

An (almost) comprehensive guide to the **new ELTIF** **regulation**

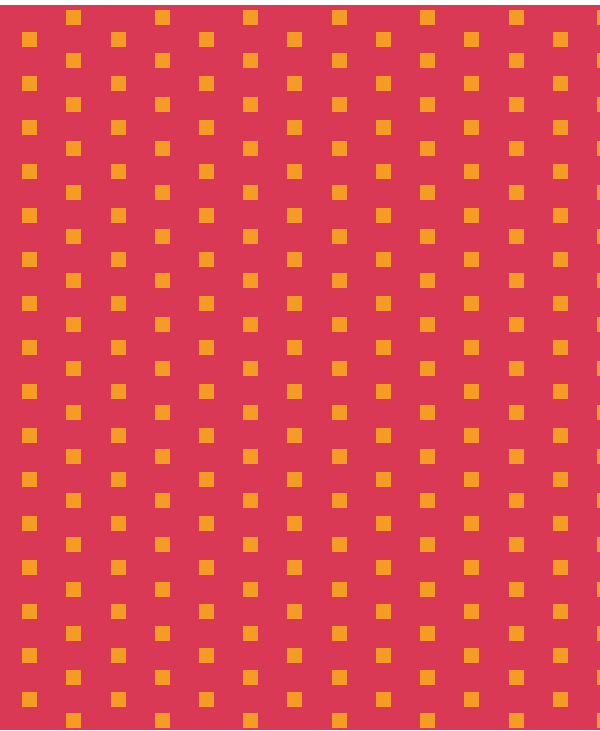


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After more than a year of discussions, and many years of preparation, the long-awaited reform of the ELTIF regulation has been adopted by the European Parliament on 15 February 2023. While the new regulation is not fulfilling all of its promises, it is nonetheless a welcome change, improving the attractiveness of the ELTIF regime.

Created in 2015, ELTIFs (European Long-Term Investment Fund) have been a relative success so far, with only 84 ELTIFs¹ set-up to date across the European Union, representing EUR 7 billion of assets under management. While ELTIFs can be set-up in any country of the European Union, they are nonetheless located in only four countries, with the Grand-Duchy of Luxembourg having the lion share with 57% of the ELTIFs or 48 ELTIFs².

An ELTIF is an EU alternative investment fund³ (**AIF**) that is necessarily managed by an EU authorised alternative investment fund manager (**AIFM**) and which aims at facilitating the raising and channelling of capital towards long-term investments in the real economy, in line with the European Union objective of smart, sustainable and inclusive growth. With that goal in mind, the ELTIF benefits from two main advantages, compared to other EU AIFs, being (i) the possibility to be marketed to retail investors across the European Union, using a marketing passport⁴ and (ii) the possibility to do loan origination across the European Union⁵.

Taking into consideration these benefits (and especially the possibility to market to retail investors), one could wonder why ELTIFs have not been a success. Without minimising the operational issues that can impact the launch of an ELTIF (e.g. the need to have an appropriate distribution network when the ELTIF is marketed to retail investors) and that are not due to the ELTIF regulation, the initial ELTIF regulation has been criticised for, among other things, (i) its lack of pragmatism or feasibility when it comes to eligible assets, (ii) its diversification and concentration requirements that are considered as being too stringent and (iii) the barriers it was imposing for marketing these products to retail investors. While the new regulation is not tackling all these issues, it's an important step in making ELTIF a more successful regime, supporting the market pick up we have seen in relation to that framework over the last few years. By providing clarifications and removing some of the previous obstacles present in ELTIF's 2015 iteration, AIMA expects this updated framework to result in an additional EUR 100 billion in alternative assets funding over the coming 5 years.

1. But bearing in mind that there were only 25 ELTIF in 2020.
2. The other ELTIF are located in Spain (2), France (21) and Italy (13).
3. Or a compartment of an AIF.

4. EU AIFs that are not ELTIF and that are managed by EU AIFMs can only benefit from the marketing passport when sold to professional investors. For other investors, they have to rely on national private placement regimes which can be more or less permissive.
5. That benefit might disappear with the entry into force of AIFMD 2.

1

Broadening the scope of eligible assets

Eligible Assets and prohibited assets or activities

As a general summary, the following assets are, subject to certain conditions, eligible for ELTIF which are, on the other side, prevented from performing some activities or making some investments.

Eligible Assets

ELTIF Core Assets

- **Equity, quasi equity, debt instruments, green bonds issued by or loans⁶ granted to a qualifying portfolio undertaking**
- **Other ELTIF, EuVECA, EuSEF, UCITS and EU AIF managed by EU AIFM**
- **Real Assets**
- **Simple, transparent and standardised securitisations (STS)**

UCITS Eligible Assets⁷

Listed transferable securities and money market instruments, recently issued transferable securities, UCITS and other collective investment undertakings, deposits with credit institutions, financial derivative instruments and non-listed money market instruments.

Prohibited investments and activities

Entering into short sales of assets

Taking direct or indirect exposure to commodities (including via financial derivative instruments; certificates, indices or generally speaking instruments that would give an exposure to them)

Entering into securities lending, securities borrowing, repurchase transactions if they represent more than 10% of the ELTIF

Using financial derivative instruments, except for hedging purpose

6. Provided the loans do not exceed the life of the ELTIF.

7. Subject to the conditions laid down in the UCITS Directive.

The new regulation is bringing several constructive changes to the eligible ELTIF core assets:

Qualifying Portfolio Undertaking

- ELTIFs have to check, except for investment in real assets (direct investment), STS and other investment funds, that the issuer of the instrument is a qualifying portfolio undertaking. It has been specified that the eligibility check has only to be performed **at the time of the initial investment**
- A qualifying portfolio undertaking cannot be a financial undertaking, which now **includes reinsurance undertaking**⁸
- Financial undertakings, other than financial holding companies and mixed-activity holding companies, **that have been authorised or registered more recently than 5 years before the date of the investment are now authorised investments**. This aims mainly at covering the investments in Fintech.
- A qualifying portfolio undertaking cannot be admitted to trading on a regulated market or a multilateral trading facility unless it has a market capitalisation of no more than **EUR 1.5 billion** (EUR 500 million in the original regulation). It is worth noting that the regulation is specifying that whenever an undertaking ceases to meet the relevant listing criteria to be qualified as qualifying portfolio undertaking, it nonetheless will still be included for the purpose of calculating the 55% minimum investment requirement in ELTIF core assets for a period of 3 years from the date it ceases to meet the listing criteria⁹

3rd Countries

- **The reference to the European nature of the long-term investment has been removed**, lifting an uncertainty on the possibility to have assets that are located outside of the European Union (EU). It has therefore been recognised that investment in 3rd countries can benefit the economy of the EU, including through investments that promote the development of border regions, enhance commercial, financial and technological cooperation and facilitate investments in environmental and sustainable energy projects, subsea fibre optic cables that connect Europe with other continents, construction of LNG terminals and related infrastructure, cross-border investments in renewable energy installations and facilities that contribute to the resilience of the electrical grid and the energy security of the EU
- It is also recognised that a majority of the assets of the ELTIF or the main revenue or profit generation of such assets may be located in a 3rd country
- Where the ELTIF invests in a qualifying portfolio undertaking that is located in a 3rd country, such country should nevertheless not be included in the list of non-cooperative jurisdictions for tax purposes or be identified as high risk 3rd country as per delegated acts of directive 2015/849 (the so-called 4th AML directive)¹⁰

8. The notion of financial undertaking already includes credit institutions, investment firms, insurance undertakings, financial holding companies, mixed-activity holding companies, UCITS management companies and AIFM.

9. That specification, which is not new, is hard to understand in light of the fact that the criteria has to be checked at the time of the initial investment.

10. The requirement to have double tax treaties between that 3rd country on the one side and the countries where the ELTIF manager is located and where the ELTIF is marketed that are in compliance with some provisions of the OECD Model Tax Convention has been removed certainly due to the limited number of tax treaties that were in compliance.

Real assets

- **The definition of “real assets” has been simplified** to include any assets that have intrinsic value due to their substance and properties. Such real assets comprise immovable property, such as communication, environment, energy or transport infrastructure, social infrastructure (including retirement homes or hospital), infrastructure for education, health and welfare support or industrial facilities, installations, and other assets including intellectual property, vessels, equipment, machinery, aircraft or rolling stock
- Investments in commercial property, in facilities or installations for education, counselling, research, development, including infrastructure and other assets that give rise to economic or social benefit, sports, or in housing, including in senior residents or social housing, should also be deemed eligible assets due to the capacity of such assets to contribute to the objectives of smart, sustainable and inclusive growth. Investments should also comprise investments in water rights, forest rights, building rights and mineral rights
- There is **not a required minimum value of a real asset an ELTIF can invest in anymore**, broadening significantly the range of target real assets

Master-Feeder

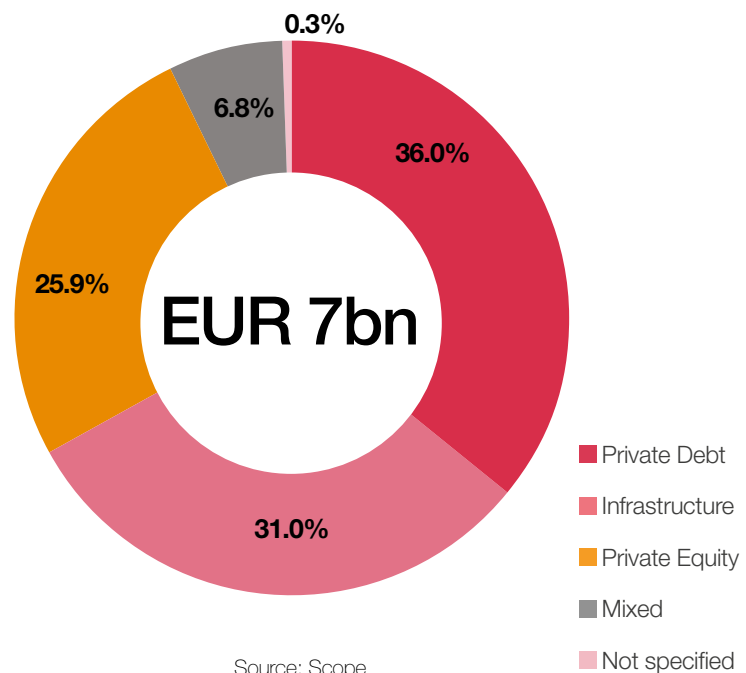
- **The possibility to have a master-feeder ELTIF has also been introduced.** While the nature of the master has been highly debated, the new regulation limits the possibility to have feeder ELTIF to those ELTIF that are investing at least 85% of their assets **in another ELTIF** (or a compartment of such ELTIF). It is unfortunate that it has not been accepted that a master entity is not an ELTIF and one could wonder what the benefit of having a feeder ELTIF, except potentially tax reasons, will be
- As part of the authorisation process of a feeder the following documents/information will have to be submitted to the competent authorities : (a) a declaration that the feeder is a feeder of a master ELTIF, (b) the constitutive document of the master, (c) the agreement between the feeder and the master or the internal rules on conducts of business, (d) the information-sharing agreement between the depositaries of the feeder and the master if the depositaries are not the same, (e) an attestation from the competent authority of the master that the master is an ELTIF when such master is not located in the same Member State than the feeder
- The feeder will have to enter into an agreement with the master pursuant to which the master shall undertake to provide all documents and information necessary for the feeder to meet the requirements of the ELTIF regulation. That agreement shall be made available to the investors upon request.
- If the master and the feeder have the same manager, the agreement may be replaced by internal rules on the conduct of business
- As a condition precedent for the feeder to invest into the master, whenever their depositaries are not the same, those depositaries shall enter into an information-sharing agreement in order to ensure the fulfilment of their duties by the depositaries

Target funds

- Beside other ELTIF, EuVECA and EuSEF that were already eligible for ELTIF, ELTIF are now authorised to invest **in UCITS or other EU AIF managed by EU AIFM**, provided that these AIF are investing in eligible investments for ELTIF, allowing therefore ELTIF to deploy fund of funds strategies
- For the purpose of the minimum requirement of investment in ELTIF core assets (which is now set at 55%), it should be noted nevertheless that the ELTIF investing in other AIF will have to perform a look-through approach, by combining the assets directly held by the ELTIF with the assets by these AIF that are eligible to be ELTIF core assets
- For the purpose of the ELTIF diversification requirements and the borrowing limits that look-through approach will also have to be implemented but this time with all the assets held and borrowing made by the target funds. That look-through approach is not required for the purpose of the compliance with the concentration requirement
- Such look-through should be done on the basis of information updated at least on quarterly basis and if not available on a quarterly basis on the basis of the most recent information available. This will require appropriate cooperation and transparency to be put in place between the ELTIF and the target funds
- Furthermore, it should be noted that the target funds shall not invest more than 10% of their assets in any other collective investment undertakings. This restriction is nonetheless not applicable in the case of feeder ELTIF

| | |
|-------------------------------|--|
| Co-investment | <ul style="list-style-type: none"> ELTIF are now allowed to make minority co-investments, which will give ELTIF additional flexibility in implementing their investments strategies, attract more promoters of investment projects and increase the range of possible eligible target assets, rather than be required to invest via or in majority owned subsidiaries as it was the case before |
| Green bonds | <ul style="list-style-type: none"> Bonds issued under Union legislation on environmentally sustainable bonds by a qualifying portfolio undertaking are also now eligible |
| Securitisation | <ul style="list-style-type: none"> When it comes to investment in securitisation, the new regulation has narrowed the scope as ELTIF will only be allowed to invest in securitisation that falls within the scope of the simple, transparent and standardised securitisations (STS) governed by the Regulation (EU) 2017/2402, provided that the underlying assets of these STS consist in (i) residential loans that are either secured by one or more mortgages on residential immovable property or that are fully guaranteed by an eligible protection provider among those referred to in Article 201(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (3) and qualifying for the credit quality step 2 or above as set out in Part Three, Title II, Chapter 2 of that Regulation, (ii) commercial loans that are secured by one or more mortgages on commercial immovable property, including offices or other commercial premises, (iii) credit facilities, including loans and leases, provided to any type of enterprise or corporation, (iv) trade receivables provided that the proceeds from the securitisation bonds are used for financing or refinancing long term investments, (v) other underlying exposures that are considered by the originator or sponsor to constitute a distinct asset type on the basis of internal methodologies and parameters provided that the proceeds from the securitisation bonds are used for financing or refinancing long term investments |
| Alignment of interests | <ul style="list-style-type: none"> Finally, it will be also now clearly possible for an ELTIF manager, its affiliated entities and their staff to invest in that ELTIF and in its assets, allowing for alignment of interests mechanisms, provided that the ELTIF manager has put in place organisation and administrative arrangements to identify, prevent, manage and monitor conflicts of interest and provided that such conflicts of interest are adequately disclosed. |

With the ELTIF, under the current regulation, being split between the following strategies, it remains to be seen whether the new regulation will have an impact on this split or will lead to new strategies being implemented.



2

Creation of 2 categories of ELTIF and bringing more flexibility in the diversification and concentration requirements

One of the main innovations of the proposal is to create a differentiated regime between ELTIF that will be solely marketed to professional investors and ELTIF that can be sold to retail investors also. The concept being that retail investors should benefit from a higher level of protection than professional investors.

The modifications in the diversification and eligibility requirements are as follows:

| Diversification Requirements | | | |
|---|---------------------|----------------------------------|--|
| | Current Requirement | New Requirement for Retail ELTIF | New Requirement for Professional ELTIF |
| Minimum investment in eligible assets | 70% | 55% | 55% |
| Maximum investment in instruments issued by or loans granted to a single qualifying portfolio undertaking | 10% | 20% | No Limit |
| Maximum investment in a single real asset | 10% | 20% | No Limit |
| Maximum investment in a single ELTIF, EuvECAs, EuSEFs | 10% | 20% ¹¹ | No Limit |
| Maximum investment in a single UCITS or EU AIF | Not possible | 20% | No Limit |
| Maximum investment in UCITS eligible assets issued by any single body | 5% | 10% ¹² | No Limit |
| Aggregate value of investments in ELTIF, EuvECAs, EuSEFs, UCITS and EU AIF | 20% | No limit | No Limit |
| Aggregate value of investments in STS | Not possible | 20% | No Limit |
| Counterparty risk in the context of OTC derivatives, repo and reverse repo | 5% | 10% | No Limit |

11. Not applicable for feeder ELTIF.

12. 25% where the bonds are issued by a Member State credit institution that is subject by law to a special public supervision designed to protect bond-holders (e.g. Société de Crédit Foncier in France).

As a reminder, for the purpose of these diversification requirements, companies that are part of the same group for the purposes of the European rules on consolidated accounts shall be regarded as a single qualifying portfolio undertaking or body.

Furthermore, it is worth reminding that these diversification requirements and the 55% minimum investment in ELTIF core assets shall apply from the date specified in the constitutive document of the ELTIF (“**ramp-up period**”) which has to be determined taking account the

characteristics and features of the assets the ELTIF is targeting and which cannot exceed the earlier of (i) 5 years from the date of the authorisation of the ELTIF and (ii) half of the life of the ELTIF¹³.

Compliance with the diversification requirements and the 55% minimum (i) ceases to be requested when the ELTIF enters into its liquidation phase, i.e. starts to sell its assets in order to redeem the investors after the end of the life of the ELTIF and (ii) is temporarily suspended for a maximum period of 12 months whenever the ELTIF issues or redeems shares.

| Concentration Requirements | | | |
|--|----------------------------------|----------------------------------|--|
| | Current Requirement | New Requirement for Retail ELTIF | New Requirement for Professional ELTIF |
| Concentration on a single ELTIF, EuvECAs or EuSEFs | 25% | 30% | No Limit |
| Concentration on a single UCITS or EU AIF | N/A | 30% | No Limit |
| Concentration for other UCITS eligible assets | As per the UCITS directive rules | As per the UCITS directive rules | No Limit |

In addition to relaxing the diversification and concentration requirements, the borrowing limit¹⁴ has been increased to 50% of the net asset value for Retail ELTIF and 100% of the net asset value for Professional ELTIF. This limit is now applicable as from the date specified in the constitutive documents of the ELTIF, such date can be no later than 3 years after the date the marketing of the ELTIF¹⁵ started. Finally, the limit will cease to be applicable on a temporary basis whenever the ELTIF issues or redeems shares. Such limitation shall be only applicable for the period of time necessary, taking into account the interests of the investors and cannot last more than 12 months.

It is now also possible for ELTIF to borrow, not only for investment purposes (and there is no more restriction as to the kind of investments that can be financed via borrowing, i.e. loans are not excluded anymore), but also for the purpose of providing liquidity and to pay costs and expenses.

Borrowing can be done in any currencies, provided that when a borrowing is done in another currency than the currency of the assets, such currency risk exposure must be appropriately hedged. It has eventually been provided that encumbrance of assets can be done in that context and the 30% limit has been removed.

Finally, it has been clarified that the rules related to rectification of investment positions that require the ELTIF manager to take, within an appropriate period of time, measures that are necessary to rectify the position, taking due account of the interests of the investors in case of infringement beyond the control of the manager, are not only applicable for the diversification requirements but also to the portfolio composition (i.e. 55% minimum in ELTIF core assets) and the borrowing limits, but not the concentration limits.

13. The life of the ELTIF, which has to be stated in the constitutive document of the ELTIF, has to be determined consistently with the long-term nature of the ELTIF and be compatible with the life cycles of each of the individual assets, taking into account the illiquidity profile and economic life cycle of each individual asset and the investment objective of the ELTIF.

14. Commitment facilities, i.e. borrowing arrangements fully covered by investors' capital commitments are not considered as being borrowings for the purpose of the ELTIF regulation.

15. One could wonder why this application date is different from the one applicable to diversification rules.

3

Liquidity possibility for ELTIF

Investors will now have also the possibility¹⁶ to redeem their shares after the end of a minimum holding period¹⁷. Redemptions are nonetheless limited to the percentage of the assets of the ELTIF that are invested in UCITS eligible assets¹⁸.

The ELTIF manager, at the time of the authorisation and through the life of the ELTIF, will have to demonstrate to the competent authority of the ELTIF that appropriate redemption policy¹⁹ and liquidity management tools are put in place.

That put aside, ELTIF managers are still subject to the same constraints, as any AIFM, of having redemption policy and liquidity management tools as well as to treat their investors fairly whenever a redemption gate is activated.

While investors' possibility to request the winding-up of an ELTIF has been removed if their redemption requests have not been satisfied within 1 year from the date on which they were requested, it has been specified that they should always have the option to be repaid in cash. Redemptions in kind are nonetheless possible provided they are allowed by the constitutive document of the ELTIF, are accepted by the relevant investor and are concerning assets that are not subject to specific rules as to their transfer.

The "main" innovation introduced by the new regulation relates to the possibility to have a liquidity matching mechanism, which would allow to include in the constitutive document of the ELTIF a full or partial matching of transfer requests of existing investors to potential investors, subject to the establishment by the ELTIF manager of a policy **including:**

The transfer process for both existing and potential investors

The role of the ELTIF manager or the central administration in conducting the transfer and matching the requests

The period of time during which the existing and potential investors may request the transfer of their shares

The rules determining the execution price

The rules determining the pro-rata conditions

The timing and nature of disclosure of information with respect to the transfer process

The fees, costs and charge, if any, related to the transfer process

Such policy and procedures shall ensure that investors are treated fairly and that matching is carried out on a pro-rata basis where there is a mismatch between existing and potential investors. Furthermore, the matching of requests should allow the ELTIF manager to monitor the liquidity risk of the ELTIF and the matching should be compatible with the long-term investment strategy of the ELTIF.

In light of all these constraints, one could wonder if a listing of the shares of the ELTIF on a regulated market or on a multilateral trading facility would not be a more efficient option.

16. The ELTIF regulation was, and still is still is, allowing to offer the possibility for investors to redeem after the end of the ramp-up period.

17. The criteria to determine such minimum holding periods will still depend on RTS to be adopted by ESMA.

18. Which is now a maximum of 45%.

19. Which shall indicate clearly the procedures and conditions for redemptions, and which shall ensure that investors asking for redemption of their shares are treated fairly and on a pro-rata basis if the redemption requests exceed the percentage of assets invested in UCITS eligible assets.

A listing or how to make ELTIFs more liquid

As discussed above, one of the main drawbacks to the potential success of ELTIF is the limited level of liquidity since they might be considered, in principle, as closed-ended from a fund's regulatory perspective. This is especially true when looking at their targeted market i.e. mainly retail investors. Although the new regulation introduces innovative mechanisms to enhance their level of liquidity these appear to be insufficient to fully overcome one of the main barriers to the ELTIF success.

When seeking liquidity, one option naturally comes to mind which surprisingly appears to be often overlooked when dealing with ELTIF. Listing shares or units of an ELTIF would by essence increase the visibility and liquidity of an ELTIF all at the same time improving its attractiveness vis-à-vis retail investors.

Contemplating a listing will however need to be addressed at an early stage of the ELTIF structuring as the latter will have a direct impact on the applicable regulatory framework and underlying costs. The ELTIF qualification i.e., open-ended versus closed-ended, will drive the overall listing process as the rules relating to the drawing up of the listing prospectus and the applicable ongoing disclosure and reporting obligations that kick in once the ELTIF is listed, differ.

Indeed, as a rule, units issued by collective investment undertakings other than the closed-ended type are excluded from the scope of both Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the "**Prospectus Regulation**") and Directive 2004/109/EC of the European parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (the "**Transparency Directive**").²⁰

Even if similar, the closed-ended qualification for purposes of the Prospectus Regulation slightly varies from the one used in the context of the regulatory framework applicable to funds. The Luxembourg financial sector supervisory authority, Commission de Surveillance du Secteur Financier (the "**CSSF**"), had in the past considered the specifics of what needs to be understood as a closed-ended fund in the context of the former prospectus regime, which remains true today under the current Prospectus Regulation regime. For purposes of the Prospectus Regulation a collective investment undertaking is of a closed-ended type if and when the investor has no redemption right prior to the term of the fund. However, when a collective investment undertaking decides, in the course of its lifetime, to "open" the fund and to allow the repurchase of the securities, the collective investment undertaking would in principle be reconsidered as an open-ended fund.

As a result, notwithstanding its closed-ended nature, an ELTIF will ultimately qualify as an open-ended collective investment undertaking within the meaning of the Prospectus Regulation if and when investors, not willing to lock their capital, benefit from an exit solution through the redemption of their shares during the lifetime of the ELTIF (even if after certain restricted pre-determined holding periods). Similarly, when the ELTIF is closed-ended but one of its sub-funds offers such redemption rights, the overall ELTIF should be seen as open-ended. The European Commission had further stressed in its Commission Delegated Regulation 694/2014 that the redemption policy is the relevant criterion to distinguish between open-ended and closed-ended funds.

It should finally be noted that the same approach should be taken as far as the Transparency Directive is concerned.

As final assessment is ultimately left at the discretion of the CSSF or the Luxembourg Stock Exchange (the "**LuxSE**") as the case may be (as further discussed below) it is always recommended to have a preliminary discussion with the CSSF or the LuxSE.

²⁰As implemented in Luxembourg by the law of 11 January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as amended (the "Transparency Law").

The Luxembourg Stock Exchange as the preferred listing choice for ELTIF

The LuxSE operates two markets: (i) the so-called Bourse de Luxembourg which qualifies as a regulated market within the meaning of MiFID II and falls within the EU harmonised regime and (ii) the Euro MTF, an exchange regulated market, hence offering multiple listing options that could suit the needs for listings of ELTIFs.

While on the one hand a listing on the Bourse de Luxembourg requires in principle the drawing up of a Prospectus Regulation compliant prospectus approved by the CSSF (or another EU competent authority and passported in Luxembourg), a listing on the Euro MTF on the other hand requires the drawing up of a prospectus in accordance with the LuxSE's Rules and Regulations (the "Rules") and approved by the LuxSE. This is where the discussion as to the nature of the ELTIF kicks in as the applicable listing regime and related reporting obligations ultimately differ depending on whether one is dealing with a closed-ended fund as opposed to an open-ended fund (within the meaning of the Prospectus Regulation) with direct impact on costs and timing. Close consideration should hence be given to the ELTIF constitutive documentation.

The benefit of an open-ended fund as opposed to a closed-ended one is that it remains out of the scope of the Prospectus Regulation and a listing on the Bourse de Luxembourg can, as a result, be done on the basis of the prospectus drawn up in compliance with the funds regulatory requirement without the need to prepare a separate listing prospectus. Similarly, when seeking a listing of an open-ended ELTIF on the Euro MTF, the prospectus drawn up for purposes of the applicable fund's regulation is sufficient. It should be stressed also that the rules typically applicable for an admission to listing of shares or units on the Official List of the LuxSE such as the free float and free transferability requirements do not apply in the case of an open-ended ELTIF.

Last but not least, once listed an ELTIF needs to abide by certain ongoing disclosure and reporting rules set out notably in the Transparency Directive (as implemented in Luxembourg by the Transparency Law) and the Rules. Open-ended collective investment undertakings do not fall within the scope of the Transparency Directive hence benefitting from a less stringent ongoing disclosure and reporting regime.

Through its multiple listing options²¹, the LuxSE offers an attractive environment for collective investment undertakings especially in the context of ELTIF. A listing on one of the markets operated by the LuxSE can offer the liquidity an ELTIF may need, granting greater attractiveness and visibility for these types of investments. However, contemplating a listing needs to be properly addressed in the constitutive documents of the ELTIF and its structuring in order to benefit from the best combination possible in terms of efficiency (notably in terms of costs and timing), attractiveness and regulatory constraints.

While having an actual liquidity for an ELTIF might remain a challenge, it is worth keeping in mind that ELTIF have always the possibility to proceed, in accordance with the distribution policy provided for in their constitutive document, with distributions of the proceeds generated by their assets and which shall comprise of (i) proceeds that the assets are regularly producing and/or (ii) capital appreciation realised after the disposal of an asset. No distributions are however possible if the proceeds are required for future commitments of the ELTIF.

21. It is also worth mentioning that the LuxSE has taken the role of a green pioneer by launching the "Luxembourg Green Exchange" (LGX) perfectly fitted for green, social, sustainable (or sustainability linked) securities. LGX is the ideal platform to display ELTIF that would qualify as sustainable funds classified as Article 8 or Article 9 funds under Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector.

4

Transparency Requirements

The new regulation is not fundamentally changing the transparency requirements applicable to ELTIF.

With the possibility of having feeder ELTIF, this category of ELTIF will nonetheless be subject to additional disclosure requirements and will have to disclose:

A declaration that the feeder ELTIF is a feeder of a particular master ELTIF and that it will permanently invest 85% or more of its assets in the master ELTIF.

Whether the performance of the feeder and the master ELTIF are identical and if not the extent and the reasons for which they differ.

A brief description of the master ELTIF, its organisation, investment objective and policy, including its risk profile and how the prospectus of the master can be obtained.

A summary of the agreement between the feeder ELTIF and the master ELTIF or the internal rules on conduct of business of the ELTIF manager.

How the investors may obtain further information on the master ELTIF and have access to the agreement between the feeder and the master.

A description of all remuneration or reimbursement of costs payable by the feeder in relation to its investment in the master, as well as the aggregate charges of the feeder and the master. These aggregate charges must also be disclosed in the annual report of the ELTIF.

5

Simplifying marketing to retail investors

One of the main goals of the ELTIF regulation is to attract retail investors to long-term investments. In light of the mitigated result of the current ELTIF regulation, the following changes has been brought:

- The requirement to have facilities in place in the Member States where the retail investors targeted are located for the purpose of making subscriptions, payments, repurchasing shares and making information available has been lifted;
- There is no requirement to provide investment advice in the context of the marketing of an ELTIF to retail investors but an assessment of suitability and a suitability statement under MIFID II²², is required in all cases. That assessment, which is a condition precedent to the marketing of the shares to a retail investor, has to be carried out whether the ELTIF is acquired from the ELTIF manager, a distributor or via the secondary market;
- The requirement that an investor having a financial instrument portfolio of less than EUR 500,000 shall not invest more than 10% of his financial instrument portfolio and ELTIF and that he invests no less than EUR 10,000 has been removed;
- It has been finally also clarified that the principle of equal treatment only applies at a share class level.

It is to be noted that retail-distributed ELTIF managers will be submitted to the product governance rules under MIFID II, including the identification of the target market for each ELTIF managed.

From a regulatory standpoint, there are a few missed opportunities in that new regulation, like the possibility to invest in non-EU AIF or to have master structures that are not ELTIF. Having evergreen structures or less restrictions as to the liquidity features of the ELTIF (although that point will mainly depend on the criteria that ESMA is adopting on the definition of the minimum holding period) would also have been welcomed by the industry. But overall, most of the regulatory issues that were concerning the industry have been addressed.

That does not mean nonetheless that ELTIF are now free of any (non-regulatory) challenges.

²². Replacing the specific assessment provided for only under the ELTIF regulation.

6

Remaining Challenges

Tax challenges

Logically, the new regulation is silent on any tax aspect leaving ELTIF's tax framework within each Member States. This generally means that the tax regime of ELTIF is the one of a local AIF. No more, no less!

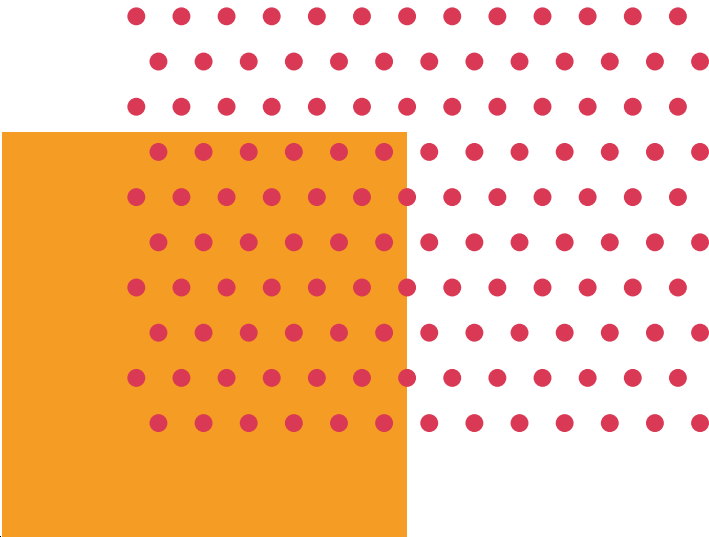
However, we would have welcomed a form of EU harmonisation to ensure a level playing field when it comes to tax treatment, which would have avoided any potential harmful competition.

That being said, some Member States such as Belgium have already set up some tax beneficial regimes which basically provides a tax neutrality for its ELTIF. We would welcome such national beneficial tax regimes as they will be a key element for the success of the new regulation.

From an investor's tax side, ELTIF promoters will need to anticipate and accommodate investors' requirements for tax and regulatory reportings that are common market practice in the retail world. Offering these reportings gives a competitive advantage to the product; retail (and more and more professional) investors are expecting to receive necessary information enabling them to benefit from the potential attractive tax rules in their home country.

From a portfolio tax perspective, strong monitoring of withholding taxes and capital gains tax should be carried out, especially if assets are located outside the EU as the new regulation now clearly allows.

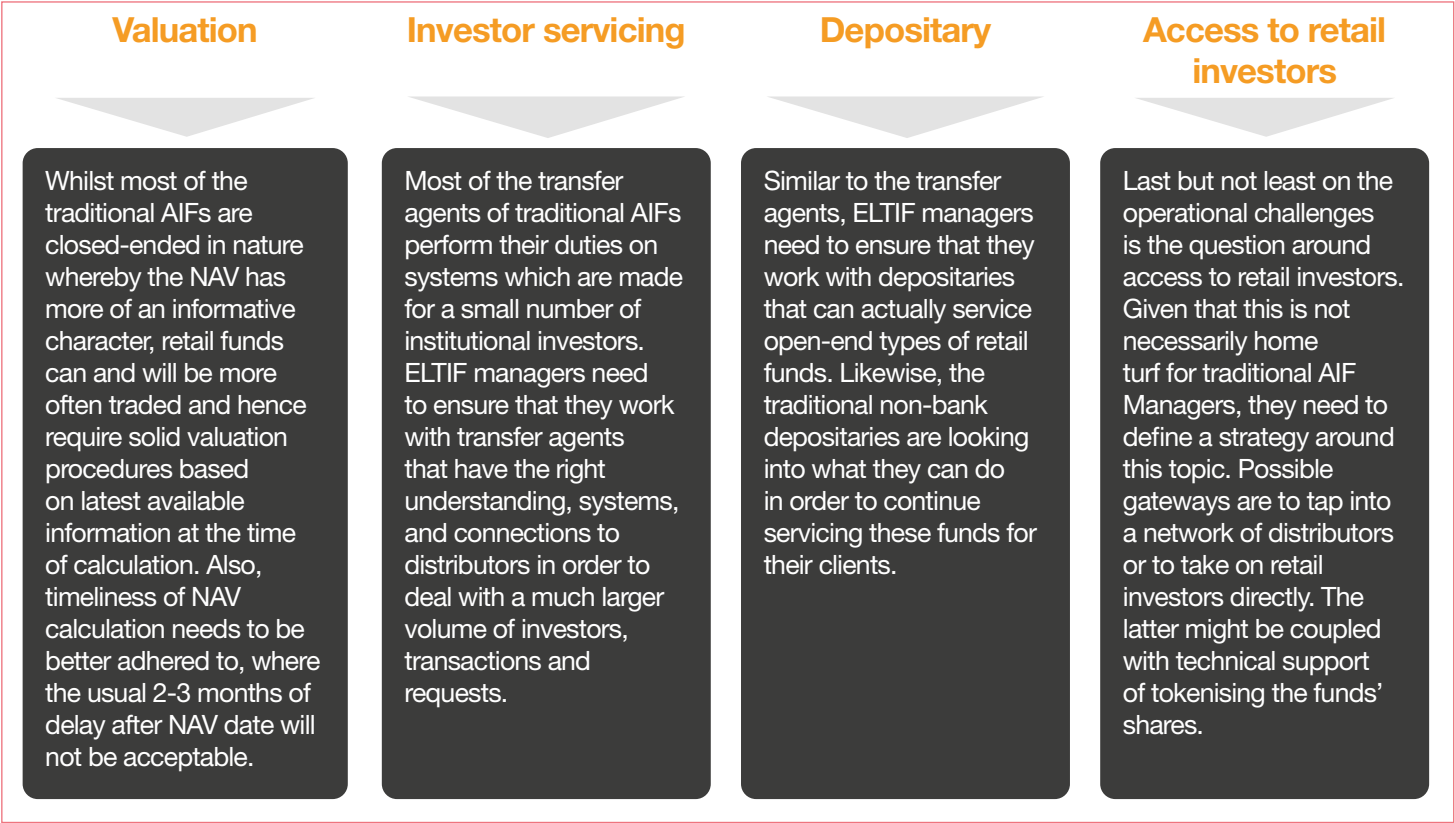
Finally, we see the introduction of Master-Feeder ELTIF structures as positive to accommodate certain investors' tax preferences.



Operational challenges

Whilst it is obvious that a regulation does not touch on operational matters, it is nevertheless important to stress the importance of operations when setting up, managing, and administering a fund such as an ELTIF. Especially when looking at retail investors.

Over the past few years, AIFM have started to focus (again) on retail investors as a possible source of fund raising. The ELTIF is obviously well positioned as a vehicle of choice for such funds, especially given the updates around eligible assets as well as transfers of investors. However, ELTIF managers and administrators alike need to be mindful of a number of operational challenges, inter alia:



7

Entry into Force



The new regulation will start to apply 9 months after its entry into force.²³ Existing ELTIF will have 5 years from the date of application of the new regulation to comply with it. Those existing ELTIF that do not raise capital after the date of application of the new regulation are exempted to comply with it.

²³i.e. on the 20th day following its publication in the Official Journal of the European Union.

In this publication, legal aspects have been covered by PwC legal, whereas tax, regulatory and operational aspects have been covered by PwC Société Coopérative.

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