation to the EU Taxonomy, nor to the SFDR at this stage. The Taxonomy is in its infancy and

its final criteria are presently absent (with a definition of “social” criteria expected to take much longer). Moreover, such Taxonomy criteria are very strict and attempts to impose requirements for ELTIFs to necessarily meet these criteria may undermine the launch of ELTIFs as there will simply not be enough eligible investments. Lastly, under SFDR, ELTIFs will already have to disclose how sustainable they are, with investment managers already free to design either “Article 8” or “Article 9” (of SFDR) ELTIFs if they choose. Instead, and as a minimum requirement to support the sustainable investment policy goals of the Union, we suggest that the ELTIF management company must take ESG/sustainability criteria into account when targeting eligible investments.

For some of the other terms used in the table/questions above and for which a narrower or EU legal definition may be absent, we suggest they be interpreted on a case-by-case basis in light of the context, as well as on common sense.

Question 8. Is the ELTIF framework appropriate in respect of the provisions related to investments in third countries?

- Yes
- No
- Don't know / no opinion / not relevant

Question 8.1 Please explain your answer to question 8.

In particular, please describe in detail any necessary adjustments to enhance legal certainty, for instance, with respect to the proportion invested in EU Member States with a view to benefit the ELTIF market, their managers and the broader European economy.

Investments in non-EU third countries remain important and these are allowed under Article 11 where the qualifying portfolio undertaking is a) based in a cooperative jurisdiction for the purpose of combating money-laundering and terrorist financing; and b) has an agreement in place with the supervisor of the ELTIF's management company (as well as with those of other Member States where the ELTIF is actively marketed) to ensure compliance with standards of the OECD Model Tax Convention and exchange of information on tax matters¹. Here, our industry believes that the general mention of a “benefit to the European economy” under the Regulation's recital (4) should not be construed as one allowing managers to only consider portfolio undertakings based in EU Member States.

Regarding third-countries, EFAMA's proposal would thus be to not introduce investment limits between European and non-European based assets, understanding that introducing any form of geographical restrictions will not only further limit the scope of eligible assets, but also diversification, as well as keep European investors and the EU economy away from additional sources of income through returns. Investment into non-EU third-countries should in any event conform to the existing conditions under Article 11 of the Regulation, although these would need to be revised to a) include financial undertakings, and b) consider non-EU regulated markets and multilateral trading facilities as equivalent (see our response to Question 9 below).

¹ Article 11(1), letter c, point (ii).

Question 9. Which provisions and requirements related to the eligibility of investments and investment assets set out in the ELTIF Regulation should be updated to improve the functioning of the ELTIF framework? Please rate as follows:

| | No policy action needed | Policy action could be considered | Policy action desirable | Policy action needed | Policy action very strongly needed | Don't know -No opinion -Not applicable |
|---|--------------------------|-----------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--|
| A size requirement of at least EUR 10 000 000 for eligible real assets investments | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| A condition for an exposure to real estate through a direct holding or indirect holding through qualifying portfolio undertakings of individual real assets | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Limitation on eligible investment assets to units or shares of ELTIFs, EuVECAs and EuSEFs, as opposed to other potential fund categories | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Inability to invest in a "financial undertaking" | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| EUR 500 000 000 market capitalisation threshold set out in the ELTIF Regulation for investing in listed issuers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Rules related to investments in third-country undertakings | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other conditions and requirements related to eligible investment assets and qualifying portfolio undertakings | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Please specify what are the other conditions and requirements related to eligible investment assets and qualifying portfolio undertakings you refer to in question 9:

As anticipated above, the withholding tax (WHT) regime for eligible investment assets at the EU level should be harmonised, to ensure sufficient tax transparency, thereby helping to develop an EU Single Market for investments via ELTIFs.

Question 9.1 Please provide your assessment of the adequacy and effectiveness of the ELTIF framework with respect to the execution of fund-of-fund investment strategies, real assets investment strategies and any restrictions on investments in other funds throughout the ELTIF's life.

Please explain and provide your suggestions which specific provisions of the ELTIF Regulation may benefit from improvements, and why:

Regarding the definition of “eligible investment assets” under Article 10 of the Regulation, we believe this has proven too restrictive, limiting the effectiveness of investment strategies when compared to alternative (AIF) fund structures. Moreover, such restrictions have hampered initial capital accumulation in the ELTIF's ramp-up phase, where only a narrow pool of investable projects may have been determined, while more are undergoing initial due diligence, the negotiation of terms, etc.

We refer in particular to the provision limiting investments to units or shares of other ELTIFs, EuVECAs and EuSEFs (up to 10% of the ELTIF's initial capital), thus excluding other types of collective investment schemes (including UCITS) for investors to benefit from fund-of-fund strategies. Such benefits include a swifter exposure to real assets, a greater diversification of the initial asset pool, a lower degree of portfolio volatility, along with the assurance that managers of the underlying funds have already duly conducted research on the underlying investments. Moreover, ELTIF investors could easily access diversified pools of expertise across various asset classes, without the need to invest in these directly, and able to accommodate various entry ticket sizes. Other investment schemes which should be considered eligible are limited partnerships, as well as other types of AIFs (including closed-end ones), open to qualified and retail investors as per national Member State regimes. In sum, we recommend the Commission broaden the scope of the current eligible asset provision to include other types of funds, besides ELTIFs, EuVECAs and EuSEFs, as well as non-listed financial start-up companies.

Moreover, we note that long-term infrastructure investments tend to be large in scale, less easy to locate and time and resource intensive to conduct due diligence on compared to other investment opportunities. The current 10% concentration limits under Article 13(2) of the Regulation - letters a), b) and c) thereof – would therefore deserve to be increased to 20%, with the following paragraph 3 to be deleted. Where an ELTIF is to invest in other funds, we believe that the sole conditions should be (i) that target fund's investment objective is consistent with that of (or part of) the ELTIF's investment objective; and (ii) that the majority of the target fund's investments would be permitted under the ELTIF Regulation if acquired directly. The 25% limit to invest in any single ELTIF, EuVECA, or EuSEF under Article 15(1) of the Regulation should be removed. In addition, we care to indicate that it is important that none of the aforementioned concentration limits be met immediately, but should be phased in gradually during a capital accumulation phase of the ELTIF of at least two years. Another commonly observed constraint for eligible assets concerns the current restrictions on (direct or indirect) holdings of “real assets”, limited to a value of at least €10 million. In this regard, we firstly note that this threshold is a limiting factor, precluding smaller value projects that could be of value for the ELTIF's portfolio.

The Regulation's Article 11 definition of “qualifying portfolio undertakings” expressly excludes financial undertakings as constituents of an ELTIF portfolio, allowing for one narrow exception. In view of the Commission's March 2018 Fintech Action Plan to support the development of technologically-enabled financial services in the EU, the above provision may inadvertently starve small start-up financial firms of capital at an early stage of their development. We would therefore invite the Commission to consider further broadening the ELTIF eligible investment universe to at least include non-listed financial start-up companies.

Lastly, in terms of facilitating an ELTIF's capital raising, the Commission could also facilitate ways to operationalise co-investments by the European Investment Bank (EIB) into ELTIF structures, as per the Regulation's recitals (31) and (32).

4. TYPES OF INVESTORS AND EFFECTIVE INVESTOR PROTECTION

Question 10. Please describe key barriers to the development of the ELTIF market, whether regulatory or of another nature, if any, to institutional investments that you consider reduce the attractiveness of the ELTIFs for institutional investors?

Please explain:

For some of the reasons explained in our answers above, institutional investors have preferred to rely on other AIF structures, as characterised by far fewer constraints, especially in terms of defining eligible investment assets, restrictions on real asset holdings (i.e. at least €10 million) and on investments in other open-end structures. To these we would also add the broad exclusion of financial undertakings as "qualifying portfolio undertakings".

In addition, as we elaborate in our answer to Question 40, the lack of tax transparent investments in the EU hampers the financing of EU real asset projects, as well as the development of ELTIFs.

Question 11. Should any of the following provisions of the ELTIF legal framework be amended, and if so how, to improve the participation and access of retail investors to ELTIFs?

Please explain which of the following provisions should be amended and give specific examples where possible and explain the benefits and disadvantages of your suggested approach, as well as potential effects and costs of the proposed changes.

a) Amendment of the size of the initial minimum amount for retail investors, and net worth requirements

Yes

No

Don't know / no opinion / not relevant

Please explain your answer to question 11.a, as well as your suggested approach if you responded yes:

For retail investors with a total financial instrument portfolio of less than €500.000, Article 30(3) of the Regulation limits the investable amount to no more than 10% of such portfolio (with the initial amount of at least €10.000). When combined, the Regulation's UCITS-inspired diversification requirements (Article 13) and those related to retail distribution and target market identification described above already offer an adequate degree of investor protection, such that the additional constraints on minimum investment amounts appears superfluous. Easing such restrictions by allowing retail investors to commit lower amounts to an ELTIF will definitely speed-up its funding and – where accompanied by tax incentives – also overcome their reluctance to "lock-up" their savings in a long-term investment vehicle.

Furthermore, we invite the Commission to consider removing the artificial €500.000 and related 10% limits. Presently, investors are known to have their investments in financial instruments distributed between several types of wrappers (e.g. insurance or non), each with a different account, offered by a host of different providers. The ELTIF distributor in most EU jurisdictions will therefore not have a consolidated overview of all of an individual's holdings. We therefore propose to amend Article 13 accordingly by introducing only a minimum investment amount – we believe one starting from €1.000 – so as to boost retail participation, either individually or combined as part of an insurance or pension wrapper. We believe that, despite the Commission's intentions to increase the popularity of the product, the ELTIF will otherwise remain a niche market solution available only to high net worth individuals.

b) Amendment of the specific requirements concerning the distribution of ELTIFs to retail investors (suitability test)

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 11.b, as well as your suggested approach if you responded yes:

In terms of a suitability test for fund distributors to administer to their retail clients, the Commission should consider aligning the present Article 28(1) requirements with the relevant provisions (Article 25) of the MiFID II regime, as the general standard for (non-complex) fund distribution in Europe.

c) Withdrawal period of two weeks

- Yes
- No
- Don't know / no opinion / not relevant

d) Possibility to allow more frequent redemptions for retail investors

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 11.d, as well as your suggested approach if you responded yes:

Our proposal for the Commission to consider is to convert the current ELTIF structure into an open-end ("evergreen") one, complete with adequate redemption periods and liquidity management tools to make the future ELTIF product more viable and open to a retail investor audience. In this regard, Article 18 would deserve to be amended, allowing the manager to determine an appropriate redemption frequency (i.e. no shorter than monthly, or otherwise quarterly or semi-annually, depending on the types of assets invested and investor profile. In this regard, it is important for the asset management company to guard its discretion in best managing liquidity risks by relying on an adequate set of liquidity management tools.

The opportunity for asset management companies to launch closed-end ELTIF structures should also be preserved. The two types of ELTIF (i.e. open-end and closed-end) should therefore coexist. For open-end structures, redemptions should moreover not be conditioned in relation to the percentage of assets that are UCITS-eligible, as presently 30% under Article 18(2) letter d).

e) Procedures and arrangements to deal with retail investors complaints

- Yes
- No
- Don't know / no opinion / not relevant

f) Provisions related to the marketing of ELTIFs

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 11.f, as well as your suggested approach if you responded yes:

Capital raising for the types of eligible investment assets envisaged under the Regulation has traditionally been within the remit of a professional investment audience, whether institutional or high (or ultra-high) net-worth individuals. The additional requirements in terms of suitability tests and investment restrictions for prospective retail clients has placed a considerable burden on ELTIFs distributors, such that of the few ELTIFs launched in Europe, most have collected funds only by partnering with private banks, family offices, or private wealth managers offering advisory services to a few and relatively sophisticated high (or ultra-high) net-worth individuals.

Managers have encountered several and often prohibitive challenges while aspiring to adhere to the specific distribution requirements intended to protect retail investors. For instance, managers have reported that setting-up retail marketing facilities – as per Article 26 of the Regulation and Article 5 of the delegate one - has proven particularly cumbersome and expensive, as well as those for conducting the internal suitability assessment processes, depending on the life and intended investment strategy of the ELTIF, as per the following Article 27. In the absence of guidance, complications have also arisen in relation to the details of suitability tests to be performed by managers - although *de facto* by third-party distributors – under Article 28 of the Regulation.

We observe that NCAs have interpreted these provisions rather flexibly and in conformity to their own domestic investor protection rules, while also adding complementary requirements for distribution to retail investors. The latter, while at odds with the maximum harmonisation rationale behind the ELTIF Regulation, also hinder the functioning of a cross-border passport, as multiple cross-jurisdictional marketing registration and notification procedures substantially increase time to market, costs for investors and burdens on fund sponsors. In this regard, EFAMA invites the Commission to consider directly surveying, or alternatively through ESMA, the varying NCA practices responsible for operationalising the above provisions ahead of the Regulation's amendment proposal. Although we are glad to offer a few examples, the Commission's evidence base should be far more comprehensive and informed.

Apart from the difficulties related to the concrete operationalisation of a retail distribution regime for ELTIFs, we would also refer the Commission to carefully consider its proposed amendments in light of the MiFID II/MiFIR regulatory framework, currently being revised. In this regard, important to consider adapting the revised ELTIF distribution requirements with those emerging from the final MiFID II/MiFIR framework, especially in terms of investor categorisation, as well as with those for PRIIPs, where ESMA Regulatory Technical Standards (RTS) are expected around cost disclosures.

g) Other provisions and requirements related to retail investors

- Yes
- No
- Don't know / no opinion / not relevant

Question 12. Which safeguards, if any, should be introduced to or removed from the ELTIF framework to ensure appropriate suitability assessment and effective investor protection, while considering the specific risk and liquidity profile of ELTIFs, including sustainability risks, investment time horizon and risk-adjusted performance?

Please give examples where possible and present the benefits and disadvantages of your suggested approach, as well as potential costs of the change:

EFAMA's opinion is that no additional safeguards are required. As the ELTIF will remain a "complex" investment product even if marketed to a retail investor audience, the necessary suitability test – to be amended and aligned with that under Article 25 of MiFID II - is sufficient for the purpose of investor protection, accompanied by all relevant disclosure documents highlighting risks (including sustainability ones where applicable), along with recommended investment holding periods, etc.

Concerning liquidity risks, more particularly, managers should dispose of a complete tool-kit to address investor redemptions, including those under volatile circumstances. Naturally, whether any of these tools will be applied depends on the unique liquidity profile of the individual ELTIF, and notably, its ratio of UCITS-eligible to investment assets available in the portfolio (currently up to a maximum of 30%, but one we recommend to adjust up to 50%).

5. CONFLICT OF INTERESTS

Question 13. Are mandatory disclosures under the ELTIF framework sufficient for investors to make informed investment decisions?

- Yes
- No
- Other
- Don't know / no opinion / not relevant

Please specify what you mean by other in your response to question 13:

Question 13.1 Please explain your position on your responses to question 13, including benefits and disadvantages of the potential changes as well as costs:

EFAMA believes the disclosure requirements under Article 23 of the Regulation are adequate.

Question 14. Which elements of mandatory disclosure requirements, if any, should be tailored to the specific type of investor?

Please explain your position, including benefits and disadvantages of the potential changes as well as costs:

See our response to Question 13 above.

Question 15. Are the ELTIF rules on conflicts of interest appropriate and proportionate?

- Yes
- No
- Other
- Don't know / no opinion / not relevant

Question 15.1 Please explain how you think how should such rules on conflicts of interest be amended. Please explain the benefits and disadvantages of the potential changes as well as costs, as well as how specifically such amendments could facilitate the effective management of conflicts of interests, co-investment strategies and indirect investment strategies:

Question 15.1 Please specify what you mean by other in your response to question 15:

We turn to Article 12 of the Regulation to look more closely at the apparent conflicts of interest between the manager and the ELTIF, where the former is prevented from acquiring any interest in the latter, other than holding its units or shares. We believe that allowing the ELTIF manager (as well as other funds managed by the same) to co-invest in the same underlying transactions as the ELTIF itself, or indirectly via another fund, is beneficial as it would demonstrate "skin in the game" (i.e. a common requirement in the alternative investment world). It would also facilitate fundraising and offer the manager greater leverage when negotiating the terms of the underlying investments, also to the advantage of all ELTIF investors. Both forms of participation should in any case be disclosed in the relevant fund documents.

6. BORROWING OF CASH AND LEVERAGE

Question 16. Which of the following policy choices related to the leverage of the ELTIF funds do you find most appropriate?

- Increasing total allowed leverage
- Decreasing total allowed leverage
- Maintaining the current leverage-related rules set out in the ELTIF regime intact

Other

Don't know / no opinion / not relevant

Question 16.1 Please explain your response to question 16 with the description of the advantages and disadvantages of your proposed approach, including its implications for ELTIF managers, the performance and risk and liquidity profile of the fund, the risk-adjusted returns of investors and the attractiveness of the ELTIF regime:

Our view is that the current leverage levels allowed for ELTIFs should be amended to allow the manager greater leeway in choosing an optimal degree of leverage that is consistent with the investment strategy and nature of the underlying assets. In this regard, the current borrowing limit of 30% of the ELTIF's capital under Article 16(1) letter a) could be increased, while deleting the same 30% limit on encumbrances under the following letter e). Overall, we believe such changes will enhance an ELTIF's capability to better support the financing of assets (in particular those of SMEs) and improve a fund's return profile.

As per the existing AIFMD requirements, potential risks arising from the use of leverage should be addressed by managing leverage appropriately with respect to the investment and any potential maturity or currency mismatches in the portfolio.

Question 17. What should be the optimal maximum allowed net leverage allowed for ELTIF funds? Please explain:

In terms of maximum leverage allowed, we believe an ELTIFs limits should be no different than those for AIFs under the relevant AIFMD rules..

Question 18. How should regulation of leverage for ELTIFs marketed to retail investors be different from that of the ELTIFs marketed solely to professional investors?

Which safeguards are particularly relevant and appropriate, and why?

EFAMA believes there should be no difference in the regulation of leverage, which should simply adhere to the existing AIFMD rules. Diversifying leverage rules between retail and professional investors will only limit the choice of the ELTIF envelope to the advantage of other AIF structures.

Question 19. Do the requirements related to the "contracting in the same currency" as the assets to be acquired with borrowed cash, maturity-related rules and other limits on the borrowing of cash constitute significant limitations to the operations and leverage strategy of ELTIFs?

With regard to the requirement to contract in the same currency as the assets acquired, we believe the limit under Article 16(1) letter c) should be removed. The condition that presently allows borrowing only in the same currency as the assets which will be acquired with the borrowed cash is not the most efficient approach, as an ELTIF could borrow at more convenient rates in currencies that are not the base currency of the asset, provided that foreign currency exposures are adequately hedged.

Question 20. Please explain which regulatory safeguards, if any, you deem appropriate to ensure the effective management of liquidity, subscriptions and the financing of assets in the investment portfolio.

In addition, please explain if you consider it appropriate to provide for any alternative regulatory approach for the borrowing of cash rules specifically during the ramp-up period in the ELTIFs' life:

In line with our response to Question 16 above, we invite the Commission to consider loosening some of the current restrictions on borrowing under Article 16 of the Regulation. Although we are not able to pinpoint a higher ratio to the present 30% value cap, we believe an ELTIF's borrowing limit could temporarily exceed this threshold during the fund's initial ramp-up phase.

7. RULES ON PORTFOLIO COMPOSITION AND DIVERSIFICATION

Question 21. Which of the following policy choices pertaining to the ELTIF rules on diversification do you consider most appropriate?

- Requiring greater diversification
- Requiring less diversification
- Fewer regulatory requirements and more flexibility by ELTIF managers with respect to portfolio composition and diversification
- Maintaining the current rules pertaining to the portfolio composition and diversification set out in the ELTIF regime intact
- Other

Question 21.1 Please explain your response to question 21 with the description of the advantages and drawbacks of your preferred policy approach. In particular, should you consider that the diversification and portfolio composition related rules under the ELTIF Regulation need to be amended, please explain, to what extent and why?

Consistent with our responses above, we believe that the portfolio composition and related diversification provisions of the Regulation deserve to be amended to introduce greater diversification. This could be achieved by (i) increasing the current 30% limit UCITS-eligible assets limit to a maximum of 50%, while (ii) further diversifying the remaining portion of the portfolio of (non-listed) eligible investment assets – which will consequently range from the current 70% maximum to a minimum of 50% - between other asset classes including other fund structures, real assets, fintech companies, companies with a market capitalisation above the current €500.000 threshold and more investments in portfolio companies based in third-countries.

Finally, in relation to the portfolio composition and diversification requirements of Article 13(2) of the Regulation, managers' experience when managing real asset portfolios suggests that the 10% exposure limit to instruments issued by, or loans granted to, a single portfolio undertaking remains too low. A higher limit could be considered – for instance, of at least 20% - with the possibility for this to be phased-in gradually – and even temporarily breached - over a period of at least two years during the ELTIF's capital accumulation phase.

Question 22. Do you consider the minimum threshold of 70% of eligible assets laid down in Article 13(1) of the ELTIF Regulation to be appropriate?

- Yes
- No
- Other
- Don't know / no opinion / not relevant

Question 22.1 Please explain your position on your response to question 22 by assessing the advantages and drawbacks of your preferred policy option pertaining to asset diversification rules:

As anticipated in our response to Question 2 and 21 above, we believe the new minimum threshold for eligible investment assets under should be lowered to 50% of the ELTIF's capital. This is essentially intended to make the management of the ELTIF product for managers looking to offer the structure to retail investors more flexible by allowing them the option to increase allocations to UCITS-eligible assets by another 20% of the ELTIF's capital (from the current 30%). Regarding the composition of the eligible investment assets proportion of the portfolio, this should allow managers to introduce more diversification into this specific portfolio "sleeve", according to our previous recommendations.

8. REDEMPTION RULES AND LIFE OF ELTIFS

Question 23. Please provide a critical assessment of the impacts of the ELTIF Regulation rules on redemption policy and the life-cycle of ELTIFs, including the appropriateness of the ELTIF Regulation for the structuring of the ELTIF funds, taking into account the legitimate interests of the investors and achieving the stated investment objective of ELTIFs:

Discussions with managers confirm that the fixed maturity of the ELTIF structure has made it of limited appeal, especially where the product is intended to also target retail investors. The latter are more familiar with an unlimited ("evergreen") structure, which typically allows for more frequent redemption periods². Furthermore, by needing to align the ELTIF's life with that of its longest maturing asset at the time of authorisation, an ELTIF's portfolio is significantly limited by those assets of a sufficiently short duration to ensure a buffer exists between the life of the asset and the life of the fund. A notable side-effect of this is that ELTIFs' performance and returns may suffer from a "cash drag", with the vehicle remaining therefore underinvested. This reduces the structure's attractiveness in terms of capital efficiency compared to other (AIF) vehicles that do not have a limited life and where managers can remain focused on generating longer-term capital appreciation for their investors.

To address such limits, we invite the Commission to amend the relevant Regulation provisions under Article 18(1) and (3) – as further specified under Article 2 of the Delegated Regulation (EU) 2018/480 - by creating a second open-end ELTIF category alongside the original closed-end, limited life structure. This can be achieved by removing the limited life feature of the ELTIF and consider harmonised redemption terms (e.g. quarterly, semi-annually or even annually). Liquidity management tools, should naturally complement these amendments.

² This notwithstanding the conditions for derogating – under Article 18(2) of the Regulation - to the general rule of investors not being permitted to redeem their holdings before the end of ELTIF's life.

Question 24. If longer-term investments were to be limited only to those with certain maturities, what threshold might be considered appropriate?

- Shorter maturity of between 5 to 10 years
- Maturity of 5 years and more
- Only investments with a maturity +10 years
- Only investments with a maturity + 15 years
- Other possible maturity
- Don't know / no opinion / not relevant

Question 24.1 Please explain your answer to question 24:

In line with our response above, we believe there is room for an amended ELTIF open-end structure alongside the original closed-end one. The former should offer managers the needed flexibility to choose their overall portfolio's maturity according to the strategy they wish to implement. Presently, an ELTIF's portfolio is significantly limited by those assets of a sufficiently short duration to ensure a buffer exists between the life of the asset and the life of the fund. In the interest of the new structure's capital efficiency – especially where compared to other (AIF) vehicles that do not have a limited life – our recommendation is to leave the optimal choice of asset maturities up to the investment manager.

Question 25. If shorter-term investments were allowed to be included into the portfolio, what proportion of the portfolio should be permitted?

- 0% to 15%
- 15% to 30%
- Above 30%
- Other options
- Don't know / no opinion / not relevant

Question 25.1 Please explain your answer to question 25:

Please refer to our answers above. Shorter-term assets would tend to coincide with those that are UCITS-eligible. As indicated, to attract greater retail participation, we believe their respective proportion within the total ELTIF portfolio could be increased until maximum of 50% of the portfolio's total invested capital.

Question 26. Do you consider that “mid-term” redemption should be allowed?

- Yes
- No
- Other

Don't know / no opinion / not relevant

Question 26.1 Please explain your position on your responses to question 26 and provide for advantages and disadvantages of your policy choice from the perspective of ELTIF managers, ELTIF liquidity and risk profile, returns of investors, and other regulatory aspects:

In line with our preference to create an alternative ELTIF open-end structure, we believe that foreseeing a “mid-term” point for investors to redeem their units would not be fully consistent with such structure. Notwithstanding any indication of a recommended minimum holding period, we believe investors – retail and non – should take advantage of more frequent redemption periods, starting with monthly, but also potentially quarterly, or even yearly. The ultimate redemption frequency should be left to the choice of the ELTIF manager, as highly dependent on the nature of the underlying portfolio assets and individual investor profiles. Please see our response below for further elements.

Question 27. Do you consider it appropriate to allow for regular redemptions or an “evergreen” vehicle approach (no maturity)?

Yes

No

Other

Don't know / no opinion / not relevant

Question 27.1 How frequent should ELTIF redemptions be, and if so, which additional safeguards would you consider necessary to cater for the illiquidity, redemptions and other fund cycle related aspects of the ELTIF framework?

Discussions with managers confirm that the fixed maturity of the ELTIF structure has made it of limited appeal, especially where the product is intended to also target retail investors. The latter are more familiar with an unlimited (“evergreen”) structure, which typically allows for more frequent redemption periods³.

In terms of redemption frequency for the open-end ELTIF structures, we believe this should depend on the nature of the underlying assets and on the investor type. As a minimum, we could consider a monthly redemption frequency for the more liquid structures, allowing other less-liquid funds to adopt longer redemptions terms (i.e. quarterly, bi-annually or even annually). Important will be for the investment manager, especially in the former case, to dispose of adequate liquidity management mechanisms.

Question 28. Is it appropriate to provide for any alternative regulatory approach with respect to the redemption rules or portfolio composition, diversification rules, etc. for ELTIFs during the ramp-up period in the ELTIFs' life-cycle?

Yes

No

³ This notwithstanding the conditions for derogating – under Article 18(2) of the Regulation - to the general rule of investors not being permitted to redeem their holdings before the end of ELTIF's life.

Other

Don't know / no opinion / not relevant

Question 28.1 Please explain your position and provide for advantages and disadvantages of your policy choice:

An ELTIF's ramp-up period is by definition limited in time (e.g. from a minimum of twelve months to five years), from the moment of launch of the fund and/or compartment thereof, until the latter reaches its targeted minimum amount of capital. It is therefore important for the ELTIF manager to raise investor capital as soon as possible for the fund to deploy its intended strategy. We believe that a dedicated regulatory regime to govern this interim period (e.g. through strict asset eligibility requirements, diversification rules, etc.) – as the questions seems to suggest – may *de facto* stifle the swift accumulation of investor capital. EFAMA would therefore not support any prescriptive approach for a temporary ramp-up phase.

9. SECONDARY MARKET AND ISSUANCE OF NEW UNITS OR SHARES

Question 29. Are the provisions of the ELTIF Regulation pertaining to the admission to the secondary market and the publication of “periodical reports” clear and appropriate?

EFAMA has no views in relation to this specific question.

Question 30. Are the limitations of the ELTIF Regulation regarding the issuance of the new units or shares at a price below their net asset value without a prior offering of those units or shares at that price to existing investors clear and appropriate?

EFAMA has no views in relation to this specific question.

Question 31. Should the provisions in the ELTIF framework related to the issuance of new units or shares be amended, and if so how?

EFAMA has no views in relation to this specific question.

10. MARKETING STRATEGY FOR ELTIFS AND DISTRIBUTION RELATED ASPECTS

Question 32. What are the key limitations stemming from the ELTIF framework that you consider reduce the attractiveness of the ELTIF fund structure or the cross-border marketing and distribution of ELTIFs across the Union?

Please explain:

Capital raising for the types of eligible investment assets envisaged under the Regulation has traditionally been within the remit of a professional investment audience, whether institutional or high (or ultra-high) net-worth individuals. The additional requirements in terms of suitability tests and investment restrictions for prospective retail clients has placed a considerable burden on ELTIFs distributors, such that of the few ELTIFs launched in Europe, most have collected funds only by partnering with private banks, family offices, or private wealth managers offering advisory services to a few and relatively sophisticated high (or ultra-high) net-worth individuals.

Managers have encountered several and often prohibitive challenges while aspiring to adhere to the specific distribution requirements intended to protect retail investors. For instance, managers have reported that setting-up retail marketing facilities – as per Article 26 of the Regulation and Article 5 of the delegate one - has proven particularly cumbersome and expensive, as well as those for conducting the internal suitability assessment processes, depending on the life and intended investment strategy of the ELTIF, as per the following Article 27. In the absence of guidance, complications have also arisen in relation to the details of suitability tests to be performed by managers - although *de facto* by third-party distributors – under Article 28 of the Regulation.

We observe that NCAs have interpreted these provisions rather flexibly and in conformity to their own domestic investor protection rules, at times also adding complementary requirements for distribution to retail investors. The latter, while at odds with the maximum harmonisation rationale behind the ELTIF Regulation, also hinder the functioning of a cross-border passport, as multiple cross-jurisdictional marketing registration and notification procedures substantially increase time to market, costs for investors and burdens on fund sponsors. In this regard, for a more comprehensive and informed evidence base, EFAMA invites the Commission to consider surveying, or alternatively through ESMA, the varying NCA practices responsible for operationalising the above provisions ahead of its amendment proposal.

Question 33. Do you consider that review of the ELTIF rules related to the equal treatment of investors is warranted?

- Yes
- No
- Other
- Don't know / no opinion / not relevant

Question 33.1 Please explain your position on your answer to question 33:

The notion of equal treatment should be clarified in a context where investors – especially in an amended ELTIF “evergreen” structure – may not all be “equal”, i.e. in terms of financial education, investment knowledge and capacity, risk tolerance, investment horizons, etc. Naturally, such differences are already addressed through the offer of different share classes. It is within each share class that we therefore believe that the equal treatment of investors deserves to be warranted.

Question 34. Is it necessary to clarify the ELTIF framework with regard to the application of the principle of equal treatment of investors at the level of individual share classes, and any other specific arrangements for individual investors/group of investors.

If possible, please provide a specific suggestion:

It is important for the ELTIF structure to offer investors a variety of different share classes. Each share class within a compartment may have different features such as the fee structure, a minimum subscription or holding amounts, currency, different hedging techniques or distribution policy or other distinctive features, or be offered or reserved to different types of investors. Investors will be able to choose the share class with the features most suitable to their individual circumstances.

11. MISCELLANEOUS

Question 35. Is the effectiveness of the ELTIF framework impaired by national legislation or existing market practices? Please provide any examples you may have of “goldplating” or wrong application of the EU acquis. Please explain:

There is scant evidence – also in light of the very few product launches – that national legislation, diverging market practices, or even “goldplating” have been responsible for decisively braking the commercial success of ELTIFs. As we have illustrated in our previous responses, there are far more important reasons to explain this outcome, rather than varying market practices et al. for a product that since 2015 has remained very niche.

Question 36. Are you aware of any national practices or local facility requirements for ELTIF managers or distributors of ELTIFs that require a local presence or otherwise prevent the marketing of ELTIFs on a cross-border basis?

Please explain and provide specific examples:

Please refer to our answer in the question above.

Question 37. Which features of the current ELTIF framework, if any, should be defined in more detail and which should be left to contractual arrangements?

Please explain:

Please refer to our responses above.

Question 38. Which specific provisions in the ELTIF framework could be amended, and how, in order to lower costs and reduce compliance, administrative or other burdens in a manner that would not lead to an increase in material risks from the perspective of effective supervision or investor protection?

Please refer to our responses above.

Question 39. Please elaborate on whether and to what extent the current ELTIF regime is appropriate for the AIFMs falling under Article 3(2) of Directive 2011/61/EU to have an incentive to market ELTIFs.

Please explain:

We believe the ELTIF regime is not appropriate for sub-threshold AIFMs, as it would require them to fully comply with the AIFMD provisions and which may prove too onerous.

Question 40. Please provide examples of any national taxation regimes towards long-term investment funds that are either discriminatory or that you deem materially reduce the relative attractiveness of the ELTIF framework vis- à-vis other (national) fund vehicles, also taking into account the interaction with foreign tax systems? Please provide specific examples of such cases:

Undermining the coherence of ELTIF as an investment product are, not least, tax considerations. These relate in particular to the absence of a favourable tax treatment for product managers and investors alike,

particularly in the form of a relief from taxation (i.e. withholding tax) on capital gains, investment income and further distributions. More specifically, by investing in real assets, unlisted securities and in other types of direct investments on a cross-border basis, ELTIFs are prone to lose their tax-neutrality depending on whether double-tax treaties are in place between jurisdictions.

EFAMA would welcome the provision of tax incentives and a tax model for funds that fulfil predefined requirements, to secure and enhance the role of ELTIFs. We would propose a tax framework which exempts EU entities owned by a qualifying vehicle from an EU taxation perspective. Such framework would entail a tax upon distributions levied in the state of residence of the investment vehicle, albeit with no imposition of taxes on income or gains within the vehicle, and no withholding at source on income from the assets of the fund where the latter are located in an EU Member State.

Additionally, from a practical standpoint, EFAMA takes the opportunity to suggest amendments to article 11(1) letter c. point (ii) of the Regulation. This nuance in the Regulation is preventing ELTIFs to be marketed on a much broader EU-wide basis, thus affecting their success. Where an ELTIF makes non-EU, third country investments, the requirement of Article 11 to ensure compliance with the OECD standard on the exchange of tax information between the third country and all Member States in which the ELTIF is actively marketed, leads to an extremely onerous assessment. Indeed, the rationale for such requirement seems to have been the prevention for ELTIF managers from investing in certain non-tax compliant jurisdictions. The practical outcome, however, is instead one significantly reducing the number of Member States in which an ELTIF is allowed to be actively marketed.

As all Member States should be able to request tax information from the Member State where the ELTIF is established, this should be sufficient to allow each Member State to be satisfied that they can collect any information necessary to ensure the correct tax is being declared in respect of an investor's interest in the ELTIF. It is, therefore, not clear in what circumstance there would be a need to request information from an underlying portfolio jurisdiction and hence why this is a requirement of the Regulation. We believe that removing the portion of this requirement relating to each of the Members States in which the ELTIF is marketed should allow for ELTIFs which might invest in third countries to be marketed on a much broader EU-wide basis⁴. In sum, while recognising the Commission's limited scope to influence the effective tax treatment of the ELTIF, our tax-related recommendations for amendments to the Regulation are:

- Guarantee an ELTIF structure's tax-neutrality; and
- Introduce minor amendments on the requirements with respect to the definition of "qualifying portfolio undertaking".

Question 41. You are kindly invited to make additional comments on this consultation if you consider that some areas have not been adequately covered. Please elaborate, more specifically, which amendments of the ELTIF framework could be beneficial in providing additional clarity and practical guidance in facilitating the pursuit of the ELTIF strategy. Please include examples and evidence on any issues, including those not explicitly covered by the questions raised in this public consultation:

We believe our responses to the questions above have sufficiently covered all areas from a European association's perspective.

⁴ In this respect, please consider the textual amendment to Article 11(1) letter (c) point (ii) as follows: *A qualifying portfolio undertaking (...) shall be a portfolio undertaking other than a collective investment undertaking that (...) (c) is established in a Member State, or in a third country provided that the third country: (...) (ii) has signed an agreement with the home Member State of the manager of the ELTIF and with every other Member State in which the units or shares of the ELTIF are intended to be marketed to ensure that the third country fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements. (...)*

Question 42. Would you be willing to provide additional clarifications or follow-up input upon a direct request from the Commission services?

Yes

No

Under certain conditions

Question 42.1 Please specify under which conditions you would be willing to provide additional clarifications or follow-up input upon a direct request from the Commission services:

EFAMA looks forward to an opportunity to discuss aspects of the ELTIF review in greater depth, inviting a small group of its most active corporate Members with an interest in the ELTIF structure to have one or more bilateral calls with the European Commission between now and the time of publication of the relative legislative review proposal.



About EFAMA

EFAMA, the voice of the European investment management industry, represents 28 Member Associations, 57 Corporate Members and 23 Associate Members. At end Q3 2020, total net assets of European investment funds reached EUR 17.6 trillion. These assets were managed by more than 34,200 UCITS (Undertakings for Collective Investments in Transferable Securities) and almost 29,400 AIFs (Alternative Investment Funds). At the end of Q2 2020, assets managed by European asset managers as investment funds and discretionary mandates amounted to an estimated EUR 24.9 trillion.

More information is available at www.efama.org.

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