

**GREAT FUND INSIGHTS**

# The ELTIF review

A further step towards the retailisation of  
alternative investment funds in Europe



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The European long-term investment fund (**ELTIF**) is an EU fund regime that was introduced in **2015 by Regulation (EU) 2015/760** (the **ELTIF Regulation**) to boost long-term investments through EU alternative investment funds (**AIFs**) in the European real economy, such as transport and social infrastructure projects, properties and capital or private debt of small and medium sized enterprises (**SMEs**).

One of the attractive features of the regime is that ELTIFs may avail of an EU retail marketing passport. Today, ELTIF is the sole pan-European vehicle Venture Capital Funds set apart – that allows managers to offer certain alternative investment strategies to retail investors via an EU retail marketing passport. However, ELTIFs that want to benefit from the retail passport must comply with additional and burdensome regulatory requirements which aim at ensuring a high level of investor protection. The ELTIF label is also of particular interest for the structuring of funds originating loans to borrowers based in certain Member States (such as France), where cross-border lending by an AIF would otherwise be prohibited.

As of September 2022 though, there are only 79 ELTIFs (43 in Luxembourg, 21 in France, 13 in Italy and 2 in Spain). Market players often attribute the limited success of ELTIFs to the overly prescriptive investment rules and complex marketing rules.

Despite a slow start, the ELTIF regime is gaining momentum as the number of ELTIFs has more than doubled since end of 2020.

The momentum is fuelled by tax incentives which have been introduced in certain Member States, including Italy and Belgium, but also by the upcoming review of ELTIF Regulation.

On 25 November 2021, the European Commission (**EC**) presented its **proposal** for revamping the ELTIF regime (the **Proposal**). The Proposal aims at simplifying and enhancing the overall attractiveness of the ELTIF regime as well as facilitating retailisation across Europe. On 24 May 2022, the Council **announced** having adopted its position and published a **compromise text** with light amendments to the Proposal.

However, the last report on the Proposal of the Committee on Economic and Monetary Affairs (**ECON**) in the European Parliament, which was **adopted** on 20 June 2022, suggests more substantial changes. Indeed, in the related press release, the Members of the European Parliament have announced among other things their wish to create “an optional sub-category of ELTIFs marketed as environmentally-sustainable to collect capital from investors looking for sustainable investments”, which would be subject to stricter requirements. However, part of the industry fears that this new category of “Sustainable ELTIF” will add overly complicated rules to the existing sustainable framework under the **Regulation (EU) 2019/2088 (SFDR)** and undermine the attractiveness of ELTIFs.

The legislative process may likely end this year but the new ELTIF rules are not likely to apply before 2023 as the contemplated entry into force of the rules may be between six months to one year after publication of the regulation.

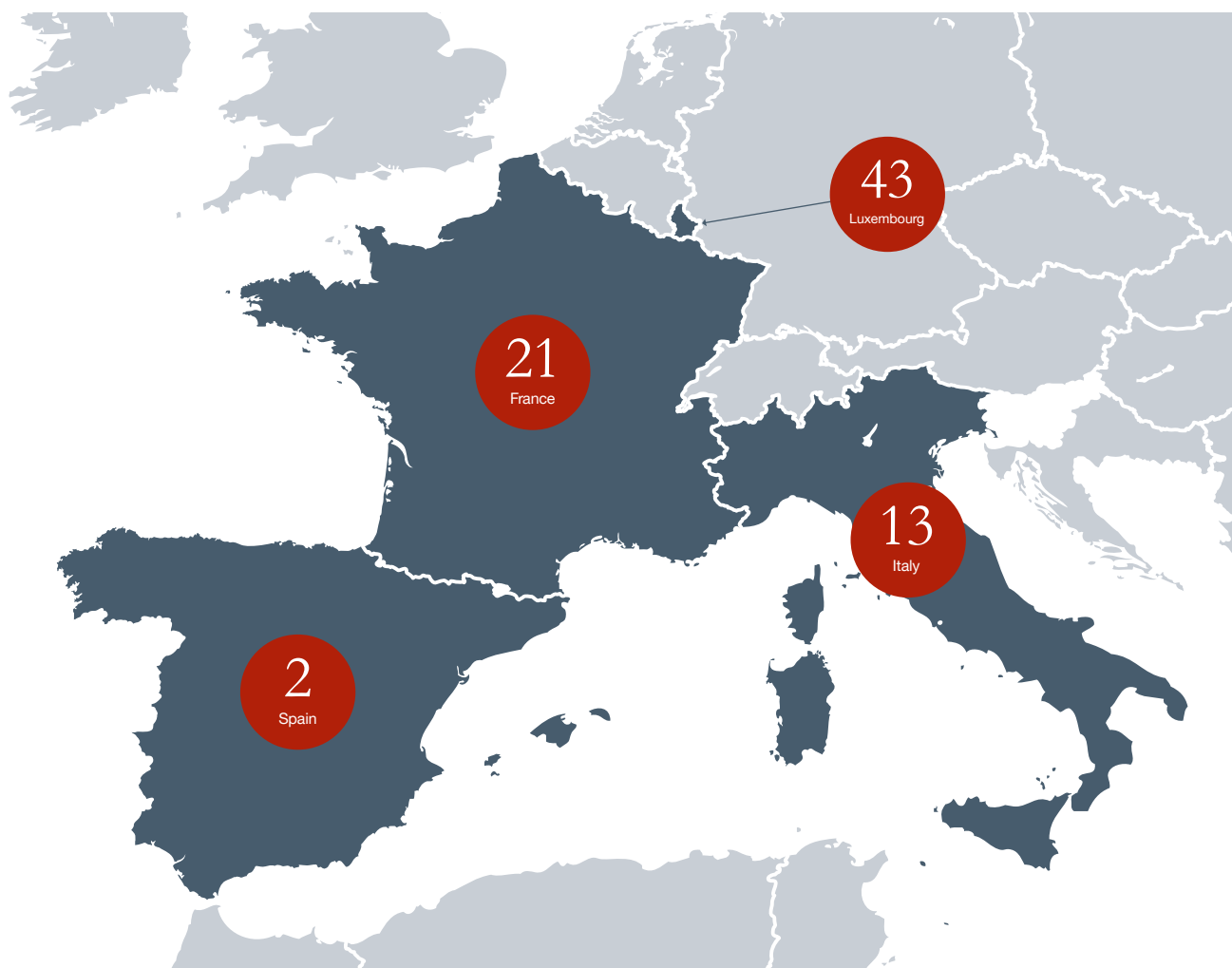
This brochure aims at providing a high-level overview of the current ELTIF regime (see the Overview of the current regime section below) as well as the most salient features of the Proposal (see ELTIF review section below).

<sup>1</sup> At the time of entry into force of the ELTIF Regulation, Article L. 511-6 of the French monetary and financial code was amended to authorise the granting of loans by ELTIFs in compliance with the French banking monopoly rules.

<sup>2</sup> Source: ESMA register on ELTIFs <https://www.esma.europa.eu/document/register-authorized-european-long-term-investment-funds-eltifs>

<sup>3</sup> There were only 28 ELTIFs in October 2020.

<sup>4</sup> COM (2021) 722 final.



## 79 ELTIFs as of September 2022

- 43 in Luxembourg
- 21 in France
- 13 in Italy
- 2 in Spain

# 1. Overview of the current regime

## 1.1 An EU label for AIFs

Only EU AIFs that are managed by an EU authorised AIFM<sup>6/6</sup> may obtain the ELTIF label. In an umbrella AIF, it is possible to have one or more ELTIF sub-funds alongside non-ELTIF sub-funds.

The AIF must be authorised as an ELTIF by its national authority. The AIFM must also be authorised by the ELTIF's national authority to manage the ELTIF. However, in most cases, the national authority will mainly check that the AIFM's authorisation covers the relevant investment strategy(ies).

In Luxembourg, ELTIFs are typically established as Part II UCIs<sup>7</sup>, SIFs<sup>8</sup> or RAIFs<sup>9/10</sup>. All Luxembourg ELTIFs, including RAIFs, must be approved by the CSSF.

Italian ELTIFs are typically set up as closed-ended investment funds (*fondo comune di investimento*). The competent Italian regulators under ELTIF Regulation are the Bank of Italy and CONSOB.

French ELTIFs, which are subject to the supervision of the AMF, are usually set-up as closed-ended funds.

In Belgium, the ELTIF is a third category of investment funds, alongside UCITS and AIFs.

Spanish ELTIFs are set up as closed-ended investment funds. The competent Spanish regulator is the CNMV (*Comisión Nacional del Mercado de Valores*).

## 1.2 Limited list of eligible assets

An ELTIF must invest at least 70% of its "Capital" in "eligible investment assets", ie:

- (a) equity, quasi-equity and/or debt instruments issued by "qualifying portfolio undertakings";
- (b) loans issued to "qualifying portfolio undertakings"<sup>11</sup>;
- (c) units or shares of other ELTIFs, EuVECAs and EuSEFs; and/or
- (d) "real assets" with a value of at least EUR 10,000,000.

The **Capital** of an ELTIF is defined as "the aggregate capital contributions and uncalled committed capital, calculated on the basis of amounts investible after deduction of all fees, charges and expenses that are directly or indirectly borne by investors".

The 70% investment limit must be complied with by a date (referred to in this brochure as the Target Date) specified in the ELTIF's documents, which must not be later than the earlier of (i) five years of the authorisation of the ELTIF; and (ii) half the ELTIF's life. The Target Date may be postponed in exceptional circumstances with the approval of the competent national authority.

The ELTIF may also invest in UCITS eligible assets<sup>12</sup>. As from the Target Date, UCITS investments may not represent more than 30% of the Capital of the ELTIF.

A "**qualifying portfolio undertaking**" is an undertaking which either:

- (i) is not listed; or
- (ii) has a market capitalisation of not more than EUR500 million.

A "**qualifying portfolio undertaking**" cannot be a collective investment undertaking or a financial undertaking<sup>13</sup>.

Furthermore, an ELTIF may only invest in "qualifying portfolio undertakings" which are established outside of the EU if the relevant third country:

- (A) is not a FATF<sup>14</sup> high-risk and non-cooperative jurisdiction; and
- (B) has signed an agreement with the ELTIF manager's home Member State and with each other Member State in which the interests of the ELTIF are intended to be marketed to ensure that the third country fully complies with the exchange information standards of the OECD Model Tax Convention<sup>15</sup>.

"**Real assets**" in which an ELTIF may invest are assets that have value due to their substance and properties and may provide returns, including infrastructure and other assets that give rise to economic or social benefit, such as education, counselling, research and development, and also including commercial property or housing only where they are integral to, or an ancillary element of, a long-term investment project that contributes to the EU objective of smart, sustainable and inclusive growth.

5 Alternative investment fund manager within the meaning of the Alternative Investment Fund Managers Directive 2011/61/EU, as amended (AIFMD).

6 Or are authorised as an internally managed AIF.

7 Luxembourg undertakings for collective investment governed by Part II of the Luxembourg act of 17 December 2010 on undertakings for collective investment, as amended.

8 Specialised investment funds.

9 Reserved alternative investment funds.

10 But ELTIFs could take other forms as well (eg a SICAR (*société d'investissement en capital à risque*) or a limited partnership that is not subject to a specific product law).

11 Loans must not have a maturity longer than the life of the ELTIF.

12 ie UCITS eligible transferable securities, money market instruments, deposits, financial derivative instruments and funds, subject to a 5% concentration limit per issuer. This 5% limit may be raised to 25% in relation to bonds issued by an EU credit institution, which are subject by law to special public supervision designed to protect bondholders.

13 The term "financial undertaking" encompasses in particular credit institutions, investment firms, insurance undertakings, financial holding companies, management companies and AIFMs. An ELTIF may however invest in financial undertakings, which exclusively finance qualifying portfolio undertakings or eligible real assets.

14 Financial Action Task Force

15 Specifically, with article 26 of the **OECD Model Tax Convention on Income and on Capital**.

## 1.3 Strict risk diversification requirements

An ELTIF may invest:

- (a) up to 10% of its Capital in equity, quasi-equity or debt instruments issued by, or loans granted to, any single qualifying portfolio undertaking or in any single real asset. This 10% limit may be increased to 20%, if the aggregate value of the assets held by the ELTIF in qualifying portfolio undertakings in which it invests more than 10% of its Capital does not exceed 40% of its Capital. Qualifying portfolio undertakings, which are included in the same group for the purposes of consolidated accounts, must be regarded as a single qualifying portfolio undertaking or a single body for calculating these 10/20/40% limits;
- (b) up to 20% of its Capital in other ELTIFs, EuVECAAs and EuSEFs in aggregate; and
- (c) up to 10% of its Capital per single ELTIF, EuVECA or EuSEF.

## 1.4 Derivatives and SFTs

The use of derivatives and securities financing transactions (**SFTs**)<sup>16</sup> by ELTIFs is highly restricted:

- (a) ELTIFs may only use derivatives for hedging purposes;
- (b) derivatives may not relate to more than 10% of the assets of the ELTIF;
- (c) the counterparty risk for the ELTIF resulting from OTC derivatives and SFTs may not exceed 5% of the Capital of the ELTIF; and
- (d) ELTIFs may not enter into short sale transactions.

ELTIFs may not take direct or indirect exposure to commodities.

## 1.5 Borrowings

ELTIFs may only borrow cash provided such borrowing:

- (a) represents no more than 30% of the Capital of the ELTIF;
- (b) serves the purpose of investing in eligible investment assets where the ELTIF does not have sufficient cash or cash equivalents to make the investment;
- (c) is contracted in the same currency as the assets to be acquired;
- (d) does not have a maturity longer than the life of the ELTIF; and
- (e) is secured by assets that represent no more than 30% of the Capital of the ELTIF.

ELTIFs may not borrow to grant loans to “qualifying portfolio undertakings”<sup>19</sup>.

## 1.6 Conflicts of interest

ELTIFs are subject to strict conflicts of interest rules. In particular, an ELTIF may not invest in an asset in which the ELTIF’s AIFM has or takes a direct or indirect interest, other than by holding units or shares of the ELTIFs, EuSEFs or EuVECAAs that it manages.

## 1.7 Term and liquidity

ELTIF must be established with limited duration. The constitutive documents of the ELTIF must indicate a specific date for the end of the life of the ELTIF, subject to potential extensions. However, it is possible to establish an ELTIF with a very long term (eg in excess of 50 years).

The term of an ELTIF must be sufficient to cover the life-cycle of each of the individual assets it holds. This condition is deemed met where: (a) the term of the ELTIF is aligned with the investment horizon date of the asset which has the longest investment horizon at the time of the application as an ELTIF; and (b) any investment made after the authorisation of the ELTIF has a residual investment horizon within the remaining life of the ELTIF at the time that investment is made.

In principle, an ELTIF must be closed-ended<sup>20</sup>. However, an ELTIF may provide for liquidity as from the Target Date if certain specific conditions are fulfilled. In particular:

- (a) the ELTIF must establish a liquidity management system;
- (b) the ELTIF must have a redemption policy, which ensures that the overall amount of redemptions within any given period is limited to a percentage of the “liquid assets” of the ELTIF (ie, the assets which are not “eligible investment assets”). If redemption requests within any given period of time exceed such percentage, redemptions must be effected on a pro rata basis; and
- (c) investors may request the winding down of the ELTIF if their redemption requests are not satisfied within one year.

One year before the date of the end of the ELTIF’s life, the ELTIF must adopt and submit to its national authority an itemised schedule for the orderly disposal of its assets to redeem investors’ interests. The schedule includes an assessment of the market for potential buyers, an assessment and comparison of potential sales price, a valuation of the assets to be divested and a timeframe or such divestments.

<sup>16</sup> Based on the current administrative practice of the AMF and the CSSF, the granting of loans also includes the acquisition of loan receivables.

<sup>17</sup> An ELTIF may acquire no more than 25% of the units or shares of a single ELTIF, EuVECA, or EuSEF.

<sup>18</sup> Securities lending, securities borrowing, repurchase transactions and similar transactions.

<sup>19</sup> But, according to the AMF and the CSSF’s administrative practice, this does not prevent ELTIFs from entering into a commitment liquidity facility.

<sup>20</sup> The ELTIF Regulation somewhat misleadingly provides that “Redemptions to investors shall be possible from the day following the date of the end of the life of the ELTIF”. This can be addressed by providing in the fund documents that the end of life of the ELTIF will correspond to the term of the ELTIF (ie the date on which the ELTIF will enter into liquidation) and that interests in the ELTIF will be redeemed from all investors by the liquidator in one or more instalments during the liquidation process.

## 1.8 Transferability

Interests in an ELTIF must be freely transferable<sup>21</sup>.  
Interests in an ELTIF may be listed<sup>22</sup>.

An ELTIF may only issue new interests at a price below their net asset value subject to a pre-emptive right of existing investors<sup>23</sup>.

## 1.9 Transparency requirements

ELTIFs must publish a prospectus, which must contain all the information required for an investor to make an informed judgment about the proposed investment and the associated risks.

The prospectus of an ELTIF must comply with the additional disclosure requirements which apply to closed-ended funds under the Prospectus Regulation<sup>24/25</sup>.

Specific disclosure obligations are also set out in the ELTIF Regulation. Particular attention must be paid to the requirements regarding the cost disclosures. The prospectus must include prominent disclosures of the different costs, regrouped under specific prescribed headings<sup>26</sup>, borne directly or indirectly by investors. The prospectus must disclose an overall ratio of costs to the Capital of the ELTIF.

## 1.10 Distribution of ELTIFs to retail investors

### (a) General

ELTIFs benefit from a marketing passport enabling them to be marketed to retail investors across the EU. However, ELTIFs which are marketed to retail investors are subject to certain specific requirements which are summarised below. These requirements apply in addition to MiFID<sup>27</sup> rules.

ELTIFs must follow the passporting process under the AIFMD, subject to certain additional requirements.

### (b) Internal assessment process

The ELTIF manager must assess whether the ELTIF is suitable for marketing to retail investors, taking into account in particular its term and investment strategy.

### (c) Investment advice and distribution channels

An ELTIF may only be marketed to retail investors on the condition that retail investors are provided with appropriate investment advice from the ELTIF manager or the distributor. Therefore, an ELTIF may only be marketed to retail investors in the EU by an entity authorised under MiFID to provide investment advice, that is:

- (i) the ELTIF manager itself if it has a MiFID top up<sup>28</sup>;
- (ii) another EU AIFM (or a UCITS management company) with a MiFID top-up; or
- (iii) an EU credit institution or a MiFID investment firm.

The ELTIF manager must provide distributors with all appropriate information on the ELTIF, including regarding its term and investment strategy, the ELTIF manager's internal assessment process and the jurisdictions in which the ELTIF is allowed to invest.

### (d) Suitability test

When directly offering or placing an ELTIF to a retail investor, the ELTIF manager must obtain information concerning the retail investor, and in particular:

- (i) his/her knowledge and experience in the relevant investment field,
- (ii) his/her financial situation and his/her ability to bear losses; and
- (iii) his/her investment objectives and his/her investment time horizon.

Based on the information collected, the ELTIF manager must assess whether the ELTIF is suitable and may only recommend the ELTIF if it is suitable for that particular retail investor.

Where the financial instrument portfolio of a retail investor does not exceed EUR 500,000, the ELTIF manager or the distributor must ensure that the potential retail investor invests at least EUR 10,000 but not more than 10% of his/her financial instrument portfolio<sup>29</sup> in ELTIFs.

### (e) ELTIF with a term in excess of 10 years

Where the life of an ELTIF exceeds 10 years, the ELTIF manager or the distributor must warn retail investors in writing that the ELTIF may not be suitable if they are unable to sustain such a long term and illiquid commitment.

21 This does in our view not prevent the ELTIF's documents from providing that: (i) the proposed transferee must be an eligible investor and (ii) transfers of undrawn commitments are subject to the prior approval of the board or the general partner.

22 According to the ELTIF Regulation, the fund documents of the ELTIF must not prevent a listing of the interests of the ELTIF.

23 This does in our view not prevent the issue of interests at fixed price as would occur in a typical closed-ended private equity fund structure. In case where the net asset value (NAV) per interest would fall below the fixed issue price before final closing, it should be sufficient to provide for an obligation of the ELTIF to inform existing investors before each closing that new interests will be issued to new investors at a price below NAV (in the context of the equalisation with previous investors) and offer them the opportunity to increase their commitment at the relevant closing. After final closing, interests are normally always issued on a pro rata basis among all investors (except in case of default or excuse).

24 Prospectus Regulation (EU) 2017/1129.

25 But, for the avoidance of doubt, an ELTIF must not issue a prospectus compliant with the Prospectus Regulation, unless it makes a non-exempted public offer of securities or seeks a listing on a regulated market.

26 ie costs of setting up the ELTIF, costs related to the acquisition of assets, management and performance-related fees, distribution costs and other costs, including administrative, regulatory, depositary, custodial, professional service and audit costs.

27 The Markets in Financial Instruments Directive 2004/39/EC

28 ie a licence for the ancillary MiFID services under Art. 6(4) of the AIFMD.

29 Including cash deposits and financial instruments, but excluding any financial instruments that have been given as collateral.



## (f) Miscellaneous

ELTIFs which are marketed to retail investors are subject to additional requirements. In particular:

- (i) retail investors must receive a key information document (**KID**) in accordance with the PRIIPs Regulation<sup>30</sup> before they invest in the ELTIF;
- (ii) the ELTIF must have local facilities in each Member State where it is marketed to retail investors to allow subscriptions and redemptions by, and payments to, retail investors and make available the information which must be provided to retail investors;
- (iii) the ELTIF must have an EU credit institution as depositary, and such depositary may not transfer its liability to sub-custodians in case of a loss of assets;
- (iv) the ELTIF may not grant any right of reuse over its assets to the depositary or any sub custodian;
- (v) no preferential treatment or specific economic benefits may be granted to individual investors or groups of investors;
- (vi) the liability of retail investors must be limited to their capital commitment;
- (vii) retail investors must be able, during the subscription period and at least two weeks after the date of their subscription, to cancel their subscription and have the money returned without penalty; and
- (viii) the ELTIF manager must have appropriate investor complaints procedures in place, which allow retail investors to file complaints in the official language or one of the official languages of their Member State.

<sup>30</sup> Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

## 2. ELTIF review

The restrictive rules applicable to ELTIFs have so far hampered the success of the ELTIF regime. However, EU institutions seem to be determined to make the ELTIF regime more flexible and therefore more attractive. In particular, the EC proposes to:

- (i) broaden the scope of eligible assets for ELTIFs;
- (ii) relax investment rules; and
- (iii) relax rules regarding the marketing to retail investors.

### 2.2 Wider scope of eligible assets

#### (a) 60/40 allocation

Under the current regime, ELTIFs are required to invest (as from the Target Date) at least 70% of their Capital in “eligible investment assets”, with the permission to invest the remaining assets in “liquid assets” (ie, UCITS eligible assets). Under the Proposal, the minimum percentage of the Capital of an ELTIF that must be invested in eligible investment assets would be reduced from 70% to 60%.

The EC also proposes to remove the reference to the European nature of the long-term investments of ELTIFs. This confirms that ELTIFs may invest outside of the EU. However, the restrictions on investments in non-EU qualifying portfolio undertakings.<sup>31</sup>

#### Investments in funds

Under the current regime, ELTIFs may only invest (up to 20% of their Capital) in other ELTIFs, EuVECA<sup>32</sup> and EuSEFs<sup>33</sup>. Investment in other funds is currently not permitted.

Under the Proposal, ELTIFs would also be permitted to invest in EU AIFs that comply with the following requirements:

- (i) they are managed by an EU AIFM<sup>34</sup>;
- (ii) they invest in ELTIF eligible assets; and
- (iii) they do not invest more than 10% of their assets in other funds<sup>35</sup>.

However, under the Proposal, ELTIFs which may be marketed to Retail Investors (**Retail ELTIFs**) would only be allowed to invest up to 40% of their Capital in funds (ELTIFs, EuVECAs, EuSEFs and EU AIFs managed by an EU AIFM). Retail ELTIFs would therefore not be permitted to deploy a pure fund of funds strategy. Furthermore, Retail ELTIFs that invest in funds would be required to look-through the target funds to:

- (i) aggregate direct investments of the ELTIF and investments of target funds for the purpose of applicable risk diversification requirements; and
  - (ii) calculate the maximum amount of borrowing permitted.
- Master-feeder structures would also be permitted under the Proposal, provided both the master and the feeder funds are ELTIFs<sup>36</sup>.

#### (b) Allowing co-investments

ELTIFs would be allowed to make co-investments via minority-owned subsidiaries. ELTIFs (including Retail ELTIFs) would thus be able to combine investments into EU AIFs managed by an EU AIFM (up to 40% of their Capital for Retail ELTIFs) and co-investments alongside other funds, as long as all underlying assets are ELTIF eligible assets (and, for Retail ELTIFs, provided applicable risk diversification requirements are met on a look-through basis).

#### (c) Authorising co-investments

Co-investments alongside the ELTIF by the ELTIF manager, its affiliates and staff and other funds under management would be permitted, provided appropriate organisational and administrative arrangements are in place to identify, prevent, manage and monitor conflicts of interest and ensure such conflicts of interest are adequately disclosed.

#### (d) Simplified definition of real assets

The EC proposes to simplify the definition of “real asset” to cover “any asset that has an intrinsic value due to its substance and properties”. The recitals of the Proposal include a rather extensive list of assets that would constitute real assets such as immovable property (including commercial property and housing), infrastructure assets and other assets (intellectual property, vessels, equipment, machinery, aircraft or rolling stock) and water, forest, building and mineral rights.

The recitals also provide that “investments in immovable property should be documented, including the extent to which real assets are integral to, or an ancillary element of, a long-term investment project that contributes to the Union’s objective of smart, sustainable and inclusive growth”.

The practical implications of this requirement are unclear to us, especially as this requirement is not covered in any operative provision of the Proposal.

The Proposal also lowers the minimum value of a real asset from EUR10m to EUR1m.

<sup>31</sup> ie requirements that the relevant third country (i) is not an FATF high-risk and non-cooperative jurisdiction and (ii) has signed an agreement with the ELTIF manager’s home Member State with every other Member State in which the interests 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. With respect to (i), it is proposed in the Council’s final compromise text that this list be replaced by the EU list on non-cooperative jurisdictions for tax purposes.

<sup>32</sup> ie European venture capital funds under Regulation (EU) 345/2013

<sup>33</sup> ie European social entrepreneurship funds under Regulation (EU) 346/2013

<sup>34</sup> The Proposal does not specify that the EU AIFM must be an EU authorised AIFM. It seems therefore that investment in EU AIFs managed by a registered (ie, de minimis) EU AIFM would be permitted as well.

<sup>35</sup> This restriction also applies in case of investment in ELTIFs, EuVECAs and EuSEFs.

<sup>36</sup> The attractiveness of ELTIF master-feeder structures is therefore limited and we do not expand in this brochure on the rules applicable to ELTIF master-feeder structures.

### (e) Broadening eligible qualifying portfolio undertakings

The maximum market capitalisation of qualifying portfolio undertakings would be increased from EUR500m to EUR1 billion. In addition, it is proposed to clarify that the maximum market capitalisation must be met only at the time of the initial investment.

### (f) Permitted investments in securitisations

Under the Proposal, ELTIFs would be allowed to invest in simple, transparent and standardised securitisations<sup>37</sup>, where underlying exposures consist of commercial, residential or corporate loans or trade receivables.

## 2.3 Relaxed investment rules

The EC proposes to relax investment rules (risk diversification requirements, acquisition limits and borrowing limits). In particular, all risk diversification requirements would be waived for non-Retail ELTIFs. The new (proposed) investment rules are summarised below (in comparison with those currently applicable).

The EC also proposes to allow (Retail and non Retail) ELTIFs to borrow in a currency other than the currency of the assets to be acquired, provided that the currency risk is hedged or that it can be demonstrated that the borrowing in another currency does not expose the ELTIF to material currency risks.

	Current regime	Proposal	
		Retail ELTIFs	Non-Retail ELTIFs
<b>Risk diversification requirements<sup>38</sup></b>			
Minimum investment in eligible investment assets	70%	60%	60%
Maximum investment in instruments issued by or loans granted to a single qualifying portfolio undertaking	10%	20%	Unrestricted
Maximum investment in a single real asset	10%	20%	Unrestricted
Maximum investment in a single ELTIF, EuvECA, EuSEF	10%	20%	Unrestricted
Maximum investment in a single UCITS or EU AIF	Not permitted	20%	Unrestricted
Maximum investment in UCITS eligible assets issued by any single body	5%	10%	Unrestricted
Aggregate value of investments in ELTIFs, EuvECAs, EuSEFs, UCITS and EU AIFs	20%	40%	Unrestricted
Aggregate value of investments in STSs	Not permitted	20%	Unrestricted
Counterparty risk in the context of OTC derivatives or SFTs (per counterparty)	5%	10%	Unrestricted
<b>Acquisition limits</b>			
Percentage of the shares or units of a single ELTIF, EuvECA or EuSEF which may be acquired by an ELTIF	25%	30%	Unrestricted
Percentage of the shares or units of a single UCITS or EU AIF which may be acquired by an ELTIF	Not permitted	30%	Unrestricted
<b>Borrowing</b>			
Maximum borrowing limit	30%	50% <sup>39</sup>	100%
Maximum % of Capital securing borrowing	30%	Unrestricted	Unrestricted

<sup>37</sup> In order to be eligible for an ELTIF, securitisations must comply with article 18 of Regulation (EU) 2017/2402.

<sup>38</sup> Expressed as a percentage of the ELTIF's Capital.

<sup>39</sup> According to its [press release](#), Members of the European Parliament propose to increase this limit to 70%.

## 2.4 Relaxed retail marketing rules

The Proposal would considerably simplify the rules regarding marketing to retail investors. Only the MiFID suitability test would have to be performed vis-à-vis retail investors (ie no additional ELTIF specific suitability test)<sup>40</sup>.

In addition, the Proposal waives:

- (a) the minimum investment holding of EUR10,000 and the 10% exposure cap for retail investors whose financial portfolios are below EUR500,000; and
- (b) the requirement to have local facilities in the Member States where the ELTIF is marketed to retail investors.

The Proposal clarifies that the interdiction of preferential treatment applies on a class-by-class basis.

## 2.5 Term and liquidity

Under the Proposal:

- (a) investors would no longer have the right to ask for the ELTIF's winding up if their redemptions have not been satisfied within one year; and
- (b) ELTIFs would only be required to provide an itemised schedule for the orderly disposal of assets upon request of their home Member State regulator.

The Proposal also seeks to introduce an optional liquidity window mechanism whereby an ELTIF manager would organise the matching of exiting and subscribing investors, provided the ELTIF manager has an appropriate policy in place.

The EC did not follow ESMA's recommendation to allow for the structuring of ELTIFs as evergreen funds (ie with an unlimited term).

The practical implications of the prohibition to establish an ELTIF with an unlimited term are marginal though, as ELTIFs may be established with a very long term (eg, in excess of 50 years).

<sup>40</sup> The Proposal also provides that no suitability assessment must be performed on portfolio managers/staff investing in the ELTIF.

## 2.6 No approval of ELTIF manager

EU authorised AIFMs would no longer be subject to the approval of the ELTIF's home Member State regulator.

## 2.7 Cost disclosure requirements

The cost disclosure requirements would be fully aligned with PRIIPs Regulation.

# 3. Conclusion

The Proposal should considerably increase the attractiveness of the ELTIF regime. Despite those significant improvements, the ELTIF will remain an imperfect product, subject to a heavy regulatory framework.

However, even if the ELTIF is not suitable in all circumstances, it is the best – if not only – product available in the market to offer retail investors exposure to certain alternative strategies on a pan-European basis. The ELTIF may be a game-changer in the path towards retailisation of AIFs in Europe.

## Belgium

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